

ORDER IN COUNCIL

XII
1999

ratifying a Projet de Loi

ENTITLED

The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999

(Registered on the Records of the Island of Guernsey
on the 4th October, 1999.)



1999

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of October, 1999 before de Vic Graham Carey, Esquire, Bailiff; present:- Leonard Arthur Moss, Esquire, O.B.E., Lawrence Oscar Ozanne, Esquire, John Richard Rowe Henry, Esquire, David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Esquire, Derek Martin Le Page, Esquire, Stephen Edward Francis Le Poidevin, Esquire, Alan Cecil Bisson, Esquire, David Michael Jory, Esquire, Keith Bichard, Esquire, O.B.E., The Reverend Peter Gerald Lane, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 21st July, 1999 approving and ratifying a *Projet de Loi* entitled "The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur 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 S n schal of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:-

At the Court at Buckingham Palace

The 21st day of July 1999

PRESENT:

**The Queen's Most Excellent Majesty
in Council**

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 6th day of July 1999 in the words following, viz.:-

"YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:-

"1. That, in pursuance of their Resolution of the 25th day of March 1998, the States of Deliberation at a meeting held on the 29th day of June 1998 approved a Bill or "Projet de Loi" entitled "The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999", and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or "Projet de Loi" is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999", and to order that the same shall have force of law in the Bailiwick of Guernsey.";

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY, having taken the said Report into consideration, is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

A. K. Galloway

Projet de Loi

entitled

The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999

ARRANGEMENT OF SECTIONS

1. Obtaining a money transfer by deception.
2. Application to loans of offence of obtaining services by deception.
3. Dishonestly retaining a wrongful credit.
4. Minor changes to Theft Law.
5. Citation.

Projet de Loi

entitled

The Theft (Bailiwick of Guernsey) (Amendment) Law, 1999

THE STATES, in pursuance of their Resolution of the 25th day of March, 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.

Obtaining a money transfer by deception.

1. (1) After section 15 of the Theft (Bailiwick of Guernsey) Law, 1983, as amended^b (hereinafter called "the Theft Law") insert the following sections-

"Obtaining a money transfer by deception.

15A. (1) A person is guilty of an offence if by any deception he dishonestly obtains a money transfer for himself or another.

(2) A money transfer occurs when-

- (a) a debit is made to one account,
- (b) a credit is made to another account, and
- (c) the credit results from the debit or the debit results from the credit.

^a Article IV of Billet d'État No. VI of 1998.

^b Ordres en Conseil Vol. XXVIII, p. 5; amended by No. I of 1991 and No. IX of 1996.

(3) References to a credit and to a debit are to a credit of an amount of money and to a debit of an amount of money.

(4) It is immaterial (in particular)-

(a) whether the amount credited is the same as the amount debited;

(b) whether the money transfer is effected on presentment of a cheque or by another method;

(c) whether any delay occurs in the process by which the money transfer is effected;

(d) whether any intermediate credits or debits are made in the course of the money transfer;

(e) whether either of the accounts is overdrawn before or after the money transfer is effected.

(5) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years.

Provision supplementary to section 15A.

15B. (1) The following provisions have effect for the interpretation of section 15A.

(2) "**Deception**" has the same meaning as in section 15.

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

(a) a bank; or

(b) a person carrying on a business which falls within subsection (4).

(4) A business falls within this subsection if-

(a) in the course of the business money received by way of deposit is lent to others; or

(b) any other activity of the business is financed, wholly or to any material extent, out of the capital of or the interest on money received by way of deposit;

and "**deposit**" has the same meaning as in section 21 of the Banking Supervision (Bailiwick of Guernsey) Law 1994^c.

(5) For the purposes of subsection (4)-

(a) all the activities which a person carries on by way of business shall be regarded as a single business carried on by him; and

(b) "**money**" includes money expressed in a currency other than sterling or in the European currency unit (as defined in Council Regulation No. 3320/94/EC or any Community instrument, within the meaning of section 1(1) of the European Communities (Bailiwick of Guernsey) Law, 1973^d, replacing it).".

^c Order in Council No. XIII of 1994.

^d Ordres en Conseil Vol. XXIV, p. 87; there are amendments not relevant to this enactment.

(2) Nothing in this section has effect in relation to anything done before the day on which this Law comes into force.

Application to loans of offence of obtaining services by deception.

2. (1) After section 17(2) of the Theft Law insert the following subsection-

"(2A) Without prejudice to the generality of subsection (2), it is an obtaining of services where the other is induced to make a loan, or to cause or permit a loan to be made, on the understanding that any payment (whether by way of interest or otherwise) will be or has been made in respect of the loan."

(2) Nothing in this section has effect in relation to anything done before the day on which this Law comes into force.

Dishonestly retaining a wrongful credit.

3. (1) After section 27 of the Theft Law insert the following section-

"Dishonestly retaining a wrongful credit.

27A. (1) A person is guilty of an offence if-

- (a) a wrongful credit has been made to an account kept by him or in respect of which he has any right or interest;
- (b) he knows or believes that the credit is wrongful; and
- (c) he dishonestly fails to take such steps as are reasonable in the circumstances to secure that the credit is cancelled.

(2) References to a credit are to a credit of an amount of money.

(3) A credit to an account is wrongful if it is the credit side of a money transfer obtained contrary to section 15A.

(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; or

(d) stolen goods.

(5) In determining whether a credit to an account is wrongful, it is immaterial (in particular) whether the account is overdrawn before or after the credit is made.

(6) A person guilty of an offence under this section shall be liable on conviction on indictment to imprisonment for a term not exceeding ten years.

(7) Subsection (8) applies for the purposes of the provisions of this Law relating to stolen goods (including subsection (4)).

(8) References to stolen goods include money which is dishonestly withdrawn from an account to which a wrongful credit has been made, but only to the extent that the money derives from the credit.

(9) In this section "**account**" and "**money**" shall be construed in accordance with section 15B."

(2) This section applies to wrongful credits made on or after the day on which this Law comes into force.

Minor changes to Theft Law.

4. In the arrangement of sections in the Theft Law, insert the following entries at the appropriate places-

"15A. Obtaining a money transfer by deception."

"15B. Provision supplementary to section 15A."

"27A. Dishonestly retaining a wrongful credit."

Citation.

5. This Law may be cited as the Theft (Bailiwick of Guernsey) (Amendment) Law, 1999.