

PROJET DE LOI

ENTITLED

The Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 *

[CONSOLIDATED TEXT]

NOTE

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* No. VI of 2013; as amended by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018).

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THE STATES, in pursuance of their Resolution of the 28th day of November, 2012^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 regulating employment agencies.

1. The States may by Ordinance make such provision as they think fit –
 - (a) to secure the proper conduct of employment agencies and employment businesses, and
 - (b) to protect the interests of persons availing themselves of the services of such agencies and businesses.

NOTE

The following Ordinances have been made under section 1:

Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013;

Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Sark) Ordinance, 2015.

^a Article I of Billet d'État No. XXIII of 2012.

Specific matters for which Ordinances may make provision.

2. (1) An Ordinance under section 1 may, without limitation, make provision in relation to the following matters –

- (a) requiring persons carrying on such agencies and businesses to keep records,
- (b) prescribing the form of such records and the entries to be made in them,
- (c) prescribing qualifications appropriate for persons carrying on such agencies and businesses,
- (d) regulating advertising by persons carrying on such agencies and businesses,
- (e) safeguarding clients' money deposited with or otherwise received by persons carrying on such agencies and businesses,
- (f) restricting the services which may be provided by persons carrying on such agencies and businesses,
- (g) regulating the way in which and the terms on which services may be provided by persons carrying on such agencies and businesses, and
- (h) restricting or regulating the charging of fees by persons carrying on such agencies and businesses.

(2) An Ordinance under section 1 may implement the provisions,

or any provision, of any relevant convention, treaty or agreement.

General provisions as to Ordinances.

3. (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provision making consequential amendments to this Law and any other enactment).
- (2) Any power to make an Ordinance under this Law 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 the generality of the foregoing provisions of this Law, an Ordinance under this Law –

- (a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences and may (for the avoidance of doubt) specify penalties which may be imposed by the courts,
- (b) may empower [the Committee], any other department, and any other body, to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance made under it,
- (c) 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,
- (d) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,

- (e) may make provision for the purpose of dealing with matters arising out of or related to matters set out in section 1,
- (f) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (g) 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*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The power conferred by subsection (3)(a) to create offences and specify penalties 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 five years.

(5) The power to make an Ordinance under this Law shall –

^b Order in Council No. XVIII of 2009.

- (a) where it is exercised in respect of Alderney, be exercised following consultation with the Policy and Finance Committee of the States of Alderney, and
- (b) where it is exercised in respect of Sark, be exercised following consultation with the [Policy and Finance Committee] of the Chief Pleas of Sark,

but a failure to comply with this subsection shall not invalidate any Ordinance made under this Law.

NOTES

In section 3,

the words in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 4, with effect from 1st May, 2016;

the words in square brackets in subsection (5) 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 following Ordinance has been made under section 3:

Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013.

Interpretation.

- 4.** (1) In this Law, unless the context otherwise requires –

a **"department"** means any department, council or committee of the States of Guernsey, States of Alderney or Chief Pleas of Sark, however styled,

"[the Committee]" means the States of Guernsey [Committee for Employment & Social Security],

"employment agency" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of providing services (whether by the provision of information or otherwise) for the purpose of finding workers employment with employers or of supplying employers with workers for employment by them,

"employment business" means the business (whether or not carried on with a view to profit and whether or not carried on in conjunction with any other business) of supplying persons in the employment of the person carrying on the business, to act for, and under the control of, other persons in any capacity,

"enactment" means any Law, Ordinance or subordinate legislation,

"implement" includes the enforcement or enactment, and the securing of the administration, execution, recognition, exercise or enjoyment, in or under domestic law –

- (a) of the provision or provisions of the convention, treaty or agreement in question, and
- (b) of any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the same,

"relevant convention, treaty or agreement" means any convention, treaty or agreement having as its object the proper regulation of employment agencies and employment businesses or the protection of the interests of persons availing themselves of the services of such agencies and businesses; and, for the avoidance of doubt, includes any convention, treaty or agreement adopted by the General Conference of the International Labour Organisation and whether or not directly applicable in or binding upon the Bailiwick, and

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect.

(2) 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.

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

NOTES

In section 4, the words, first, "the Committee" and, second, "Committee for Employment & Social Security" in square brackets in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 4 and section 2, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016.

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 Employment & Social Security and its President or Vice-President by the

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

Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(b), Schedule 2, Part 1, paragraph 1, with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

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 Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012.

Commencement.

6. (1) This Law shall come into force –

- (a) in respect of Guernsey and Alderney, on the day appointed by Ordinance of the States, and
- (b) in respect of Sark, on the day appointed by Ordinance of the Chief Pleas.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions and for different purposes.

NOTES

The Law was brought into force, in respect of Guernsey and Alderney, on 1st August, 2013 by the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 (Commencement) (Guernsey and Alderney) Ordinance, 2013, section 1.

The Law was brought into force, in respect of Sark, on 7th October, 2013 by the Employment Agencies (Enabling Provisions) (Bailiwick of Guernsey) Law, 2012 (Commencement) (Sark) Ordinance, 2013, section 1.

¹ These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

² The functions, rights and liabilities of the Sark Finance and Resources Committee and its Chairman arising under or by virtue of this Law were transferred to and vested in them from , respectively, the Sark Finance and Commerce Committee and its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.