

ORDER IN COUNCIL

V
2019

ratifying a Projet de Loi

ENTITLED

The European Union (Amendment of Legislation)(Bailiwick of Guernsey) Law, 2018

(Registered on the Records of the Island of Guernsey
on the 26th March, 2019.)



2019

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 26th day of March, 2019 before Richard James McMahon, Esquire, Deputy Bailiff; present:- Barbara Jean Bartie, Stephen Murray Jones, Esquire, O.B.E. Claire Helen Le Pelley, David Percy Langley Hodgetts, Esquire, L.V.O., Niall David McCathie, Terry John Ferbrache, David Allan Grut, Jonathan Grenfell Hooley, David James Mortimer, Alan Stevenson Boyle, David John Robilliard, Esquires, and Marilyn Jasmine King, Jurats.

The Deputy Bailiff, having this day placed before the Court an Order of Her Majesty in Council dated 13th March 2019, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED:

1. That the said Order be registered on the records of this Island;
and
2. That an extract of this present Act, together with a copy of the said Order be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands.

J. TORODE
Her Majesty’s Greffier.



At the Court at Buckingham Palace

THE 13th DAY OF MARCH 2019

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

“In accordance with Your Majesty’s General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

“That, in pursuance of their Resolution of 8th November 2017, the States of Deliberation at a meeting on 24th October 2018 approved a *Projet de Loi* entitled the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the States of the Island of Alderney at a meeting held on 12th September 2018 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Alderney. That the Chief Pleas of the Island of Sark at a meeting held on 11th January 2019 considered the *Projet de Loi* when a Resolution was passed agreeing to the application to Sark. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018, and to order that it shall have force of law in the Bailiwick of Guernsey.

“The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it”.

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Bailiwick of Guernsey and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty’s Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty’s Order and to proceed accordingly.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018

THE STATES, in pursuance of their Resolution of the 8th day of November, 2017^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.

General power to make Ordinances amending EU-related law.

1. (1) The States may by Ordinance -
 - (a) provide for the disapplication of Preserved EU law,
 - (b) provide that any Preserved EU law shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the Ordinance, and
 - (c) amend or repeal any Ordinance made under the Implementation Law,

^a Article III of Billet d'État No. XXI of 2017.

for any purpose.

(2) The powers conferred by subsection (1) are in addition to, and not in derogation from, the powers conferred by the Implementation Law.

(3) For the avoidance of doubt, subsection (1) does not displace the presumption that a statutory power to –

- (a) prescribe exceptions, adaptations or modifications in respect of, or
- (b) amend,

an enactment does not include power to prescribe exceptions, adaptations or modifications, or make amendments, that are outwith the scope of that enactment.

Examples of specific matters for which Ordinances may make provision.

2. An Ordinance under section 1 may, without limitation and by way of example, make provision in relation to the following matters -

- (a) customs and trade,
- (b) financial services,
- (c) transport,
- (d) energy,
- (e) agriculture and horticulture, and

- (f) fisheries.

General provisions as to Ordinances.

- 3. (1) An Ordinance under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -
 - (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),
 - (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
 - (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsection (1)(b)(i) does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^b, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

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

^b Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

- (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.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,
- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith (but may not prevent an award of

damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^c),

- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,
- (d) may direct that any EU provision, Preserved EU law or any enactment shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision, law or enactment described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any

^c Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; G.S.I. No. 27 of 2006.

enactment for the time being in force,

- (g) may, in the case of an Ordinance of the States of Deliberation, specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the Government of Alderney Law, 2004^d or, as the case may be, section 11 of the Reform (Sark) Law, 2008^e,

- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on indictment which exceeds 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 the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or, as the case may be, the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and

^d Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

^e Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance No. II and VI of 2015; No. XI of 2017.

- (i) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) Before a committee of the States of Guernsey recommends that the States of Deliberation agrees to make an Ordinance under this Law having effect in Alderney or Sark, the committee must consult –

- (a) in the case of an Ordinance having effect in Alderney, the Alderney Committee, and
- (b) in the case of an Ordinance having effect in Sark, the Sark Committee,

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.

(7) An Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases to have effect -

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of

Alderney resolve to disapprove its application to Alderney, and

- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(9) In subsection (7), "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

Interpretation.

- 4. In this Law, unless the context otherwise requires -

"**the Alderney Committee**" means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

"committee" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"EU provision" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"the Implementation Law" means the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^f,

"Preserved EU law" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"the Sark Committee" means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law, and

"the States" means -

- (a) in relation to an Ordinance having effect in Alderney only, the States of Alderney,
- (b) in relation to an Ordinance having effect in Sark only, the Chief Pleas of Sark, and

^f Ordres en Conseil Vol. XXXV (1), p. 65; amended by Order in Council No. I of 2019.

(c) in any other case, the States of Deliberation.

Citation.

5. This Law may be cited as the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018.

Commencement.

6. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions of this Law or for different purposes.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

PRICE £3.00

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