

PROJET DE LOI

ENTITLED

The False Documents and Domicile, etc. (Bailiwick of Guernsey) Law, 1998 *

[CONSOLIDATED TEXT]

NOTE

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* No. V of 1998 (Ordres en Conseil Vol. XXXVIII, p. 174); as amended by the: Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the: Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Arbitration (Guernsey) Law, 2016 (No. X of 2016); Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (No. XII of 2022).

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ARRANGEMENT OF SECTIONS

PART I

OFFENCES IN RELATION TO FALSE DOCUMENTS & DOMICILE, ETC

1. Provision of false documents, etc.
2. False holding out of domicile, etc.
3. Aiding and abetting, etc.
4. Attempts.
5. Issuing of advertisements.

PART II

ENFORCEMENT PROVISIONS

6. Search warrants.
7. Offences of obstruction, false statements, etc.
8. Penalties.
9. Offences by bodies corporate.
10. Offences due to default of another.
11. Defence of due diligence.
12. Defence for persons who issue advertisements.

PART III

INTERPRETATION & OTHER GENERAL PROVISIONS

13. Interpretation.
14. General provisions as to regulations.
15. Citation.

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The False Documents and Domicile, etc. (Bailiwick of Guernsey) Law, 1998

THE STATES, in pursuance of their Resolution of the 29th day of January, 1998^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.

PART I

OFFENCES IN RELATION TO FALSE DOCUMENTS & DOMICILE, ETC

Provision of false documents, etc.

1. A person who, for any purpose whatsoever, provides or procures for another, or holds himself out as being able or willing to provide or procure for another –

- (a) any document, address or personal identity which is false, or
- (b) any advice, service or facility for the obtaining or procurement of any such document, address or identity,

shall be guilty of an offence.

False holding out of domicile, etc.

^a Article XX of Billet d'État No. III of 1998.

2. A person who, not being domiciled or resident in the Bailiwick of Guernsey or any of the islands thereof, for any purpose whatsoever –

- (a) holds himself out, or
- (b) causes or permits himself to be held out,

as being so domiciled or resident, as the case may be, shall be guilty of an offence.

Aiding and abetting, etc.

3. A person who knowingly and wilfully aids, abets, counsels, procures or commands the commission of –

- (a) an offence under section 1 or 2, or
- (b) any act which, if committed in the Bailiwick, would constitute such an offence,

shall be guilty of an offence.

Attempts.

4. A person who attempts to commit –

- (a) an offence under section 1, 2 or 3, or
- (b) any act which, if committed in the Bailiwick, would constitute such an offence,

shall be guilty of an offence.

Issuing of advertisements.

5. Without prejudice to the generality of section 1, the requirements of the offence set out in that section shall be deemed to be made out in the case of a person who causes to be issued (whether in the Bailiwick or elsewhere) or issues an advertisement which holds out that person or any other person in the manner mentioned in that section.

PART II
ENFORCEMENT PROVISIONS

Search warrants.

6. (1) If, on the application of Her Majesty's Procureur or an officer of police of the rank of inspector or above, the Bailiff is satisfied by information on oath –

- (a) that there are reasonable grounds for suspecting that there are on any premises documents (whether or not they can be particularised) likely to be of relevance (whether by themselves or together with other documents) to establishing whether or not an offence under any provision of Part I of this Law has been committed, and
- (b) that an investigation in relation to the offence might be seriously prejudiced unless immediate entry can be secured to the premises,

he may grant a warrant authorising an officer of police and any other person named in the warrant to enter and search the premises, using such force as may be reasonably necessary for the purpose.

(2) A person acting under the authority of a warrant granted under

subsection (1) may –

- (a) make such inspection and examination of the premises in respect of which the warrant was granted, and
- (b) require any person thereon to reply to such questions and to furnish such information and documents,

as he considers to be necessary for the purposes of the investigation; and he may also exercise the following powers in relation to any documents considered by him to be relevant for the purposes of the investigation –

- (i) he may take copies or extracts of them,
- (ii) he may seize them, or take any other steps necessary to preserve them or protect them from interference, if he suspects that they may otherwise be destroyed, damaged, tampered with or removed,
- (iii) if he considers that any person is or may be able to provide an explanation of them or of anything in them, he may require that person to provide such an explanation, and
- (iv) in relation to any documents which are not furnished to him in accordance with his requirements, he may require any person to state to the best of his knowledge and belief their whereabouts (whether or not that person is in possession or control of the documents).

(3) A person seeking to exercise any power conferred by this section in relation to any premises shall, if so requested by the owner or occupier of the premises, furnish evidence of his office or authority.

[(4) A statement made by a person in compliance with a requirement imposed under 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 section 7(1),

(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.]

(5) Subject to subsection (6), no obligation or duty of secrecy or of confidence nor any other restriction on the disclosure of information to which a person is subject, whether imposed by statute, contract or otherwise, shall be regarded as being contravened by reason of the compliance by that person with a requirement imposed under this section.

(6) 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 in proceedings in the Royal Court; but an advocate or other legal adviser may be required to give the name and address of any client.

(7) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(8) No person seeking to exercise any power conferred by this section shall be obliged to divulge his reasons for belief or suspicion when exercising that power.

(9) In this section –

(a) **"document"** includes information recorded in any form; and in relation to information recorded otherwise than in legible form the power to require its production includes power to require the production of a copy of the information in legible form,

(b) **"premises"** includes any place, vehicle, vessel or aircraft.

NOTE

In section 6, subsection (4) 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.

Offences of obstruction, false statements, etc.

7. (1) A person who –
- (a) in compliance or purported compliance with any requirement imposed by or under section 6 –
 - (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
 - (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
 - (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
 - (iv) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

- (b) without reasonable excuse, proof whereof shall lie on him –
 - (i) fails to produce or furnish any information or document in accordance with any requirement imposed by or under section 6, or
 - (ii) obstructs or fails to give all reasonable assistance to, or fails to comply in all respects with any requirement made of him by, an officer of police or other person exercising or purporting to exercise any power or authority conferred by or under a warrant granted under section 6, or
- (c) with intent to evade the provisions of this Law relating to inquiry, investigation, search and seizure, destroys, mutilates, defaces, secretes or removes any document,

shall be guilty of an offence.

- (2) Subject to the provisions of subsection (3), a person who –
 - (a) under or for the purposes of this Law receives information relating to the business or other affairs of any person, or
 - (b) obtains any such information directly or indirectly from a person who has so received it,

and who discloses the information without the consent of the person to whom it

relates and (if different) the person from whom it was so obtained shall be guilty of an offence.

- (3) Subsection (2) does not preclude –
- (a) the disclosure of information which at the time of disclosure is or has already been made available to the public from other sources or information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
 - (b) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings, whether under this Law or otherwise,
 - (c) the disclosure of information in connection with any other proceedings (whether in a court of law or by way of arbitration) arising out of this Law,
 - (d) the disclosure of information to Her Majesty's Procureur or an officer of police as to any suspected offence under this Law,
 - (e) where information is disclosed to an officer of police under paragraph (d), the disclosure of that information by an officer of police for the purposes of a prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere, or

- (f) the disclosure of information in compliance with an order of a court of law.

NOTE

In accordance with the provisions of the Arbitration (Guernsey) Law, 2016, section 80(1), with effect from 12th December, 2016, the provisions of that Law apply to every arbitration under a Guernsey enactment (a "statutory arbitration"), subject to, first, the exceptions in section 80(2) and, second, the adaptations and exclusions specified in sections 81 to 83 of the 2016 Law.

Penalties.

8. (1) A person guilty of an offence under any provision of this Law shall be liable –

- (a) on summary conviction –
 - (i) in Guernsey, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months or to both,
 - (ii) in Alderney, to a fine not exceeding level 5 on the Alderney uniform scale, to imprisonment for a term not exceeding 3 months or to both,
 - (iii) in Sark, to a fine not exceeding level 4 on the Sark uniform scale, to imprisonment for a term not exceeding 1 month or to both,
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

(2) If, on the trial of a person charged with an offence under section 1, 2 or 3, it appears to the court upon the evidence that the accused did not complete the offence but that he had attempted to commit the same, the court may find the accused not guilty of the offence charged but guilty of an attempt to commit the offence, whereupon the accused may be punished as if charged with, and convicted of, an offence under section 4.

(3) Where a person is convicted of an offence under section 7 which involved a failure to –

- (a) produce or furnish any information or document,
- (b) give assistance to any person, or
- (c) comply with any requirement made by any person,

the court may, in addition to imposing any other penalty specified in this section, order the person convicted, within such period as may be specified, to produce or furnish the information or document, to give the assistance or to comply with the requirement in question.

(4) An appeal lies from an order of the court under subsection (3) in the same manner as if it were a penalty imposed upon conviction.

(5) A person who fails to comply with any provision of an order of the court under subsection (3) –

- (a) shall be guilty of an offence and liable on summary conviction –
 - (i) in Guernsey, to a fine not exceeding level 5 on

the uniform scale, to imprisonment for a term not exceeding 3 months or to both,

(ii) in Alderney, to a fine not exceeding level 5 on the Alderney uniform scale, to imprisonment for a term not exceeding 3 months or to both,

(iii) in Sark, to a fine not exceeding level 4 on the Sark uniform scale, to imprisonment for a term not exceeding 1 month or to both, or

(b) where the order was that of the Royal Court, shall be liable to be proceeded against in the Royal Court for a contempt of court.

Offences by bodies corporate.

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

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

Offences due to default of another.

10. Where the commission by any person of an offence under this Law is due to the act or default of another person, the latter is guilty of the offence and may

be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

Defence of due diligence.

11. (1) In proceedings against a person for an offence under section 1 or 2 it shall be a defence for him to show that he took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) Where in any such proceedings the defence provided for by subsection (1) involves an allegation that the commission of the offence was due to the act or default of another person or to reliance on information supplied by another person, the accused may not, without the leave of the court, rely on the defence unless, not less than 7 clear days before the day of the hearing of the proceedings, he serves notice on Her Majesty's Procurer giving such information identifying or assisting in the identification of that other person as is in his possession when he serves the notice.

(3) A person may not rely on the defence provided for by subsection (1) by reason of his reliance on information supplied by another person unless he shows that it was reasonable in all the circumstances for him to have relied on the information, having regard in particular –

- (a) to the steps which he took, and those which might reasonably have been taken, for the purpose of verifying the information, and
- (b) to whether he had any reason to disbelieve the information.

Defence for persons who issue advertisements.

12. A person whose business it is to publish or arrange for the publication

of advertisements shall not, by virtue of section 5, be guilty of an offence under section 1 if he proves that –

- (a) he received the advertisement for publication in the ordinary course of his business,
- (b) the matters contained in the advertisement were not (wholly or in part) devised or selected by him or by any employee of his or any other person under his direction or control, and
- (c) he did not know and had no reason to believe that publication of the advertisement would constitute an offence.

PART III

INTERPRETATION & OTHER GENERAL PROVISIONS

Interpretation.

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

"act" includes omission,

"address" means any postal, telecommunication or electronic address,

"Bailiff" means –

- (a) in relation to the Bailiwick of Guernsey, the Bailiff,
- (b) in relation to Alderney, the Chairman of the Court of Alderney,

- (c) in relation to Sark, the Seneschal,

"Committee" means the States of Guernsey [Committee for Economic Development],

"document" in section 1 means anything purporting to be, or described (in whatever words, and whether or not on its face) as –

- (a) a passport or other statement indicating name, nationality, domicile, residence, address or rights of residence,
- (b) a driving licence or vehicular licence, registration plate or registration book,
- (c) any document or other statement of qualification or academic or professional achievement,
- (d) any document or other statement issued by or on behalf of a bank or similar institution, or
- (e) any other document of a prescribed class or description,

"false" in section 1 means that which –

- (a) is not what it purports to be or is described as,
- (b) is calculated to deceive, mislead or misrepresent,
- (c) cannot lawfully be used for, or is unfit for, its intended,

apparent or purported purpose,

- (d) purports to be issued by or on behalf of a person or body, but –
 - (i) which is not so issued, or
 - (ii) the person or body does not exist,
- (e) purports to comply with a standard specified or recognised by or on behalf of, or to be approved by or on behalf of, a person or body where there is no such compliance, standard, approval, person or body, or
- (f) purports to have a legal effect or legal validity in any jurisdiction which it does not have,

and accordingly, for the avoidance of doubt and without prejudice to the generality of the foregoing, an address shall be deemed to be false if it is calculated to misrepresent that a person is domiciled or resident in the Bailiwick of Guernsey or any of the islands thereof when that person is not so domiciled or resident,

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

"officer of customs and excise" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972, as amended^b,

^b Ordres en Conseil Vol. XXIII, p. 573; and No. XIII of 1991.

"officer of police" means a member of the salaried police force of the Island of Guernsey, an officer of customs and excise and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, 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^c,
- (c) in relation to Sark, the Constable and the Vingtenier,

"prescribed" means prescribed by regulations of the Committee,

"resident" means resident for any purpose.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^d shall apply to the interpretation of this Law throughout the Bailiwick of Guernsey.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

^c Ordres en Conseil Vol. XXX, p. 37; No. XI of 1988; No. VI of 1989; No. XI of 1993; and No. IX of 1995.

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

NOTES

In section 13,

the words in square brackets in the definition of the expression "Committee" in subsection (1) 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 paragraph (b) of the definition of the expression "officer of police" in subsection (1) were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002.

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

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 in this Law relating to the discharge of such functions or the exercise of such powers shall have effect as if the references in this Law to the Bailiff included a reference to the Deputy Bailiff.

In accordance with the provisions of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, section 8, Schedule 2, paragraph 1 and paragraph 2, with effect from 20th October, 2022, unless the contrary intention appears and subject to any regulations made under section 8(3), first, any reference to a police officer in this Law and any subordinate legislation made hereunder includes a reference to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit and, second, subject to the provisions of section 8(4), any power in an enactment to disclose information to a police officer or customs officer for a specified purpose includes a power to disclose that information to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit for the purpose of carrying out their functions.

In accordance with the provisions of the Police Force (Bailiwick of

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.

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.

General provisions as to regulations.

14. (1) Regulations of the Committee under this Law –

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient,
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(2) Any power conferred upon the Committee by this Law to make regulations 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.

Citation.

15. This Law may be cited as the False Documents and Domicile, etc. (Bailiwick of Guernsey) Law, 1998.

NOTE

The Law received Royal Sanction on 19th May, 1998 and was registered on the Records of the Island of Guernsey and came into force on 14th July, 1998.

¹ These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), 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 Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.