

ORDER IN COUNCIL

**XVIII
2007**

ratifying a Projet de Loi

ENTITLED

The Social Insurance (Guernsey) (Amendment) Law, 2006

(Registered on the Records of the Island of Guernsey
on the 18th December, 2007.)



2007

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

18th day of December, 2007 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, OBE, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard OBE, Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte and John Ferguson, Jurats

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 12th December 2007 approving and ratifying a Projet de Loi entitled the Social Insurance (Guernsey) (Amendment) Law 2006, 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 for registration on the records of that Island.



At the Court at Buckingham Palace

THE 12th DAY OF DECEMBER 2007

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 28th September 2005, 30th June 2006 and 28th September 2006 the States of Deliberation at a meeting on 13th December 2006 approved a *Projet de Loi* entitled *The Social Insurance (Guernsey) (Amendment) Law 2006* 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 Social Insurance (Guernsey) (Amendment) Law 2006*, and to order that it shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

“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 Islands of Guernsey, Alderney, Herm and Jethou 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

The Social Insurance (Guernsey) (Amendment) Law, 2006

THE STATES, in pursuance of their Resolutions of the 28th September 2005^a, 30th June 2006^b and 28th September 2006^c, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Alderney, Herm and Jethou.

Amendment of Law of 1978.

1. (1) In the Arrangement of Sections -
 - (a) immediately following the reference to section 16 ("Persons to be treated as employers."), insert -

"Anti- avoidance

- 16A. General provision against avoidance.
- 16B. Contributions payable in proportion to total amount of income or earnings.
- 16C. Power to make regulations, directions and orders concerning avoidance.
- 16D. Provisions of sections 16A to 16C without prejudice to other

^a Resolution 4 of Article XVI of Billet d'État No. XIV of 2005.

^b Resolution 9 (as amended) of Billet d'État No. XI of 2006.

^c Resolution 6 of Article XVI of Billet d'État No. XVI of 2006.

provisions of Law.", and

- (b) immediately before the reference to section 116 ("General provisions as to Ordinances, orders and regulations."), insert -

"115A. Power to amend Law by Ordinance."

(2) In section 4(1)(b) of the Law of 1978, the words "and under section seven of this Law by employed persons in certain cases" are repealed.

- (3) Immediately after section 5(1) of the Law of 1978, insert -

"(1A) An Ordinance under subsection (1) may prescribe different relevant upper earnings limits for the purpose of primary and secondary Class 1 contributions."

- (4) Section 7 of the Law of 1978 is repealed.

- (5) Immediately after section 16 of the Law of 1978, insert -

"Anti-avoidance

General provision against legal avoidance.

16A. (1) Where the effect of a transaction or series of transactions is the avoidance, reduction or deferral of the liability of any person ("**the person concerned**") to pay contributions, the Department may, in its discretion, make such adjustments as respects the liability of the person concerned to pay such contributions as may in its opinion be appropriate to counteract the avoidance, reduction or deferral of liability which would

otherwise be effected by or as a result of that transaction or series of transactions.

(2) For the purposes of this section, a transaction includes any arrangement, agreement, operation, scheme or event, or any action, omission, decision or concurrence, whether or not -

- (a) enforceable by legal proceedings,
- (b) involving or dependent on any action by, or any omission, decision or concurrence of, the person concerned or any other person, or more than one person,
- (c) brought to a conclusion, and
- (d) involving or dependent on any other transaction.

(3) For the purposes of this section, and for the avoidance of doubt, it is immaterial -

- (a) when or where the transaction or series of transactions (or any of the series of transactions) occurs,
- (b) whether or not the transaction or series of transactions (or any of the series of transactions) -

- (i) was undertaken by or on behalf of, or in conjunction with, the person concerned, or
 - (ii) was undertaken by or on behalf of, or in conjunction with, more than one person, and
- (c) whether or not the avoidance, reduction or deferral of liability -
- (i) was an intended effect of the transaction or series of transactions, or any of the series of transactions, or
 - (ii) was the only or principal effect.

(4) In this section the expression "avoidance, reduction or deferral" of liability to pay contributions includes (without limitation) an increase or enhancement in the entitlement of the person concerned to a repayment of any contributions.

Contributions payable in proportion to total amount of income or earnings.

16B. (1) Every person who is liable to pay a contribution under this Law shall contribute in proportion to the total amount of all income or earnings, as the case may be, relevant to the class of contribution determined by the Department to be appropriate in his circumstances.

(2) For the purpose of subsection (1), the total amount of

all income or earnings, as the case may be, relevant to the class of contribution concerned, includes amounts which -

(a) are determined under, or

(b) derived from the application of,

the provisions of sections 16C or any other provision of this Law.

Power to make regulations, directions and orders concerning avoidance.

16C. (1) Regulations may provide for such measures as appear reasonably necessary to the Department to counter avoidance, or reduction, of any liability to pay contributions of any class, including (without limitation) assignment of a monetary value to any asset, right, benefit or other thing available for the enjoyment of a contributor (whether that enjoyment is taken or foregone), for the purposes of determining the total amount of income or earnings, as the case may be, relevant to any class of contribution.

(2) The Department may, in any particular case, where it appears to the Department to be fair and reasonable with regard to the interests of the general body of insured persons -

(a) direct that -

(i) money, and

(ii) the monetary value (as determined by the Department) of assets, goods, services or other things,

provided for, or made available to, a contributor by another person, shall be treated as the income or earnings, as the case may be, of that contributor, and

- (b) order the substitution of such amount (as determined by the Department) of income or earnings, as the case may be, which may be relevant to any class of contribution in place of the amount of income or earnings, as the case may be, declared by or on behalf of a contributor .

Provisions of section 16A to 16C without prejudice to other provisions of Law.

16D. The provisions of sections 16A to 16C are without prejudice to the generality of any other provision of this Law under which the Department has power to take measures for the purpose of -

- (a) countering avoidance, or reduction, of any liability to pay contributions of any class, or
- (b) ensuring fairness in relation to the general body of insured persons."

(6) In section 88(5) of the Law of 1978 -

- (a) for "they" substitute "it", and

- (b) delete "to them".
- (7) Section 89 of the Law of 1978 is repealed.
- (8) Immediately before section 116 of the Law of 1978 insert -

"Power to amend Law by Ordinance.

115A. (1) The States may by Ordinance amend -

- (a) Part I, II, V or VI, and
- (b) any other Part where, in the case of that other Part, the amendment is -
 - (i) necessary to give full effect to, or
 - (ii) consequential upon,any amendment made under paragraph (a).

(2) An Ordinance under subsection (1) may, for the avoidance of doubt -

- (a) create new offences, and
- (b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law."

Interpretation.

2. (1) In this Law -

"**Arrangement of Sections**" means the arrangement of sections to the Law of 1978, and

"**the Law of 1978**" means the Social Insurance (Guernsey) Law, 1978 as amended^d.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^e shall apply to the interpretation of this Law throughout the Islands of Guernsey, Alderney, Herm and Jethou.

Citation.

3. This Law may be cited as the Social Insurance (Guernsey) (Amendment) Law, 2006.

Commencement.

4. This Law shall come into force on the Monday next following its registration on the Records of the Island of Guernsey.

^d Ordres en Conseil Vol. XXVI, p. 292; Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; No. V of 1990; Nos. V and XII of 1993; Ordinance No. XIV of 1993; Ordres en Conseil No. V of 1994, Nos. VI and XIII of 1995; No. I of 1998; No. VI of 1999; No. X of 2000; No. IX of 2001; No XXIV of 2003.

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