

ORDER IN COUNCIL

**XVI
2009**

ratifying a Projet de Loi

ENTITLED

The Fraud (Bailiwick of Guernsey) Law, 2009

(Registered on the Records of the Island of Guernsey
on the 6th July, 2009.)



2009

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

6th day of July, 2009 before Richard John Collas, Esquire, Deputy Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Michael Henry De La Mare, Esquires, The Reverend Peter Gerald Lane, Michael John Tanguy, Esquire, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, Stephen Murray Jones, Esquires, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire and Constance Helyar-Wilkinson, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 10th June 2009 approving and ratifying a Projet de Loi entitled “The Fraud (Bailiwick of Guernsey) Law, 2009”, 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 in Council 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 in Council 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 respectively.



At the Court at Buckingham Palace

THE 10th DAY OF JUNE 2009

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 Resolutions of 31st May 2007 and 25th February 2009, the States of Deliberation at a meeting on 25th February 2009 approved a *Projet de Loi* entitled the Fraud (Bailiwick of Guernsey) Law, 2009, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. 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 Fraud (Bailiwick of Guernsey) Law, 2009, 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.

Judith Simpson

PROJET DE LOI

ENTITLED

Fraud (Bailiwick of Guernsey) Law, 2009

ARRANGEMENT OF SECTIONS

Fraud

1. Fraud.
2. Fraud by false representation.
3. Fraud by failing to disclose information.
4. Fraud by abuse of position.
5. "Gain" and "loss".
6. Possession etc. of articles for use in fraud.
7. Making or supplying articles for use in fraud.
8. "Article".
9. Participating in fraudulent business carried on by sole trader etc.

Obtaining services dishonestly

10. Obtaining services dishonestly.

Supplementary

11. Aiding and abetting fraud in another jurisdiction.
12. Liability of officers and members for offences by bodies corporate.
13. Customary or common law offence of fraud.

14. Amendments.
15. Ordinances.
16. Interpretation.
17. Commencement.
18. Citation.

Schedule - Amendments.

PROJET DE LOI

ENTITLED

Fraud (Bailiwick of Guernsey) Law, 2009

THE STATES, in pursuance of their Resolutions of the 31st May 2007^a and the 25th February 2009^b, 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.

Fraud

Fraud.

1. (1) A person is guilty of fraud if he contravenes –
 - (a) section 2 (fraud by false representation),
 - (b) section 3 (fraud by failing to disclose information), or
 - (c) section 4 (fraud by abuse of position).
- (2) A person who is guilty of fraud is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both, or

^a Article XIX of Billet d'État No. XIV of 2007.

^b Article I of Billet d'État No. VII of 2009.

- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 years, or to a fine, or to both.

Fraud by false representation.

- 2. (1) A person contravenes this section if he –
 - (a) dishonestly makes a false representation, and
 - (b) intends, by making the representation –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.
- (2) A representation is false if –
 - (a) it is untrue or misleading, and
 - (b) the person making it knows that it is, or might be, untrue or misleading.
- (3) For the purposes of this section, a "**representation**" –
 - (a) means any representation as to fact or law, including a representation as to a state of mind of –
 - (i) the person making the representation, or

- (ii) any other person,
- (b) may be express or implied, and
- (c) may be regarded as made if it (or anything implying it) is submitted in any form to any system or device designed to receive, convey or respond to communications (with or without human intervention).

Fraud by failing to disclose information.

3. A person contravenes this section if he –

- (a) dishonestly fails to disclose to another person information which he is under a legal duty to disclose, and
- (b) intends, by failing to disclose the information –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

Fraud by abuse of position.

4. (1) A person contravenes this section if he –

- (a) occupies a position in which he is expected to safeguard, or not to act against, the financial interests of another person,

- (b) dishonestly abuses that position, and
- (c) intends, by means of the abuse of that position –
 - (i) to make a gain for himself or another, or
 - (ii) to cause loss to another or to expose another to a risk of loss.

(2) A person may be regarded as having abused his position even though his conduct consisted of an omission rather than an act.

"Gain" and "loss".

5. (1) The references to gain and loss in sections 2 to 4 are to be read in accordance with this section.

- (2) The expressions –
 - (a) "**gain**" and "**loss**" –
 - (i) extend only to gain or loss in money or other property, and
 - (ii) include any such gain or loss whether temporary or permanent,
 - (b) "**property**" means any property whether real or personal (including things in action and other intangible property),

- (c) "**gain**" includes a gain by keeping what one has, as well as a gain by getting what one does not have, and
- (d) "**loss**" includes a loss by not getting what one might get, as well as a loss by parting with what one has.

Possession etc. of articles for use in fraud.

6. (1) A person is guilty of an offence if he has in his possession or under his control any article for use in the course of or in connection with any fraud.

- (2) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 6 years, or to a fine, or to both.

Making or supplying articles for use in fraud.

7. (1) A person is guilty of an offence if he makes, adapts, supplies or offers to supply any article –

- (a) knowing that it is designed or adapted for use in the course of or in connection with fraud, or
- (b) intending it to be used to commit or assist in the commission of fraud.

- (2) A person guilty of an offence under this section is liable –
- (a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 12 years, or to a fine, or to both.

"Article".

8. For the purposes of sections 6 and 7, "**article**" includes any program or data held in electronic form.

Participating in fraudulent business carried on by sole trader etc.

9. (1) A person is guilty of an offence if he is knowingly a party to the carrying on of a business –

- (a) by a person who is outside the reach of section 432 of the Companies (Guernsey) Law, 2008^c ("**the Companies Law**"), and
- (b) with intent to defraud creditors of any person or for any other fraudulent purpose.

(2) The following are within the reach of section 432–

^c Order in Council No. VIII of 2008 as amended by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2008 and the Companies (Guernsey) Law, 2008 (Amendment) (No.2) Ordinance, 2008.

- (a) a company (within the meaning of the Companies Law),
- (b) a person to whom that section applies (with or without adaptations or modifications) as if the person were a company, and
- (c) a person exempted from the application of that section.

(3) For the purposes of this section, "**fraudulent purpose**" has the same meaning as in section 432 of the Companies Law.

- (4) A person guilty of an offence under this section is liable –
 - (a) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both, or
 - (b) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

Obtaining services dishonestly

Obtaining services dishonestly.

10. (1) A person is guilty of an offence under this section if he obtains services for himself or another –

- (a) by a dishonest act, and
- (b) in contravention of subsection (2).

(2) A person obtains services in contravention of this subsection if –

(a) they are made available on the basis that payment has been, is being or will be made for or in respect of them,

(b) he obtains them without any payment having been made for or in respect of them or without payment having been made in full, and

(c) when he obtains them, he knows –

(i) that they are being made available, or

(ii) that they might be made available,

on the basis described in paragraph (a) but intends that payment will not be made, or will not be made in full.

(3) A person guilty of an offence under this section is liable –

(a) on summary conviction, to imprisonment for a term not exceeding 2 years, or to a fine not exceeding twice level 5 on the uniform scale, or to both, or

(b) on conviction on indictment, to imprisonment for a term not exceeding 6 years, or to a fine, or to both.

Supplementary

Aiding and abetting fraud in another jurisdiction.

11. A person ("the secondary party to an offence") who, within the Bailiwick, aids, abets, counsels or procures the commission by another person ("the principal offender") of an offence in another jurisdiction which would be an offence under this Law if committed within the Bailiwick is guilty of that offence under this Law and may be proceeded against and punished accordingly.

Liability of officers and members for offences by bodies corporate.

12. (1) Where under this Law an offence –
- (a) is committed by a body corporate, and
 - (b) is proved to have been committed with the consent or connivance of –
 - (i) any director, manager, secretary or other similar officer of the body corporate, or
 - (ii) any person purporting to act in any such capacity,

he as well as the body corporate is 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.

Customary or common law offence of fraud.

13. Nothing in this Law shall be taken to affect any customary or common law offence of fraud, cheating relating to the public revenue or conspiracy to defraud.

Amendments.

14. The Schedule to this Law shall have effect.

Ordinances.

15. (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 class of case for different purposes, and/or
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

Interpretation.

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

"**article**" has the meaning given in section 8,

"**Bailiwick**" means the Bailiwick of Guernsey,

"**the Companies Law**" has the meaning given in section 9(1)(a),

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

"**fraudulent purpose**" has the meaning given in section 9(2),

"**gain**" has the meaning given in section 5,

"**loss**" has the meaning given in section 5,

"**the principal offender**" has the meaning given in section 11,

"**representation**" has the meaning given in section 2(3),

"**the secondary party to the offence**" has the meaning given in section 11,

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

"**uniform scale**" means the uniform scale of fines from time to time in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^d.

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

(3) Unless the context requires otherwise, 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.

Commencement.

17. (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) An Ordinance under subsection (1) may appoint different dates

^d Ordres en Conseil Vol. XXXI, p. 278.

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

for different provisions of this Law and for different purposes.

Citation.

18. This Law may be cited as the Fraud (Bailiwick of Guernsey) Law, 2009.

K.H. TOUGH,
Her Majesty's Greffier.

SCHEDULE

Section 14

AMENDMENTS

The following Laws are amended in the manner indicated -

Theft Law 1983^f

1. For section 15B(3), substitute -

"(3) "Account" means an account kept with -

- (a) a bank;
- (b) a person carrying on a business which falls within subsection (4) below; or
- (c) an issuer of electronic money (as defined for the purposes of the Transfer of Funds (Guernsey) Ordinance, 2007).".

2. For section 15B(5)(b), substitute -

"(b) "money" includes money expressed in a currency other than sterling.".

^f Ordres en Conseil Vol. XXVIII, pg. 5 and Order in Council No. XII of 1999.

3. In section 27(4) (meaning of "stolen goods"), immediately after "section fifteen of this Law" insert ", or, subject to subsection (5), by fraud (within the meaning of the Fraud Law)".

4. Immediately after section 27(4), insert the following –

"(5) Subsection (1) applies in relation to goods obtained by fraud as if –

(a) the reference to the commencement of this Law were a reference to the commencement of the Fraud Law, and

(b) the reference to an offence under this Law were a reference to an offence under section 1 of that Law."

5. For section 27A(4), substitute –

"(4) A credit to an account is also wrongful to the extent that it derives from –

(a) theft;

(b) an offence under section 15A;

(c) blackmail;

(d) fraud (contrary to section 1 of the Fraud Law);
or

(e) stolen goods."

6. In section 42(2) (interpretation), immediately after the definition of "the Bailiwick", insert –

"**the Fraud Law**" means the Fraud (Bailiwick of Guernsey) Law, 2009;"

Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law 2003^g

7. Immediately after section 1(8)(e) (Power of police officer to stop and search persons, vehicles etc.), insert paragraph (f) –

"(f) fraud (contrary to section 1 of the Fraud Law)."

8. In section 91 (interpretation), immediately after the definition of "**fingerprints**", insert –

"**the Fraud Law**" means the Fraud (Bailiwick of Guernsey) Law, 2009;"

9. In section 91, immediately after paragraph (a) of the definition of "**trigger offence**", insert the following –

"(aa) offences under the following provisions of the Fraud Law –

^g Order in Council No. XXIII of 2003.

- (i) section 1 (fraud);
- (ii) section 6 (possession etc. of articles for use in fraud); and
- (iii) section 7 (making or supplying articles for use in fraud);".

Criminal Justice (Compensation) (Bailiwick of Guernsey) Law 1990^h

10. In section 1(3) and (4) (compensation orders), after "Theft (Bailiwick of Guernsey) Law, 1983" insert "or Fraud (Bailiwick of Guernsey) Law 2009".

Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law 2006ⁱ

11. Immediately after section 14(2)(a), insert the following paragraph –

"(aa) an offence under the following provisions of the Fraud (Bailiwick of Guernsey) Law, 2009 -

- (i) section 1 (fraud),
- (ii) section 6 (possession etc. of articles for use in fraud),
- (iii) section 7 (making or supplying articles for use in fraud),

^h Ordres en Conseil Vol. XXXII, pg. 77.

ⁱ Order in Council No. XII of 2006.

(iv) section 9 (participating in fraudulent business carried on by sole trader etc),
or

(v) section 10 (obtaining services dishonestly),".

12. In section 15(1), immediately after "means" insert "(subject to subsection (1A))".

13. Immediately after section 15(1), insert the following subsection –

"(1A) In relation to an offence under section 1 (fraud) of the Fraud (Bailiwick of Guernsey) Law, 2009, "relevant event" includes –

(a) if the fraud involved an intention to make a gain and the gain occurred, the occurrence, and

(b) if the fraud involved an intention to cause a loss or to expose another to a risk of loss and the loss occurred, that occurrence.".

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