

PROJET DE LOI

ENTITLED

The Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991 *

[CONSOLIDATED TEXT]

NOTE

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* No. III of 1991 (Ordres en Conseil Vol. XXXIII, p. 81); as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) (Amendment) Law, 2002 (No. II of 2003, Ordres en Conseil Vol. XLIII(1), p. 26); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 472); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. ** of 2018). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the 28th day of November, 1990^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.

Powers of investigation.

1. (1) The powers of Her Majesty's Procureur under this section shall be exercisable in any case in which it appears to him –

- (a) on reasonable grounds that there is a suspected offence involving serious or complex fraud, wherever committed, and
- (b) that there is good reason to do so for the purpose of investigating the affairs, or any aspect of the affairs, of any person.

(2) Her Majesty's Procureur may by notice in writing require the person whose affairs are to be investigated ("**the person under investigation**") or any other person whom he has reason to believe has relevant information to attend before Her Majesty's Procureur at a specified time and place to answer questions or

^a On Article 8 of Billet d'État XXII.

otherwise furnish information with respect to any matter relevant to the investigation.

(3) Her Majesty's Procureur may by notice in writing require the person under investigation or any other person to produce at a specified time and place any specified documents which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation or any documents of a specified class which appear to him so to relate; and –

(a) if any such documents are produced, Her Majesty's Procureur may –

(i) take copies or extracts from them,

(ii) require the person producing them to provide an explanation of any of them,

(b) if any such documents are not produced, Her Majesty's Procureur may require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(4) Where, on information on oath laid by Her Majesty's Procureur, the Bailiff is satisfied, in relation to any documents, that there are reasonable grounds for believing –

(a) that –

(i) a person has failed to comply with an obligation under this section to produce them,

(ii) it is not practicable to serve a notice under

subsection (3) in relation to them, or

(iii) the service of such a notice in relation to them might seriously prejudice the investigation, and

(b) that they are on premises specified in the information

he may issue such a warrant as is mentioned in subsection (5).

(5) The warrant referred to above is a warrant authorising any officer of police –

(a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and

(b) to take possession of any documents appearing to be documents of the description specified in the information or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(6) An officer of police executing a warrant issued under subsection (4) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the officer of police.

[(7) A statement by a person in response to a requirement imposed by virtue of this section –

(a) may be used in evidence against him in proceedings other than criminal proceedings, and

- (b) may not be used in evidence against him in criminal proceedings except –
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under subsection (12),
 - (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.]

(8) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

(9) A person shall not under this section be required to disclose information or produce a document in respect of which he owes an obligation of confidence by virtue of carrying on any banking or fiduciary business unless –

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (b) Her Majesty's Procureur has authorised the making of the requirement.

(10) Her Majesty's Procureur may authorise any person to exercise on his behalf all or any of the powers conferred by this section but no such authority shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authority.

(11) Any person who without reasonable excuse fails to comply with a requirement imposed on him under this section shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

(12) A person who, in purported compliance with a requirement under this section –

- (a) makes a statement which he knows to be false or misleading in a material particular, or
- (b) recklessly makes a statement which is false or misleading in a material particular,

shall be guilty of an offence.

(13) A person guilty of an offence under subsection (12) shall –

- (a) on conviction on indictment be liable to imprisonment for a term not exceeding 2 years or to a fine or to both,

and

- (b) on summary conviction, be liable to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale, or to both.

(14) Where any person –

- (a) knows or suspects that an investigation by the police or Her Majesty's Procureur into serious or complex fraud is being or is likely to be carried out, and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of documents which he knows or suspects are or would be relevant to such an investigation,

he shall be guilty of an offence unless he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation.

(15) A person guilty of an offence under subsection (14) shall –

- (a) on conviction on indictment, be liable to imprisonment for a term not exceeding 7 years or to a fine or to both, and
- (b) on summary conviction, be liable to imprisonment for a term not exceeding 6 months or to a fine not exceeding level 5 on the uniform scale or to both.

(16) In this section, "**documents**" includes information recorded in any form and, in relation to information recorded otherwise than in legible form, references to its production include references to producing a copy of the information in legible form.

NOTES

In section 1, subsection (7) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

The following cases have referred to this Law:

In re Moore Stephens (1992) 14.GLJ.19
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.G.L.J.88;
Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;
Bassington Limited et al. v. H.M. Procureur (1999) 27.GLJ.23;
Holland v. H.M. Procureur (Unreported, Royal Court, 21st October, 2002) (Guernsey Judgment No. 4/2003);
A Limited and B Limited v. H.M. Procureur [2004] GLR 17.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Disclosure.

2. (1) Where any information is subject to an obligation of secrecy imposed by or under any enactment (including in an enactment passed after this Law) the obligation shall not have effect to prohibit the disclosure of that information to any person authorised by Her Majesty's Procureur, but any information disclosed under this subsection may only be disclosed by such a person for the purpose of a prosecution in the Bailiwick or elsewhere.

(2) Without prejudice to his power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information to or by him subject, in either case, to an obligation not to disclose the information concerned otherwise than for a specified purpose.

[(3) Subject to subsection (1) and to any provision of an agreement for the supply of information which restricts the disclosure of the information supplied, information obtained by Her Majesty's Procureur or any person duly authorised under section 1(10) may be disclosed –

- (a) to any person or body for the purposes of any investigation of an offence or prosecution in the Bailiwick or elsewhere,
- (b) to any competent authority, or
- (c) to the [Director of the Revenue Service] of the States of Guernsey [Policy & Resources Committee].

(4) The following are competent authorities for the purposes of subsection (3)(b) –

- (a) any person or body having supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
- (b) any person having under the law of any country or territory outside the Bailiwick functions corresponding to any of the functions mentioned in subparagraph (a);
and

- (c) any person appointed to investigate the affairs of a company in the Bailiwick or elsewhere.]

NOTES

In section 2,

subsection (3) was substituted, and subsection (4) was inserted, by the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) (Amendment) Law, 2002, section 1, with effect from 20th January, 2003;

the words in the first pair of square brackets in paragraph (c) of subsection (3) were substituted by the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, with effect from 1st November, 2018, subject to the savings and transitional provisions in section 2 of the 2018 Ordinance;¹

the words in the second pair of square brackets in paragraph (c) of subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.²

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.³

The following case has referred to section 2:

Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86.

[Offences as to "tipping off".

- 2A.** (1) A person is guilty of an offence if –
- (a) he knows or suspects that Her Majesty's Procureur is conducting an investigation, or proposing to conduct an investigation, using his powers under this Law, and

- (b) he discloses to any other person information or any other matter which is likely to prejudice that investigation or proposed investigation.

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or

- (b) to any person –

- (i) in contemplation of, or in connection with, legal proceedings, and

- (ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the investigation or proposed investigation was likely to be prejudiced.

(5) No person authorised to act under section 1(10) shall be guilty of an offence under this section in respect of anything done by him in the course of his acting under the said authority.

(6) A person guilty of an offence under this section shall be liable

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- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, to a fine not exceeding level 5 on the uniform scale, or to both,
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 5 years, to a fine, or to both.]

NOTES

Section 2A was inserted by the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) (Amendment) Law, 2002, section 2, with effect from 20th January, 2003.

The following case has referred to section 2A:

A Limited and B Limited v. H.M. Procureur [2004] GLR 17.

Interpretation.

3. In this Law –

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"officer of police" means –

- (a) in relation to the islands of Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey, and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

- (b) in relation to the Island of Alderney, a member of the said salaried police force, a member of any police force which may be established by the States of Alderney, and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^b,
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of the Island of Guernsey.

NOTES

In section 3, the words in square brackets in paragraph (b) of the definition of the expression "officer of police" were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002.

The following case has referred to section 3:

A Limited and B Limited v. H.M. Procureur [2004] GLR 17.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 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.

Transitional provisions.

b Order in Council No. IV of 1987.

4. (1) Nothing done by or in relation to any investigation, matter or proceedings under or by virtue of the Criminal Justice Act, 1987 (Guernsey) Order, 1989 ("**the Order**") before the commencement of this Law shall be invalidated by such commencement.

(2) Anything in the process of being done by or in relation to any investigation, matter or proceedings under or by virtue of the Order at the commencement of this Law may be continued and determined as if this Law was not in force.

(3) For the avoidance of doubt an investigation under this Law may take place notwithstanding that any suspected offence within the meaning of section 1(1)(a) occurred before this Law came into force.

Citation and commencement.

5. (1) This Law may be cited as the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law, 1991.

(2) This Law shall come into force on the 30th May, 1991 or on the day after the registration of the Law on the records of the Island of Guernsey, whichever is the later.

NOTE

The Law was registered on the Records of the Island of Guernsey on the 21st May, 1991.

¹ These words were previously substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

² These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph

18, with effect from 6th May, 2004.

³ The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Income Tax Authority and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 18, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.