

PROJET DE LOI

ENTITLED

The Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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* No. I of 2005; as amended by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018). See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015).

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ARRANGEMENT OF SECTIONS

1. Implementation of Human Rights provisions.
2. General provisions as to Ordinances.
3. Amendment of Law of 2000.
4. Interpretation.
5. Citation.

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THE STATES, in pursuance of their Resolution of the 25th February, 2004^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Implementation of Human Rights provisions.

1. (1) The States may by Ordinance under this section, for the purpose of the implementation of any provision of –

(a) the Human Rights (Bailiwick of Guernsey) Law, 2000^b, and/or

(b) the Convention,

amend any relevant enactment, subject to the provisions of subsection (3).

(2) In deciding whether or not to enact an Ordinance under this section the States may, without limitation, have regard to –

(a) any judgment, decision, declaration or opinion mentioned in section 2 of the Human Rights (Bailiwick

^a Article V of Billet d'État No. II of 2004.

^b Order in Council No. XIV of 2000.

of Guernsey) Law, 2000,

- (b) any decision of a court in the Bailiwick, the Bailiwick of Jersey, the Isle of Man or the United Kingdom under which a provision of subordinate legislation has been quashed, or declared invalid, by reason of incompatibility with a Convention right,
- (c) any declaration of incompatibility made –
 - (i) under section 4 of the Human Rights (Bailiwick of Guernsey) Law, 2000,
 - (ii) under section 4 of the Human Rights Act 1998, or
 - (iii) under the equivalent provision in force in the Bailiwick of Jersey or the Isle of Man, and
- (d) any finding of the European Court of Human Rights pursuant to which it appears to the States that a provision of law applicable in the Bailiwick, or any part thereof, is incompatible with an obligation arising from the Convention.

(3) The States shall not enact an Ordinance under this section unless a Law Officer of the Crown has certified that its enactment is in his opinion necessary or expedient for the purpose mentioned in subsection (1).

General provisions as to Ordinances.

2. (1) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient,
 - (c) may be made so as to have effect from a date earlier than that on which it is made,
 - (d) may be made so as to have the same extent, or any part thereof, as the legislation which it affects and may make any such provision of any such extent as might be made by an Order in Council, other than any provision which –
 - (i) imposes or increases taxation, or
 - (ii) provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.
- (2) Any power conferred by this Law to make an Ordinance may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

(ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Without prejudice to section 2(1)(d)(ii) and the generality of the foregoing, an Ordinance under this Law –

(a) may make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences, and –

(i) an Ordinance of the States of Deliberation may specify a penalty which may be imposed by the Magistrate's Court which exceeds the limits of jurisdiction for the time being imposed upon that Court by section 10 of the Magistrate's Court (Guernsey) Law, 1954^c,

^c Ordres en Conseil Vol. XVI, p. 103; Vol. XXVII, p. 170; Vol. XXVIII, p. 5; and No. V of 1989.

(ii) no Ordinance of the States of Alderney or the Chief Pleas of Sark may specify a penalty in respect of an offence triable summarily or on indictment which exceeds –

(A) the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment, or

(B) the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 1987^d or the Court of the Seneschal by section 23 of the Reform (Sark) Law, 1951^e,

whichever is greater,

(iii) no Ordinance under this Law shall increase the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 1987 or the Court of the Seneschal by section 23 of the Reform (Sark) Law, 1951.

^d Ordres en Conseil Vol. XXX, p. 37; and No. VI of 1989.

^e Ordres en Conseil Vol. XV, p. 215; Vol. XXIII, p. 200; Vol. XXIX, p. 27; No. VII of 1989; and No. XII of 1991.

NOTES

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.

Amendment of Law of 2000.

3. In section 6(5) of the Human Rights (Bailiwick of Guernsey) Law, 2000, insert –

"or (c) make any Ordinance under the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004.".

Interpretation.

4. (1) In this Law, except where the context excludes –

"the Convention" means the Convention for the Protection of Human Rights and Fundamental Freedoms, agreed by the Council of Europe at Rome on 4th November, 1950 as it has effect for the time being in relation to Guernsey,

"implementation", in relation to a provision referred to in section

1(1), includes the enforcement or enactment of the provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the provision, in or under domestic law,

"relevant enactment" means any Law of the States of Deliberation, States of Alderney or Chief Pleas of Sark, including any Law enacted after the date of this Law,

"the States", in section 1, means –

- (a) in relation to a relevant enactment which is applicable only in Alderney, the States of Alderney,
- (b) in relation to a relevant enactment which is applicable only in Sark, the Chief Pleas of Sark,
- (c) in any other case, the States of Deliberation.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^g shall apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) Every department of the States of Guernsey must, before recommending the States of Deliberation to agree to make an Ordinance under this Law amending a relevant enactment which applies in Sark or Alderney, consult the [Policy and Finance Committee] of the Chief Pleas of Sark or (as the case may be) the

^g Ordres en Conseil Vol. XIII, p. 355.

Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(5) The requirement imposed by subsection (4) to consult a committee includes a requirement to inform the States of Deliberation of the views of that committee when making any recommendation to the States as to the matter consulted upon.

NOTES

In section 4, the words in square brackets in subsection (4) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.¹

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.²

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Citation.

5. This Law may be cited as the Human Rights (Implementation and Amendment) (Bailiwick of Guernsey) Law, 2004.

NOTE

The Law received Royal Sanction on 13th October, 2004 and was registered on the Records of the Island of Guernsey and came into force on 17th January, 2005.

¹ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

² The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.