

PROJET DE LOI

ENTITLED

The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 *

[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. XVI of 2008; as amended by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008 (No. IV of 2009).

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ARRANGEMENT OF SECTIONS

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The Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008

THE STATES, in pursuance of their Resolution of the 25th July, 2007^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.

Amendment of Law of 1994.

1. The Banking Supervision (Bailiwick of Guernsey) Law, 1994, as amended^b (hereinafter called "**the 1994 Law**"), is further amended as follows.

2. In the arrangement of sections to the 1994 Law for the entry relating to section 26 substitute the following entries –

"26. Power of Bailiff to grant warrant.

26A. Powers conferred by Bailiff's warrant granted under section 26."

3. In section 18 of the 1994 Law –

(a) after subsection (1)(d) insert –

"(dd) to serve a notice of objection upon him under section 14 or 15,

^a Articles IV and V of Billet d'État No. XIX of 2007.

^b Order in Council No. XIII of 1994; amended by No. XVII of 2002 and by Guernsey S.I. No. 3 of 2000.

Consolidated text

- (ee) to give him a direction under section 17(2),",
- (b) at the end of subsection (1)(e) delete "or",
- (c) after subsection (1)(f) insert –
 - "(g) to maintain a direction under section 19(10),
 - (h) to serve a notice under section 25,
 - (i) to appoint an inspector under section 27(1), or
 - (j) to issue a notice under section 28(1),",
- (d) subsection (3) is repealed,
- (e) for subsection (4) substitute –
 - "(4) The grounds of an appeal under this section are that –
 - (a) the decision was ultra vires or there was some other error of law,
 - (b) the decision was unreasonable,
 - (c) the decision was made in bad faith,
 - (d) there was a lack of proportionality, or

- (e) there was a material error as to the facts or as to the procedure",
- (f) for subsection (7) substitute –

"(7) On an appeal under this section the Court may –
 - (a) set the decision of the Commission aside and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
 - (b) confirm the decision, in whole or in part.", and
- (g) in subsection (8) –
 - (i) the letters, brackets and punctuation mark "(c), (d) or (e)" are repealed, and
 - (ii) after "direction" insert ", notice, appointment".

4. ...

NOTE

Section 4 was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 7, with effect from 25th February, 2009.

5. For section 26 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994 substitute –

"Power of Bailiff to grant warrant."

- 26.** (1) If the Bailiff is satisfied by information on oath –
- (a) that a notice has been served under section 25 on any licensed institution and that there are reasonable grounds for suspecting –
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
 - (ii) that there has been a failure by that institution to comply with any other requirement imposed by or under section 25, or
 - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i) or (ii),
 - (b) that it is not practicable to serve a notice under section 25, or
 - (c) that there are reasonable grounds for suspecting that if such a notice were served –

- (i) it would not be complied with,
- (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
- (iii) the service of the notice might seriously prejudice the performance by the Commission of its functions,

he may grant a warrant conferring the powers set out in section 26A.

(2) If the Bailiff is satisfied by information on oath that the Commission has appointed inspectors under section 27 to carry out an investigation under that section, and that there are reasonable grounds for suspecting –

- (a) that an offence under this Law has been committed in relation to the investigation,
- (b) the accuracy or completeness of any information or documents furnished in the course of the investigation, or
- (c) that, if a warrant were not granted –
 - (i) any documents which the inspectors wish or might wish to inspect would be removed, tampered with or destroyed,

or

- (ii) the investigation might be seriously prejudiced,

he may grant a warrant conferring the powers set out in section 26A.

Powers conferred by Bailiff's warrant granted under section 26.

26A. (1) A warrant granted under section 26(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –

- (i) which are occupied by the institution upon whom the notice under section 25 was or could be served,
- (ii) upon which the documents to which the notice under section 25 relates are reasonably believed to be, or
- (iii) where no notice under section 25 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for

the purpose,

(b) to search the premises and, in relation to any documents –

(i) which were required by the notice under section 25, or

(ii) where no notice under section 25 has been served, which are of a class or description specified in the warrant and which could have been required by a notice under section 25,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer any questions which could have been put to the person under section 25,

(ii) to state to the best of his knowledge and

belief the whereabouts of any documents described in paragraph (b),

- (iii) to make an explanation of any such documents.

(2) A warrant granted under section 26(2) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, any officer, servant or agent of the Commission) –

- (a) to enter any premises specified in the warrant, being premises –

- (i) which are occupied by the person being investigated by inspectors under section 27, or

- (ii) upon which any documents to which the investigation under section 27 relates are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

- (b) to search the premises and, in relation to any documents appearing to be relevant for the purpose of the investigation under section 27, to take possession of them or to take any other steps which may appear to be necessary for

preserving them or preventing interference with them,

(c) to take copies of or extracts from any such documents,

(d) to require any person named in, or of a class or description specified in, the warrant –

(i) to answer any questions relevant to the investigation under section 27,

(ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),

(iii) to make an explanation of any such documents.

(3) A warrant granted under section 26 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(4) Any documents of which possession is taken under the powers conferred by a warrant granted under section 26 may be retained –

(a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(5) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 26 is guilty of an offence.

(6) A statement made by a person in response to a requirement imposed under a warrant granted under section 26 may not be used in evidence against him except –

- (a) in proceedings for an offence under subsection (5) or sections 30 or 47, or
- (b) in proceedings for some other offence where in giving evidence he makes a statement inconsistent with it."

6. In section 27 of the 1994 Law –

- (a) subsection (6) is repealed, and
- (b) ...

NOTE

In section 6, paragraph (b) was repealed by the Banking Supervision

(Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 7, with effect from 25th February, 2009.

7. In section 28 of the 1994 Law –

(a) subsection (2)(c) is repealed, and

(b) ...

NOTE

In section 7, paragraph (b) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 7, with effect from 25th February, 2009.

8. In section 29 of the 1994 Law –

(a) in subsection (4)(a) after the word "months" insert "or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct", and

(b) ...

NOTE

In section 8, paragraph (b) was repealed by the Banking Supervision (Bailiwick of Guernsey) (Amendment) (No. 2) Law, 2008, section 7, with effect from 25th February, 2009.

9. In section 40 of the 1994 Law –

(a) for subsection (2) substitute –

"(2) The grounds of an appeal under this section are that –

- (a) the decision was ultra vires or there was some other error of law,
- (b) the decision was unreasonable,
- (c) the decision was made in bad faith,
- (d) there was a lack of proportionality, or
- (e) there was a material error as to the facts or as to the procedure ", and

(b) for subsection (5) substitute –

"(5) On an appeal under this section the Court may –

- (a) set aside the decision of the Commission to issue the notice and, if the Court considers it appropriate to do so, remit the matter to the Commission with such directions as the Court thinks fit, or
- (b) confirm the decision, in whole or in part. "

10. In section 48(1) of the 1994 Law for "26(2)" substitute "26A(5)".

11. In section 56(1) of the 1994 Law in the definition of "**the Court**" after the words "Ordinary Court" insert "and for the purposes of this Law –

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats, and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of the proceedings or any matter relevant thereto."

Interpretation.

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

Repeal.

13. Section 1(15) of the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2003^d is repealed.

Citation.

14. This Law may be cited as the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008.

Commencement.

15. This Law shall come into force on the day appointed by Ordinance of

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

^d Order in Council No. XVI of 2003.

the States; and different days may be appointed for different provisions of this Law or for different purposes.

NOTE

The Law was brought into force on 29th October, 2008 by the Banking Supervision (Bailiwick of Guernsey) (Amendment) Law, 2008 (Commencement) Ordinance, 2008, section 1.
