

# ORDER IN COUNCIL

**XV  
2005**

ratifying a Projet de Loi

ENTITLED

## **The Racial Hatred (Bailiwick of Guernsey) Law, 2005**

(Registered on the Records of the Island of Guernsey  
on the 23rd November, 2005.)



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2005

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 23rd day of November, 2005 before Richard John Collas, Esquire, Deputy Bailiff; present:– Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, Susan Mowbray and Barbara Jean Bartie, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 12th day of October, 2005, approving and ratifying the Projet de Loi entitled “The Racial Hatred (Bailiwick of Guernsey) Law, 2005”, 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 Clerk of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.

# At the Court at Buckingham Palace

The 12th day of October, 2005

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of 25th September, 2003, the States of Deliberation at a meeting on 27th April, 2005 approved a Projet de Loi entitled “The Racial Hatred (Bailiwick of Guernsey) Law, 2005” 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 Racial Hatred (Bailiwick of Guernsey) Law, 2005” 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.

*G. C. Donald*

# PROJET DE LOI

ENTITLED

## **The Racial Hatred (Bailiwick of Guernsey) Law, 2005**

### ARRANGEMENT OF SECTIONS

#### *Meaning of "racial hatred"*

1. Meaning of "racial hatred".

#### *Acts intended or likely to stir up racial hatred*

2. Use of words or behaviour or display of written material.
3. Publishing or distributing written material.
4. Public performance of play.
5. Script as evidence of what was performed,
6. Power to make copies of scripts.
7. Power of entry.
8. Distributing, showing or playing a recording.
9. Broadcasting programmes.
10. Possession of racially inflammatory material.
11. Powers of entry and search for racially inflammatory material.
12. Power to order forfeiture.

#### *Supplementary provisions*

13. Savings for reports of States proceedings or judicial proceedings.
14. Procedure and punishment.
15. Offences by corporations.
16. Interpretation.
17. Power to amend by Ordinance.
18. Citation.

# PROJET DE LOI

ENTITLED

## **The Racial Hatred (Bailiwick of Guernsey) Law, 2005**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> September, 2003<sup>a</sup>, 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.

### *Meaning of racial hatred*

#### **Meaning of "racial hatred".**

1. In this Law "**racial hatred**" means hatred against a group of persons defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins.

### *Acts intended or likely to stir up racial hatred*

#### **Use of words or behaviour or display of written material.**

2. (1) A person who uses threatening, abusive or insulting words or behaviour, or displays any written material which is threatening, abusive or insulting, is guilty of an offence if -

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is

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<sup>a</sup> Article XV of Billet d'État No. XXI of 2003.

likely to be stirred up thereby.

(2) An offence under this section may be committed in a public or private place, except that no offence is committed where the words or behaviour are used, or the written material is displayed, by a person inside a dwelling and are not heard or seen except by other persons in that or another dwelling.

(3) In proceedings for an offence under this section it is a defence for the accused to prove that he was inside a dwelling and had no reason to believe that the words or behaviour used, or the written material displayed, would be heard or seen by a person outside that or another dwelling.

(4) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not intend his words or behaviour, or the written material, to be, and was not aware that it might be, threatening, abusive or insulting.

(5) This section does not apply to words or behaviour used, or written material displayed, solely for the purpose of being included in a programme service.

**Publishing or distributing written material.**

3. (1) A person who publishes or distributes written material which is threatening, abusive or insulting is guilty of an offence if -

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

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(2) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the material and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(3) References in this Law to the publication or distribution of written material are to its publication or distribution to the public or a section of the public.

(4) A person shall be deemed for the purposes of this section to publish or distribute written material if he publishes, distributes or transmits material in any electronic or other non-visible or non-legible form from which the material may, by any means, be reproduced in visible or legible form.

**Public performance of play**

4. (1) If a public performance of a play is given which involves the use of threatening, abusive or insulting words or behaviour, or the display of any written material which is threatening, abusive or insulting, any person who presents or directs the performance is guilty of an offence if -

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances (and, in particular, taking the performance as a whole) racial hatred is likely to be stirred up thereby.

(2) If a person presenting or directing the performance is not shown to have intended to stir up racial hatred, it is a defence for him to prove -

- (a) that he did not know and had no reason to suspect that

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the performance would involve the use of the offending words, behaviour or material,

- (b) that he did not know and had no reason to suspect that the offending words, behaviour or material were threatening, abusive or insulting, or
- (c) that he did not know and had no reason to suspect that the circumstances in which the performance would be given would be such that racial hatred would be likely to be stirred up.

(3) This section does not apply to a performance given solely or primarily for one or more of the following purposes -

- (a) rehearsal,
- (b) making a recording of the performance, or
- (c) enabling the performance to be included in a programme service,

but if it is proved that the performance was attended by persons other than those directly connected with the giving of the performance or the doing in relation to it of the things mentioned in paragraph (b) or (c), the performance shall, unless the contrary be shown, be taken not to have been given solely or primarily for the purposes mentioned above.

(4) For the purposes of this section -

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- (a) a person shall not be treated as presenting a performance of a play by reason only of his taking part in it as a performer,
- (b) a person taking part as a performer in a performance directed by another shall be treated as a person who directed the performance if without reasonable excuse he performs otherwise than in accordance with that person's direction, and
- (c) a person shall be taken to have directed a performance of a play given under his direction notwithstanding that he was not present during the performance,

and a person shall not be treated as aiding and abetting the commission of an offence under this section by reason only of his taking part in a performance as a performer.

(5) In this section -

**"play"** means -

- (a) any dramatic piece, whether involving improvisation or not, which is given wholly or in part by one or more persons actually present and performing and in which the whole or a major proportion of what is done by the person or persons performing, whether by way of speech, singing or acting, involves the playing of a role, and

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- (b) any ballet given wholly or in part by one or more persons actually present and performing, whether or not it falls within paragraph (a) of this definition,

"**public performance**" includes any performance in a public place and any performance which the public or any section thereof are permitted to attend, whether on payment or otherwise.

**Script as evidence of what was performed.**

5. (1) Where a performance of a play was based on a script, then, in any proceedings for an offence under section 4 alleged to have been committed in respect of that performance -

- (a) an actual script on which that performance was based shall be admissible as evidence of what was performed and of the manner in which the performance or any part of it was given, and
- (b) if such a script is given in evidence on behalf of any party to the proceedings, then, except insofar as the contrary is shown, whether by evidence given on behalf of the same or any other party, the performance shall be taken to have been given in accordance with that script.

(2) In this Law "**script**", in relation to a performance of a play, means the text of the play (whether expressed in words or in musical or other notation) together with any stage or other directions for its performance, whether contained in a single document or not.

**Power to make copies of scripts.**

6. (1) If Her Majesty's Procureur has reasonable grounds for suspecting that -

- (a) an offence under section 4 has been committed by any person in respect of a performance of a play, or
- (b) that a performance of a play is to be given and that an offence under section 4 is likely to be committed by any person in respect of that performance,

he may make an order in writing under this section relating to that person and that performance.

(2) An order made under this section shall be signed by Her Majesty's Procureur, shall name the person to whom it relates, and shall describe the performance to which it relates in a manner sufficient to enable that performance to be identified.

(3) Where an order under this section has been made, any police officer, on production if so required of the order -

- (a) may require the person named in the order to produce, if such a thing exists, an actual script on which the performance was or, as the case may be, will be based, and
- (b) if such a script is produced to him, may require the person so named to afford him an opportunity of causing a copy thereof to be made.

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(4) A person who without reasonable excuse fails to comply with a requirement under subsection (3) is guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the uniform scale.

(5) Where, in the case of a performance of a play based on a script, a copy of an actual script on which that performance was based has been made by or on behalf of a police officer by virtue of an order under this section relating to that performance, section 5(1) shall apply in relation to that copy as it applies in relation to an actual script on which the performance was based.

**Powers of entry.**

7. If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting, as regards any premises specified in the information, that a performance of a play is to be given at those premises, and that an offence under section 4 is likely to be committed in respect of that performance, he may issue a warrant empowering any police officer at any time within one month from the date of the warrant to enter the premises and to attend any performance of a play which may be given there.

**Distributing, showing or playing a recording.**

8. (1) A person who distributes, or shows or plays, a recording of visual images or sounds which are threatening, abusive or insulting is guilty of an offence if -

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

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(2) In this Law "**recording**" means any record from which visual images or sounds may, by any means, be reproduced; and references to the distribution, showing or playing of a recording are to its distribution, showing or playing to the public or a section of the public.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

(4) This section does not apply to the showing or playing of a recording solely for the purpose of enabling the recording to be included in a programme service.

**Broadcasting programmes.**

9. (1) If a programme involving threatening, abusive or insulting visual images or sounds is included in a programme service, each of the persons mentioned in subsection (2) is guilty of an offence if -

- (a) he intends thereby to stir up racial hatred, or
- (b) having regard to all the circumstances racial hatred is likely to be stirred up thereby.

(2) The persons are -

- (a) the person providing the programme service,
- (b) any person by whom the programme is produced or directed, and

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- (c) any person by whom offending words or behaviour are used or offending material is displayed.

(3) If the person providing the service, or a person by whom the programme was produced or directed, is not shown to have intended to stir up racial hatred, it is a defence for him to prove that -

- (a) he did not know and had no reason to suspect that the programme would involve the offending words, behaviour or material, and
- (b) having regard to the circumstances in which the programme was included in a programme service, it was not reasonably practicable for him to secure the removal of the words, behaviour or material.

(4) It is a defence for a person by whom the programme was produced or directed who is not shown to have intended to stir up racial hatred to prove that he did not know and had no reason to suspect -

- (a) that the programme would be included in a programme service, or
- (b) that the circumstances in which the programme would be so included would be such that racial hatred would be likely to be stirred up.

(5) It is a defence for a person by whom offending words or behaviour were used or offending material was displayed and who is not shown to

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have intended to stir up racial hatred to prove that he did not know and had no reason to suspect -

- (a) that a programme involving the use of the offending words, behaviour or material would be included in a programme service, or
- (b) that the circumstances in which a programme involving the use of the offending words, behaviour or material would be so included, or in which a programme so included would involve the use of the offending words, behaviour or material, would be such that racial hatred would be likely to be stirred up.

(6) A person who is not shown to have intended to stir up racial hatred is not guilty of an offence under this section if he did not know, and had no reason to suspect, that the offending words, behaviour or material were threatening, abusive or insulting.

**Possession of racially inflammatory material.**

**10.** (1) A person who has in his possession or under his control written material which is threatening, abusive or insulting, or a recording of visual images or sounds which are threatening, abusive or insulting, with a view to -

- (a) in the case of written material, its being displayed, published, distributed, or included in a programme service, whether by himself or another, or
- (b) in the case of a recording, its being distributed, shown, played, or included in a programme service,

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whether by himself or another,

is guilty of an offence if he intends racial hatred to be stirred up thereby or, having regard to all the circumstances, racial hatred is likely to be stirred up thereby.

(2) For this purpose regard shall be had to such display, publication, distribution, showing, playing, or inclusion in a programme service, as he has, or it may reasonably be inferred that he has, in view.

(3) In proceedings for an offence under this section it is a defence for an accused who is not shown to have intended to stir up racial hatred to prove that he was not aware of the content of the written material or recording and did not suspect, and had no reason to suspect, that it was threatening, abusive or insulting.

**Powers of entry and search for racially inflammatory material.**

11. (1) If the Bailiff is satisfied by information on oath that there are reasonable grounds for suspecting that a person has possession, power or control of written material or a recording in contravention of section 10, he may issue a warrant authorising any police officer to enter and search the premises where it is suspected the material or recording is situated.

(2) A police officer entering or searching premises in pursuance of a warrant issued under this section may use reasonable force if necessary.

(3) In this section "**premises**" means any place and, in particular, includes -

(a) any vehicle, vessel, aircraft or hovercraft, and

(b) any tent or moveable structure.

**Power to order forfeiture.**

12. (1) A court by or before which a person is convicted of -

(a) an offence under section 2 relating to the display of written material, or

(b) an offence under section 3, 8 or 10,

shall order to be forfeited any written material or recording produced to the court and shown to its satisfaction to be written material or a recording to which the offence relates; and an appeal lies against such an order in all respects as against the conviction.

(2) An order made under this section shall not take effect until the expiry of the ordinary time within which an appeal may be instituted or, where an appeal is duly instituted, until it is finally determined or abandoned.

(3) For the purposes of subsection (2) -

(a) an application for leave to appeal shall be treated as the institution of an appeal, and

(b) where a decision on appeal is subject to a further appeal, the appeal is not finally determined until the expiry of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally determined or abandoned.

*Supplementary provisions*

**Savings for reports of States proceedings or judicial proceedings.**

13. (1) Nothing in this Law applies to a fair and accurate report of proceedings in the States of Deliberation, the States of Alderney or the Chief Pleas of Sark.

(2) Nothing in this Law applies to a fair and accurate report of proceedings publicly heard before a court or tribunal exercising judicial authority where the report is published contemporaneously with the proceedings or, if it is not reasonably practicable or would be unlawful to publish a report of them contemporaneously, as soon as publication is reasonably practicable and lawful.

**Procedure and punishment.**

14. (1) For the purposes of the rule against charging more than one offence in the same count or information, each of sections 2, 3, 4, 8, 9 and 10 creates one offence.

(2) A person guilty of an offence under this Law is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 7 years, or to a fine, or to both,
- (b) 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.

**Offences by corporations.**

15. (1) Where a body corporate is guilty of an offence under this Law and it is shown that the offence was committed with the consent or connivance of,

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or was attributable to any neglect on the part of, a 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 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 in relation to the acts and defaults of a member in connection with his functions of management as it applies to a director.

**Interpretation.**

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

**"Bailiff"** means -

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or, if he is unavailable, a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal or his deputy, and
- (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué,

**"distribute"** and related expressions shall be construed in accordance with section 3(3) and (4) (written material) and section 8(2) (recordings),

**"document"** includes information recorded in any form (including, without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production,

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howsoever expressed, include (without limitation) references to the production of a copy of the information in legible form,

**"dwelling"** means any structure or part of a structure occupied as a person's home or other living accommodation (whether the occupation is separate or shared with others) but does not include any part not so occupied, and for this purpose "structure" includes a tent, caravan, vehicle, vessel or other temporary or moveable structure,

**"police officer"** means a member of the salaried police force of the Island of Guernsey 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 pursuant to section 47 of the Government of Alderney Law, 2004, and
- (c) in relation to Sark, the Constable and the Vingtenier,

**"programme"** means any item which is included in a programme service,

**"programme service"** has the same meaning as in section 201 of the

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Broadcasting Act 1990<sup>b</sup>,

"**publish**" and related expressions, in relation to written material, shall be construed in accordance with section 3(3) and (4),

"**racial hatred**" has the meaning given by section 1,

"**recording**" has the meaning given by section 8(2), and "play" and "show" and related expressions, in relation to a recording, shall be construed in accordance with that provision,

"**uniform scale**" means the scale of fines designated by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>c</sup>,

"**written material**" includes any sign or other visible representation.

(2) The Interpretation (Guernsey) Law, 1948<sup>d</sup> applies to the interpretation of this Law throughout the Bailiwick.

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

**Power to amend by Ordinance.**

17. (1) The States may by Ordinance amend any provision of this

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<sup>b</sup> An Act of Parliament (1990 c. 42).

<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 279; the scale of fines was amended by Ordinance No. XXII of 1998.

<sup>d</sup> Ordres en Conseil Vol. XIII, p. 355.

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Law.

(2) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(3) Any power conferred by this Law to make any Ordinance 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,

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- (iii) any such provision either unconditionally or subject to any prescribed conditions.

**Citation.**

**18.** This Law may be cited as the Racial Hatred (Bailiwick of Guernsey) Law, 2005.