

ORDER IN COUNCIL

XII
2016

ratifying a Projet de Loi

ENTITLED

The Designation of Officers (Bailiwick of Guernsey) Law, 2016

(Registered on the Records of the Island of Guernsey
on the 5th December, 2016.)



2016

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 5th day of December, 2016 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Susan Mowbray, Barbara Jean Bartie, John Ferguson, Esquire, Claire Helen Le Pelley, Peter Sean Trueman Girard, Esquire, Constance Helyar-Wilkinson, Terry George Snell, Esquire, Margaret Ann Spaargaren, Terry John Ferbrache, David Allan Grut, Jonathan Grenfell Hooley, and David James Mortimer, Esquires, Jurats.

The Judge, having this day placed before the Court an Order of Her Majesty in Council dated 16th November, 2016 approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Designation of Officers (Bailiwick of Guernsey) Law, 2016”, 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 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 be sent by Her Majesty’s Greffier to the Greffier of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands.

J. TORODE
Her Majesty’s Greffier.



At the Court at Buckingham Palace

THE 16th DAY OF NOVEMBER 2016

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 16th February 2016, the States of Deliberation at a meeting on 2nd March 2016 approved a *Projet de Loi* entitled the Designation of Officers (Bailiwick of Guernsey) Law, 2016 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 Designation of Officers (Bailiwick of Guernsey) Law, 2016, 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.

Richard Tilbrook

PROJET DE LOI

ENTITLED

The Designation of Officers (Bailiwick of Guernsey) Law, 2016

ARRANGEMENT OF SECTIONS

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2. Designation may be subject to limitations.
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PROJET DE LOI

ENTITLED

The Designation of Officers (Bailiwick of Guernsey) Law, 2016

THE STATES, in pursuance of their Resolution of the 16th February, 2016^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.

Designation of officers as having operational powers.

1. (1) The Chief Officer of Police may designate any customs officer or immigration officer as a person having the powers and privileges of a police officer.

(2) The Chief Revenue Officer may designate any police officer or immigration officer as a person having the powers of a customs officer.

(3) The Chief Revenue Officer may designate any police officer as a person having the powers of an immigration officer.

(4) An officer must not be designated under this section unless the Chief Officer of Police or, as the case may be, the Chief Revenue Officer, is satisfied that the officer –

- (a) is capable of effectively exercising the operational powers which the officer is to have,
- (b) has received adequate training in respect of the exercise of those powers, and

^a Article I of Billet d'État No. IV of 2016.

(c) is otherwise a suitable person to exercise those powers.

(5) The Chief Officer of Police or, as the case may be, the Chief Revenue Officer may modify, suspend or withdraw a designation by giving notice of the modification, suspension or withdrawal to the designated officer.

Designations may be subject to limitations.

2. (1) A designation may be made subject to any limitations specified in the designation.

(2) Without limiting the generality of subsection (1), a designation may include limitations on –

- (a) the operational powers that the designated officer is to have,
- (b) the purposes for which the designated officer may exercise the operational powers which the officer is to have, and
- (c) the duration of the designation.

(3) A designation has effect without limitation of time unless the designation limits the duration of the designation.

(4) Any limitation on a designation is subject to modification, suspension or withdrawal of the designation under section 1(5).

Additional provisions concerning police officer designates.

3. (1) A customs officer or an immigration officer designated as having the powers and privileges of a police officer ("**a police officer designate**") –

- (a) has all the powers and privileges of a police officer subject to any limitations imposed under section 2,
- (b) may exercise those powers and privileges subject to

any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers and privileges are exercised by a police officer,

- (c) in the exercise of any such power or privilege, is subject to any duties to which a police officer would be subject if the police officer were exercising the power or privilege, and
- (d) is responsible to the Chief Officer of Police for the exercise of those powers and privileges.

(2) Where a power or privilege of a police officer in any enactment is exercisable by a police officer designate, a reference to a police officer in the enactment is to be regarded as including a reference to the police officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise a police officer to exercise any power or privilege has effect as if a police officer designate were a police officer.

Additional provisions concerning customs officer designates.

4. (1) A police officer or an immigration officer designated as having the powers of a customs officer ("a **customs officer designate**") –

- (a) has all the powers of a customs officer subject to any limitations imposed under section 2,
- (b) may exercise those powers subject to any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers are exercised by a customs officer,
- (c) in the exercise of any such power, is subject to any duties to which a customs officer would be subject if

the customs officer were exercising the power, and

- (d) is responsible to the Chief Revenue Officer for the exercise of those powers.

(2) Where a power of a customs officer in any enactment is exercisable by a customs officer designate, a reference to a customs officer in the enactment is to be regarded as including a reference to the customs officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise a customs officer to exercise any power has effect as if a customs officer designate were a customs officer.

Additional provisions concerning immigration officer designates.

5. (1) A police officer designated as having the powers of an immigration officer ("**an immigration officer designate**") –

- (a) has all the powers of an immigration officer subject to any limitations imposed under section 2,
- (b) may exercise those powers subject to any restrictions on their exercise (for example relating to territory, rank or uniform) that apply when those powers are exercised by an immigration officer,
- (c) in the exercise of any such power, is subject to any duties to which an immigration officer would be subject if the immigration officer were exercising the power, and
- (d) is responsible to the Chief Revenue Officer for the exercise of those powers.

(2) Where a power of an immigration officer in any enactment is exercisable by an immigration officer designate, a reference to an immigration officer in the enactment is to be regarded as including a reference to the immigration officer designate.

(3) Without limiting the generality of subsection (2), an enactment which provides for the issuing of warrants that authorise an immigration officer to exercise any power has effect as if an immigration officer designate were an immigration officer.

Evidence of designation.

6. (1) A designated officer must produce evidence of the designation if –

- (a) the officer exercises, or purports to exercise, any operational power in relation to another person, and
- (b) the other person requests the officer to produce such evidence.

(2) If the designated officer fails to produce such evidence, that failure does not make the exercise of the operational power invalid.

Resistance or wilful obstruction of designated officers.

7. (1) A person commits an offence if the person resists or wilfully obstructs –

- (a) a designated officer acting in the exercise of an operational power, or
- (b) a person who is assisting a designated officer in the exercise of such a power.

(2) A person guilty of an offence under subsection (1) 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 two years, or to a fine not exceeding twice level 5 on the uniform scale, or to both.

Assault on designated officers.

8. (1) A person commits an offence if the person assaults –

- (a) a designated officer acting in the exercise of an operational power, or
- (b) a person who is assisting a designated officer in the exercise of such a power.

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

Impersonation of designated officers.

9. (1) A person commits an offence if, with intent to deceive –

- (a) the person impersonates a designated officer,
- (b) the person makes any statement or does any act calculated to falsely suggest that the person is a designated officer, or
- (c) the person makes any statement or does any act calculated to falsely suggest that the person has powers as a designated officer that exceed the powers that the person actually has.

(2) A person guilty of an offence under subsection (1) is liable on conviction to imprisonment for a term not exceeding two years, or to a fine, or to both.

States may make Ordinances.

10. (1) The States may, by Ordinance, make such provision as the States considers appropriate in consequence of designated officers having operational powers.

(2) Without limiting the generality of subsection (1), an Ordinance under this section may, in particular –

- (a) provide for designated officers to benefit from exemptions or other protection in respect of the exercise of operational powers,
- (b) provide for the disclosure of information to, or the doing of other things in relation to, designated officers,
- (c) confer functions on designated officers or any other person.

General provisions as to Ordinances.

11. (1) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance, 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 any Law (including this Law), Ordinance or subordinate legislation.

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

(3) Without prejudice to the generality of the other provisions of this Law, an Ordinance under this Law –

- (a) may empower any department or committee of the States, any other body or authority (including, without limitation, any court in the Island), or any other person to –
 - (i) make subordinate legislation, or
 - (ii) issue codes or guidance,

in relation to any matter for which an Ordinance may be made under this Law,

- (b) may provide that no liability shall be incurred by any person in respect of anything done or omitted to be done in the discharge or purported discharge of any of the person's functions unless the thing is done or omitted to be done in bad faith,
- (c) may make provision under the powers conferred by this Law despite the provisions of any enactment for the time being in force,
- (d) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and
- (e) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi.

Application of Police Complaints (Guernsey) Law, 2008.

12. For the avoidance of doubt, for the purposes of the Police Complaints (Guernsey) Law, 2008^b and any Ordinance or subordinate legislation made under it –

- (a) a police officer who is designated as having the powers of a customs officer or an immigration officer remains a member of the salaried police force of the Island of Guernsey, despite the designation, and
- (b) a customs officer or an immigration officer who is designated as having the powers and privileges of a police officer does not become a member of the salaried police force of the Island of Guernsey by reason of the designation.

^b Order in Council No. XIX of 2009; as amended by Ordinance No. XVI of 2011. See also Ordres en Conseil Vol. XXIX, p. 207 and G.S.I. No. 16 of 2011.

Civil liability for wrongful acts of designated officers.

13. (1) Any unlawful conduct of a police officer designate in the exercise or purported exercise of the powers or privileges of a police officer is to be regarded as if it were the unlawful conduct of a police officer for the purposes of determining civil liability (including who is liable) for that conduct.

(2) Any unlawful conduct of a customs officer designate in the exercise or purported exercise of the powers of a customs officer is to be regarded as if it were the unlawful conduct of a customs officer for the purposes of determining civil liability (including who is liable) for that conduct.

(3) Any unlawful conduct of an immigration officer designate in the exercise or purported exercise of the powers of an immigration officer is to be regarded as if it were the unlawful conduct of an immigration officer for the purposes of determining civil liability (including who is liable) for that conduct.

Interpretation.

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

"**Chief Officer of Police**" means the Chief Officer of the salaried police force of the island of Guernsey, and

"**Chief Revenue Officer**" means the Chief Officer of Customs and Excise for the time being appointed by the Policy Council,

"**customs officer**" means an officer authorised under section 3 of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law 1972^c,

"**customs officer designate**" has the meaning given by section 4(1),

^c Ordres en Conseil Vol. XXIII, p. 573; as amended by Vol. XXXIII, p. 217 and Recueil d'Ordonnances Tome XXIX, p. 406. There are several other amendments not relevant to this section.

"**designate**" means designate under section 1, and "**designation**" has a corresponding meaning,

"**designated officer**" means an officer designated as having operational powers under section 1,

"**enactment**" includes an Act of Parliament applicable to or extended (subject to any modifications) to the Bailiwick of Guernsey, a Law, an Ordinance and any subordinate legislation and includes any provision or portion of such an Act, a Law, an Ordinance or subordinate legislation,

"**function**" includes power or duty,

"**immigration officer**" means an immigration officer for the purposes of the Immigration Act 1971^d,

"**immigration officer designate**" has the meaning given by section 5(1),

"**operational powers**", in relation to a designated officer, means –

- (a) the powers and privileges of a police officer,
- (b) the powers of a customs officer, or
- (c) the powers of an immigration officer,

conferred on the designated officer by or under this Law,

"**police officer**" means a member of the salaried police force of the Island of Guernsey,

^d An Act of Parliament (Chapter 77 of 1971) extended to the Bailiwick of Guernsey subject to modifications by UK S.I. 1993/1796; as further modified or amended in its application to the Bailiwick of Guernsey by UK S.I. 1998/1264, 2003/2900, 2011/2444 and 2015/1533.

"**police officer designate**" has the meaning given by section 3(1),

"**Policy Council**" means the States of Guernsey Policy Council,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

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

(2) 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.

Citation.

15. This Law may be cited as the Designation of Officers (Bailiwick of Guernsey) Law, 2016.

^e Ordres en Conseil Vol. XXXI, p. 278; as amended by Order in Council No. XVIII of 2009.

Copies may be purchased from
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