

PROJET DE LOI

ENTITLED

The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* No. I of 2004, Ordres en Conseil Vol. XLIV(1), p. 1; as amended by the Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023 (No. V of 2023); Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 (Amendment) Ordinance, 2007 (No. V of 2007, Recueil d'Ordonnances Tome XXXII, p. 77); Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Ordinance, 2008 (No. XL of 2008, Recueil d'Ordonnances Tome XXXIII, p. 163). See also the: Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Magistrate's Court (Guernsey) Law, 2008 (No. XVIII of 2009); Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (No. XII of 2022).

PROJET DE LOI

ENTITLED

The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003

ARRANGEMENT OF SECTIONS

1. Corrupt transactions with agents.
2. Meaning of "agent".
3. Corruption by public officials.
4. Corruption committed outside the Bailiwick.
5. Corruption occurring partially in the Bailiwick.
- 5A. Offence of failure of commercial organisation to prevent bribery.
- 5B. Publication of Guidance.
6. Offences by bodies corporate and partnerships: liability of officers, etc.
7. Search warrants.
8. Interpretation.
9. Common law bribery.
10. Repeal.
11. Citation.

PROJET DE LOI

ENTITLED

The Prevention of Corruption (Bailiwick of Guernsey) Law, 2003

THE STATES, in pursuance of their Resolution of the 1st day of November 2001^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.

Corrupt transaction with agents.

1. (1) An agent or any other person who corruptly –
 - (a) accepts or obtains, or
 - (b) agrees to accept or attempts to obtain,

for himself, or for any other person, any gift, consideration or advantage as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his office or position or his principal's affairs or business shall be guilty of an offence.

- (2) A person who corruptly –
 - (a) gives or agrees to give, or

^a Article XXI of Billet d'État No. XXI of 2001.

- (b) offers,

any gift, consideration or advantage to an agent or any other person, whether for the benefit of that agent, person or other person, as an inducement to, or reward for, or otherwise on account of, the agent doing any act or making any omission in relation to his office or position or his principal's affairs or business shall be guilty of an offence.

- (3) For the purposes of this section it is immaterial if –

- (a) the principal's affairs or business have no connection with the Bailiwick and are conducted in a country or territory outside the Bailiwick,
- (b) the agent's functions have no connection with the Bailiwick and are carried out in a country outside the Bailiwick.

- (4) A person guilty of an offence under this section shall be liable

–

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, 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 7 years, to a fine, or to both.

- (5) In this section –

"consideration" includes valuable consideration of any kind,

"principal" includes any employer.

NOTE

The following case has referred to this Law:

Daniel De Kock v. The Law Officers of the Crown (2017)
(Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017).

Meaning of "agent".

2. [(1) In this Law –

"agent" includes –

- (a) any person employed by or acting for another and,
- (b) without prejudice to the generality of paragraph (a), a person of any of the following descriptions –
 - (i) a member of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark,
 - (ii) the Bailiff, the Deputy Bailiff or a Lieutenant-Bailiff,
 - (iii) a Judge of the Court of Appeal,
 - (iv) a Judge of the Royal Court,
 - (v) a Judge or Deputy Judge of the Magistrate's Court,

Consolidated text

- (vi) the Magistrate, any Assistant Magistrate or any Acting Magistrate,
- (vii) a Jurat of the Royal Court or any Juré-Justicier Suppléant,
- (viii) the President or Vice President of the States of Alderney,
- (ix) any Juge Délégué of Alderney or any person appointed under section 9 of the Government of Alderney Law, 2004^{ab},
- (x) a Jurat of the Court of Alderney,
- (xi) the Seigneur or any Deputy Seigneur of Sark,
- (xii) the Sénéchal, any Deputy Sénéchal or Lieutenant Sénéchal of Sark,
- (xiii) a member of any tribunal created by or under any enactment of the Bailiwick or any part thereof,
- (xiv) Her Majesty's Procureur or any Procureur Délégué,
- (xv) Her Majesty's Comptroller or any Contrôle

^{ab} Order in Council No. III of 2005.

Consolidated text

Délégué,

- (xvi) Her Majesty's Greffier or any Deputy Greffier,
- (xvii) Her Majesty's Sheriff or any Deputy Sheriff,
- (xviii) Her Majesty's Sergeant or any Deputy Sergeant,
- (xix) the Greffier appointed under section 20(1) of the Government of Alderney Law, 2004,
- (xx) the Greffier of Sark or any Deputy Greffier,
- (xxi) the Prevôt of Sark or any Deputy Prevôt,
- (xxii) the Constable, Vingtenier or any Assistant Constable of Sark,
- (xxiii) the Treasurer or the Deputy Treasurer of Sark,
- (xxiv) a person elected to Parochial office in Guernsey,
- (xxv) a member of a Parish Douzaine,
- (xxvi) an auditor,
- (xxvii) an arbitrator or umpire (whether appointed by virtue of an arbitration agreement, by a court or by any other means),
- (xxviii) a non States member of a States Department or

Committee,

(xxix) a non Chief Pleas member of a Chief Pleas Committee,

(xxx) a member of any body created by or under any enactment responsible for the regulation of any type of business or other activity, and

(xxxi) any other person employed by or acting on behalf of the public administration in any part of the Bailiwick, and

(c) without prejudice to the generality of paragraph (a), a person of any of the following descriptions –

(i) a member of the government of any other country or territory,

(ii) a member of a public assembly exercising legislative or administrative powers in any other country or territory,

(iii) a mayor of a municipality in any other country or territory,

(iv) a member of the European Parliament,

(v) a member of the Court of Auditors of the European Communities,

Consolidated text

- (vi) a member of the Commission of the European Communities,
- (vii) a public prosecutor in any other country or territory,
- (viii) a judge of a court in any other country or territory,
- (ix) a lay person who has the responsibility of deciding on the guilt of an accused person in criminal proceedings in any other country or territory,
- (x) a lay person who has the responsibility of deciding on matters of fact, law or both in civil or administrative proceedings in any other country or territory,
- (xi) an arbitrator or umpire (whether appointed by virtue of an arbitration agreement, by a court or by any other means) appointed in any other country or territory,
- (xii) a judge of any court established under an international agreement,
- (xiii) a member of, or any other person employed by or acting for or on behalf of, any body established under an international agreement,

(xiv) a member of a body created by law in any other country or territory responsible for the regulation of any type of business or other activity, and

(xv) any other person employed by or acting on behalf of the public administration of any other country or territory, and

(d) a company or other body corporate.]

(2) The States by Ordinance may amend subsection (1).

NOTES

In section 2, subsection (1) was substituted by the Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Ordinance, 2008, section 1, with effect from 26th November, 2008.¹

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 2008, section 47(3), the references in this section to, first, the "Magistrate" and, second, the "Assistant Magistrate" and "Acting Magistrate" shall be construed as references to, respectively, a Judge and a Deputy Judge of the Magistrate's Court within the meaning of the 2008 Law, with effect from 1st September, 2009.

Corruption by public officials.

3. (1) A public official who does or does not do any act in relation to his office for the purpose of corruptly obtaining a gift, consideration or advantage for himself or any other person shall be guilty of an offence.

(2) A person guilty of an offence under this section shall be liable

—

- (a) on summary conviction, to imprisonment for a term not exceeding 12 months, 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 7 years, to a fine, or to both.
- (3) In this section –

"consideration" includes valuable consideration of any kind,

"public official" means a person referred to in section 2(1)(b).

Corruption committed outside the Bailiwick.

4. (1) This section applies if –
- (a) a Bailiwick person or a body incorporated under the law of any part of the Bailiwick does or omits to do anything in a country or territory outside the Bailiwick, and
 - (b) the act or omission would, if done in the Bailiwick, constitute any offence under this Law.
- (2) In such a case –
- (a) the act or omission constitutes the offence concerned, and
 - (b) proceedings for the offence may be taken in the Bailiwick.

(3) A "**Bailiwick person**" means a person who is an agent by reason of section 2(1)(b) or any other person who is ordinarily resident in the Bailiwick and who is –

- (a) a British citizen, a British Dependent Territories citizen, a British National (Overseas) or a British Overseas citizen,
- (b) a person who under the British Nationality Act 1981 is a British subject, or
- (c) a British protected person within the meaning of that Act.

Corruption occurring partially in the Bailiwick.

5. A person may be tried in the Bailiwick for an offence under sections 1 or 3, if any of the acts or omissions alleged to constitute the offence was committed in the Bailiwick notwithstanding that other acts or omissions constituting the offence were committed outside the Bailiwick.

[Offence of failure of commercial organisation to prevent bribery.

5A. (1) A relevant commercial organisation ("**C**") is guilty of an offence under this section if an agent or other person ("**A**") associated with C bribes another person intending –

- (a) to obtain or retain business for C, or
- (b) to obtain or retain an advantage in the conduct of business for C.

(2) It is a defence for C to prove that C had in place adequate procedures designed to prevent persons associated with C from undertaking such conduct ("**prevention procedures**").

(3) For the purposes of this section, A bribes another person if, and only if, A is, or would be, guilty of an offence under section 1 (whether or not A has been prosecuted for such an offence).

(4) For the purposes of this section, A is associated with C if (disregarding any corrupt gift, consideration or advantage under consideration) A is a person who performs services for or on behalf of C.

(5) The capacity in which A performs services for or on behalf of C is immaterial, and may include, but is not limited to, A being employed by C.

(6) Whether or not A is a person who performs services for or on behalf of C is to be determined by reference to all the relevant circumstances, and not merely by reference to the nature of the relationship between A and C.

(7) Where A is employed by C, it is to be presumed unless the contrary is shown that A is a person who performs services for or on behalf of C.

(8) A relevant commercial organisation guilty of an offence under this section is liable on conviction to a fine.

(9) In this section –

"relevant commercial organisation" means –

Consolidated text

- (a) a body which is incorporated under the law of any part of the Bailiwick and which carries on a business (whether there or elsewhere),
- (b) any other body corporate (wherever incorporated) which carries on a business, or part of a business, in any part of the Bailiwick,
- (c) a partnership which is formed under the law of any part of the Bailiwick and which carries on a business (whether there or elsewhere), or
- (d) any other partnership (wherever formed) which carries on a business, or part of a business, in any part of the Bailiwick,

and for these purposes "**partnership**" means –

- (a) a partnership within the Partnership (Guernsey) Law, 1995 or the Partnership (Alderney) Law, 2021, or
- (b) a limited partnership registered under the Limited Partnerships (Guernsey) Law 1995, or the Limited Partnerships (Alderney) Law, 2021,

or a firm or entity of a similar character formed under the law of a country or territory outside the Bailiwick.]

NOTE

Section 5A was inserted by the Prevention of Corruption (Bailiwick of

Guernsey) (Amendment) Law, 2023, section 1(2), with effect from 26th April, 2024.

[Publication of Guidance.

5B. (1) Subject to subsection (3), the States of Guernsey Committee for Home Affairs ("**the Committee**") shall publish guidance (in such manner as the Committee considers appropriate) about prevention procedures within the meaning of section 5A(2), and a court may take such guidance into account when determining whether a relevant commercial organisation had adequate prevention procedures in place.

(2) For the avoidance of doubt, the Committee may, from time to time, publish revisions to guidance under this section or revised guidance.

(3) The Committee must consult the Policy and Finance Committee of the States of Alderney and the Policy and Finance Committee of the Chief Pleas of Sark before publishing guidance under this section.]

NOTE

Section 5B was inserted by the Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023, section 1(2), with effect from 26th April, 2024.

[Offences by bodies corporate and partnerships: liability of officers, etc.

6. (1) Where an offence under this Law is committed by a body corporate or unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) any director, manager, secretary or other similar officer, or any foundation official, of the body corporate,

- (b) where the offence is committed by a partnership, any partner of the partnership,
- (c) where the offence is committed by any other unincorporated body, any officer of that body who is bound to fulfil any duty any breach of which is an offence or, if there is no such officer, any member of the committee or similar governing body, or
- (d) any person purporting to act in any capacity described in paragraph (a) to (c),

he or she as well as the body corporate or unincorporated body 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 that member's functions of management as if he or she were a director.

(3) Where any such offence is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.]

NOTE

Section 6 was substituted by the Prevention of Corruption (Bailiwick of Guernsey) (Amendment) Law, 2023, section 1(3), with effect from 26th April, 2024.

Search warrants.

7. (1) The Bailiff or appropriate judicial officer on hearing evidence on oath from a police officer may, if he is satisfied that there are reasonable grounds

for suspecting that evidence of or relating to the commission of an offence under this Law ("**an offence**") is to be found in any place, issue a warrant for the search of any premises and any persons found on those premises.

(2) A warrant issued under this section shall authorise police officers and any other persons named in the warrant to enter within one calendar month of the date of issue of the warrant, using if necessary reasonable force, the premises named in the warrant, and to search them and any persons found on them and to seize anything found in the possession of a person present at the time of the search which a police officer involved in conducting the search reasonably believes to be evidence of or relating to the commission of an offence or suspected offence.

(3) A police officer acting under the authority of a warrant under this section may –

(a) require any person present at the place where the search is being carried out to give to the police officer his name and address, and

(b) arrest without warrant any person who –

(i) obstructs or attempts to obstruct a police officer in the carrying out of his duties,

(ii) fails to comply with a requirement under paragraph (a), or

(iii) gives a name or address which the police officer has reasonable cause for believing is false or misleading.

(4) A person who obstructs or attempts to obstruct a police officer acting under the authority of a warrant issued under this section, fails to comply with a requirement under subsection (3)(a), or gives a false or misleading name or address to a police officer so acting shall be guilty of an offence and shall be liable on summary conviction to imprisonment for a period not exceeding 6 months, to a fine not exceeding level 5 on the uniform scale, or to both.

(5) The power to issue a warrant under this section is without prejudice to any other power conferred by statute for the issue of a warrant for the search of any place or person.

(6) No application for a warrant under this section may be made without the consent of Her Majesty's Procureur.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Interpretation.

8. (1) In this Law –

"agent" has the meaning given by section 2,

"appropriate judicial officer" means –

(a) in Alderney, the Chairman of the Court of Alderney or,

if he is absent or unable to act, a Jurat of the Court of Alderney authorised by him to act in that behalf,

- (b) in Sark, the Seneschal or, if he is absent or unable to act, his deputy,

"Bailiwick" means the Bailiwick of Guernsey,

"Bailiwick person" has the meaning given in section 4(4),

"Her Majesty's Procureur" save for in section 2(1)(b) includes Her Majesty's Comptroller,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey 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 the said salaried police force, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a member of the Alderney Special Constabulary established pursuant to section 46A of the Government of Alderney Law, 1987^b,
- (c) in relation to Sark, the Constable, the Vingtenier and a

^b Ordres en Conseil Vol. XXX, p. 37, Vol. XXXI, pp. 83 and 306; Order in Council No. XI of 1993; No. IX of 1995; No. IV of 1996; No. IV of 1998; and No. I of 2000.

member of the said police force of the Island of Guernsey, and

- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^c.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^d shall apply 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, replaced or re-enacted (in either case, with or without modification), extended or applied.

NOTES

In accordance with the provisions of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022, section 8, Schedule 2, paragraph 1 and paragraph 2, with effect from 20th October, 2022, unless the contrary intention appears and subject to any regulations made under section 8(3), first, any reference to a police officer in this Law and any subordinate legislation made hereunder includes a reference to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit and, second, subject to the provisions of section 8(4), any power in an enactment to disclose information to a police officer or customs officer for a specified purpose includes a power to disclose that information to the Director of the Economic and Financial Crime Bureau and designated persons and to members of the Financial Intelligence Unit for the purpose of carrying out their functions.

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

^c Ordres en Conseil Vol. XXIII, p. 573 and No. XIII of 1991.

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

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Common law bribery.

9. The common law offence of bribery is abolished.

Repeal.

10. The Corruption (Alderney) Law, 1994^e is repealed.

Citation.

11. This Law may be cited as the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003.

NOTE

The Law received Royal Sanction on 10th December, 2003 and was registered on the Records of the Island of Guernsey and came into force on 19th January, 2004.

^e Order in Council No. XXXI of 1994.

1 Prior to its substitution, subsection (1) was amended by the Prevention of Corruption (Bailiwick of Guernsey) Law, 2003 (Amendment) Ordinance, 2007, section 1, with effect from 28th March, 2007.