

PROJET DE LOI

ENTITLED

The Fishing (Bailiwick of Guernsey) Law, 1989 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXXI, p. 548; as amended by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992 (No. IV of 1992, Ordres en Conseil Vol. XXXIV, p. 149); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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THE STATES, in pursuance of their Resolution of the 27th day of July, 1989, 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.

[Unlawful fishing.]

1. If within fishery limits there is a contravention of an enforceable Community restriction relating to sea fishing, the master, owner and charterer of any relevant fishing boat are each guilty of an offence.]

NOTES

Section 1 was substituted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, section 1(a), with effect from 25th August, 1992.

The following cases have referred to this Law:

Jersey Fishermen's Association Limited et al v States of Guernsey (2004) (Unreported, Royal Court, 29th June) (Guernsey Judgment No. 30/2004);

States v. Jersey Fishermen's Association Limited, IF Limited, Interfish Wirons Limited, Scerene Fishing Company Limited and Lovell [2005–06] GLR 226;

Jersey Fishermen's Association Limited, IF Limited, Interfish Wirons Limited, Scerene Fishing Company Limited and Lovell v. States [2007-08] GLR 36.

Penalties.

2. (1) A person guilty of an offence under section 1 shall be liable –

- (a) on summary conviction –
 - (i) to a fine not exceeding £50,000, and
 - (ii) subject to subsection (3)(a), to a fine not exceeding the value of the fish in respect of which the offence was committed,
- (b) on conviction on indictment, to a fine.

(2) Subject to subsection (3)(b), the court by or before which a person is convicted of an offence under section 1 may order the forfeiture of any fish in respect of which the offence was committed and of any net or other fishing gear used in committing the offence.

(3) Where in respect of an offence under section 1 which is tried summarily –

- (a) the court orders the forfeiture of any fish under subsection (2), the court shall not impose a fine under subsection (1)(a)(ii) in respect of the offence,
- (b) the court imposes a fine under subsection (1)(a)(ii), the court shall not order the forfeiture of the fish in respect of which the offence was committed.

(4) A fine to which a person is liable under subsection (1)(a)(ii) in respect of an offence shall be in addition to any other penalty (pecuniary or otherwise) to which he is liable in respect of the offence under any other enactment.

Powers of sea-fishery officers.

3. (1) For the purpose of enforcing any restriction mentioned in section 1, a sea-fishery officer may exercise, in relation to any fishing boat within fishery limits, the powers conferred by subsections (2) to (4).

(2) He may go on board the boat, with or without persons assigned to assist him in his duties, and for that purpose may require the boat to stop and do anything else which will facilitate the boarding of the boat.

(3) He may require the attendance of the master and other persons on board the boat and may make any examination and inquiry which appears to him to be necessary for the purpose mentioned in subsection (1) and, in particular, –

- (a) may examine any fish on the boat and the equipment of the boat, including the fishing gear, and require any person on board the boat to do anything which appears to him to be necessary for facilitating the examination,
- (b) may require any person on board the boat to produce any document which relates to the boat, to its fishing operations or other operations ancillary thereto or to the persons on board and which is in his custody or possession, and may take copies of any such document,
- (c) for the purpose of ascertaining whether the master, owner or charterer (if any) of the boat has contravened any restriction mentioned in section 1, may search the boat for any such document and may require any person on board the boat to do anything which appears to him to be necessary for facilitating the search, and
- (d) where the boat is one in relation to which he has reason

to suspect that there has been a contravention of any such restriction, may seize and detain any such document produced to him or found on board for the purpose of enabling the document to be used as evidence in proceedings in respect of the contravention,

but nothing in paragraph (d) permits any document required by law to be carried on board the boat to be seized and detained except while the boat is detained in a port.

(4) Where it appears to him that a contravention of any restriction mentioned in section 1 has at any time taken place within fishery limits he may –

- (a) require the master of the boat in relation to which the contravention took place to take, or may himself take, the boat and its crew to whichever port in the Bailiwick appears to him to be convenient, and
- (b) detain or require the master to detain the boat in the port,

and where he detains or requires the detention of a boat he shall serve on the master a notice in writing stating that the boat will be or is required to be detained until the notice is withdrawn by the service on the master of a further notice in writing signed by a sea-fishery officer.

(5) A sea-fishery officer may seize –

- (a) any fish in respect of which an offence under section 1 has been or is being committed where the fish are on the fishing boat with or on which the offence was or is being committed or are in the ownership or custody of,

or under the control of, the owner, master, or charterer
(if any) of the fishing boat,

- (b) any net or other fishing gear used in contravention of
any restriction mentioned in section 1.

(6) A sea-fishery officer is not liable in any civil or criminal proceedings for anything done in the purported exercise of the powers conferred by this section if the act was done in good faith and there were reasonable grounds for doing it.

Offences in relation to sea-fishery officers.

4. A person who within fishery limits –

- (a) fails without reasonable excuse to comply with a requirement imposed by or to answer a question asked by a sea-fishery officer under section 3,
- (b) prevents or attempts to prevent another person from complying with such a requirement or answering such a question,
- (c) assaults such an officer while exercising any power conferred by section 3, or
- (d) wilfully obstructs such an officer in the exercise of any of those powers,

is guilty of an offence and liable –

- (i) on summary conviction, to a fine not exceeding

£5,000, and

- (ii) on conviction on indictment, to a fine,

and in the case of an offence of assault under paragraph (c) the offender shall, instead of or in addition to such fine, be liable to imprisonment for a term not exceeding 3 months on summary conviction or 2 years on conviction on indictment.

Offences by bodies corporate.

5. Where an offence under section 1 committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

Jurisdiction and powers of court.

6. (1) Proceedings for an offence under section 1 or 4 may be taken, and the offence may be treated as having been committed, in any place in the Bailiwick.

(2) No provision of this Law shall be taken as increasing the powers of the Court of Alderney or the Court of the Seneschal of Sark to impose penalties.

Application of law.

7. Sections 1, 2, 3(1) to (5), 5 and 6 apply in relation to any restriction mentioned in section 1 except where or to the extent that other provision is made by [order] under section 8.

NOTE

In section 7, the word in square brackets was substituted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, section 1(b), with effect from 25th August, 1992.

[Orders.]

8. (1) The [Committee] may by [order], subject to subsection (2)(d), make such provision as appears to them to be requisite for the enforcement of any restriction mentioned in section 1.

(2) An [order] under subsection (1) –

- (a) may contain such incidental, consequential, transitional or supplementary provision as the [Committee] consider expedient,
- (b) may be amended or repealed by a subsequent [order] thereunder,
- (c) may make different provisions for different cases or circumstances,
- (d) shall not stipulate, in respect of any enforceable Community restriction, a penalty which exceeds the penalty stipulated in respect of that restriction from time to time by order under section 30(2) of the Fisheries Act 1981^a.

[(3) An order under subsection (1) shall be laid before a meeting of

^a An Act of Parliament (1981 c.29).

the States as soon as possible after being made and shall, if at that or the next meeting the States resolve to annul it, cease to have effect, but without prejudice to anything done under it or to the making of a new order.]

NOTES

In section 8,

the word "order(s)" in square brackets, wherever occurring, was substituted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, section 1(b), with effect from 25th August, 1992;

the word "Committee" in square brackets, wherever occurring, was substituted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, section 1(c), with effect from 25th August, 1992;

subsection (3) was inserted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, section 1(d), with effect from 25th August, 1992.

The following Order has been made under section 8:

Fishing (Penalties) (Bailiwick of Guernsey) Order, 1992.

The following cases have referred to section 8:

States v. Jersey Fishermen's Association Limited, IF Limited, Interfish Wirons Limited, Scerene Fishing Company Limited and Lovell [2005–06] GLR 226;

Jersey Fishermen's Association Limited, IF Limited, Interfish Wirons Limited, Scerene Fishing Company Limited and Lovell v. States [2007-08] GLR 36.

Interpretation.

9. (1) In this Law, unless the context otherwise requires –

"the Bailiwick" means the Bailiwick of Guernsey,

[**"the Committee"** means the States [Committee for Economic Development] or such other committee of the States as the States may prescribe by Ordinance,]

["**contravention**" includes failure to comply and cognate expressions shall be construed accordingly,]

"enforceable Community restriction" means a restriction [or obligation] to which section 2(1) of the European Communities Act 1972^b applies,

"fishery limits" means that part of British fishery limits set by or under section 1 of the Fishery Limits Act 1976^c adjacent to the Bailiwick and not exceeding 12 international nautical miles of 1852 metres from the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured, excluding any waters beyond the median line,

"fishing boat" means a vessel for the time being employed in fishing operations or any operations ancillary thereto [or any activity preparatory to or undertaken subsequent to or in connection with any such operations],

"master" includes, in relation to a fishing boat, the person for the time being in command or charge of the boat,

"median line" means a line every point of which is equidistant from the nearest points of (on the one hand) the baselines from which the breadth of the territorial sea adjacent to the Bailiwick is measured and (on the other hand) the corresponding baselines of any other country including the Bailiwick of Jersey,

"penalties" means criminal penalties (whether by way of fine,

^b An Act of Parliament (1972 c. 68).

^c An Act of Parliament (1976 c. 86).

imprisonment or forfeiture),

["**relevant fishing boat**", in section 1, means any fishing boat upon which, in relation to which or in relation to the gear, catch, crew or use of which the contravention in question took place,]

"**sea-fishery officer**" means a person who by virtue of section 7 of the Sea Fisheries Act 1968^d is a British sea-fishery officer.

(2) Unless the context otherwise requires, a reference in this Law to another enactment is a reference to that enactment as amended, re-enacted, extended or applied by or under any other enactment, including this Law.

(3) The Interpretation (Guernsey) Law, 1948^e applies to the interpretation of this Law throughout the Bailiwick.

NOTES

In section 9,

the definitions of the expressions, first, "the Committee" and "contravention" and, second, "relevant fishing boat" in subsection (1) were inserted by the Fishing (Amendment) (Bailiwick of Guernsey) Law, 1992, respectively section 1(e)(i) and section 1(e)(iv), with effect from 25th August, 1992;

the words in square brackets within the definition of the expression "the Committee" were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;¹

the words in square brackets in the definitions of the expressions "enforceable Community restriction" and "fishing boat" in subsection (1) were inserted by the Fishing (Amendment) (Bailiwick of Guernsey) Law,

^d An Act of Parliament (1968 c. 77).

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

1992, respectively section 1(e)(ii) and section 1(e)(iii), with effect from 25th August, 1992.

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The following case has referred to section 9:

Jersey Fishermen's Association Limited, IF Limited, Interfish Wirons Limited, Scerene Fishing Company Limited and Lovell v. States [2007-08] GLR 36.

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.

10. This Law may be cited as the Fishing (Bailiwick of Guernsey) Law, 1989.

Commencement.

11. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey.

NOTE

The Law was registered on the Records of the Island of Guernsey on 6th February, 1990.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 25, with effect from 6th May, 2004.

² The functions, rights and liabilities of the Commerce and Employment Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sea Fisheries Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 25, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.