

ORDER IN COUNCIL

VII
2014

ratifying a Projet de Loi

ENTITLED

The Loi Relative aux Douits (Amendment) Law, 2013

(Registered on the Records of the Island of Guernsey
on the 12th May, 2014.)



2014

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 12th day of May, 2014 before John Russell Finch, Esquire, Judge of the Royal Court; present:- Stephen Edward Francis Le Poidevin, Esquire, Susan Mowbray, John Ferguson, Peter Sean Trueman Girard, Esquires, Constance Helyar-Wilkinson, David Percy Langley Hodgetts LVO, Niall David McCathie, Esquires, Margaret Ann Spaargaren, Terry John Ferbrache, Esquire, Jurats.

Judge Finch having this day placed before the Court an Order of Her Majesty in Council dated 28th April, 2014 approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Loi Relative aux Douits (Amendment) Law, 2013”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order be registered on the records of this Island.

S J COLLINS
Her Majesty’s Deputy Greffier



At the Court at Windsor Castle

THE 28th DAY OF APRIL 2014

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 Resolution of 30th June 2010, the States of Deliberation at a meeting on 11th December 2013 approved a Projet de Loi entitled the Loi relative aux Douits (Amendment) Law, 2013 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 Loi relative aux Douits (Amendment) Law, 2013, and to order that it shall have force of law in the Island 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 Island 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 Loi Relative aux Douits (Amendment) Law, 2013

THE STATES, in pursuance of their Resolution of the 30th June, 2010^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 Island of Guernsey.

Amendment of the 1936 Law.

1. (1) The Law entitled "Loi relative aux Douits" of 1936^b is further amended as follows.

(2) Delete paragraphs (b) to (d) of section 3(1).

(3) After section 6, insert –

"Offence of impeding Constable, etc., in execution of his duty.

6A. (1) A person who obstructs or impedes –

(a) a Constable or Douzenier in the execution of the functions and duties of a Stream Committee under this Law, or

^a Article II of Billet d'État No. XV of 2010.

^b Ordres en Conseil Vol. X, p. 419; as amended by Ordres en Conseil Vol. XXXI, p. 278, and Recueil d'Ordonnances Tome XXIX, p. 406.

- (b) a States employee or contractor instructed and authorised to enter property and execute work by the Central Committee under section 9, in the entry of property for that purpose or in the execution of such work,

is guilty of an offence.

(2) A person guilty of an offence under this section shall be liable on conviction to a fine not exceeding level 5 on the uniform scale."

- (4) For sections 8 to 10, substitute –

"Warning notices.

8. (1) A Stream Committee may serve a notice (a "**warning notice**") signed by two or more Constables or Douzeniers, on a person who in their opinion has failed to carry out any duty upon him, whether under this Law or otherwise, in relation to –

- (a) the cleaning of a watercourse,
- (b) the clearing of obstructions to the free flow of water in a watercourse, and
- (c) the repair of the banks of a watercourse.

(2) A warning notice must –

- (a) contain an explanation of why it has been served,

including a description of the alleged failure,

- (b) explain that the person has, from the date of service of the warning notice, seven days to remedy the failure,
- (c) explain the consequences of failing to remedy the failure within the seven day period, including the imposition of a civil penalty and ongoing daily penalty pursuant to subsection (3), and the possibility of a demand for payment of work executed under section 9, and
- (d) set out the person's right to appeal under section 10 against the service of the notice and any penalty subsequently imposed.

(3) A person who has been served with a warning notice and who continues to fail to carry out the duty shall be liable, on the eighth day after service of the warning notice, to a civil penalty of £50; and he shall in addition be liable to a further ongoing penalty of £5 for every day after the date of the imposition of the original penalty, during which the failure continues.

(4) A penalty imposed under this section shall be collected by the Constables of the relevant Parish, and on collection shall form part of the general funds of that Parish.

(5) In default of payment of a penalty under this section, the Constables may proceed to enforce payment as if the amount due were a

civil debt.

Power of Central Committee to execute work.

9. (1) Subject to the provisions of this section, where a warning notice has been served on a person ("A") under section 8, and A continues to fail to carry out the duty, the Central Committee may, at the request of the Stream Committee or otherwise, and only if it considers it necessary in all the circumstances, instruct and authorise a States employee or a contractor to enter upon the property where the relevant watercourse is situated and execute the relevant work; and the costs of that work shall be recoverable from A as a civil debt, in addition to any penalty imposed under section 8.

(2) Subject to subsection (3), the Central Committee must serve a notice on A at least five days before the work is to be executed, informing A that it has instructed and authorised a States employee or contractor under subsection (1), of the time and date when the work will be executed, and of A's right to appeal under section 10.

(3) If the Central Committee is satisfied that there would be a risk to life or a risk of serious damage to property if a notice were served under subsection (2), a notice may be served on A fewer than five days before the work is to be executed, on such a day as the Central Committee thinks appropriate in all the circumstances, informing A that it has instructed and authorised a States employee or contractor under subsection (1), and of the time and date when the work will be executed; and such a notice may be served on A by the States employee or contractor who is to execute the work at any time before that work is begun.

(4) A States employee or contractor acting under this section shall, if so required, produce some duly authenticated document showing his authority so to act.

(5) If it appears to such an employee or contractor that any person with whom he is dealing while acting for the purposes of this Law does not know that he is so acting, he shall identify himself as such to that person.

Appeals.

10. (1) A person aggrieved by a decision to -

- (a) serve a warning notice under section 8,
- (b) impose a civil penalty under section 8, including an ongoing daily penalty,
- (c) serve a notice under section 9, or
- (d) demand payment for work executed under section 9,

may appeal to the Parochial Appeals Tribunal established under the Parochial Administration Ordinance, 2013, by way of service of a notice of appeal on that Tribunal.

(2) The making of an appeal under subsection (1) does not affect the validity of the penalty, notice or demand in question, save that -

- (a) an ongoing daily penalty shall stop accruing from the date of the service of a notice of appeal under subsection (1), and
- (b) subject to subsection (3), if the appeal relates to a decision of the Central Committee to serve a notice of intent to execute work under section 9, no such work may be executed until the final determination of the appeal.

(3) Subsection (2)(b) does not apply where the notice of intent has been served under section 9(3).

Service of documents.

10A. (1) A warning notice under section 8, and a notice under section 9(2) or (3), may be served by being delivered to, or being left at, or sent by post to the property to which the notice in question relates.

(2) A notice of appeal under section 10 may be served on the Tribunal by being delivered to, or being left at, or sent by post to the Tribunal's published address for service.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) In subsections (1) and (2) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post.

(5) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Law to have been received on the third day after the day of posting, excluding any day which is not a working day.

(6) Service of a document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment."

(5) In section 16, after "Law" insert "; 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".

Savings and transitional provisions.

2. Nothing in this Law shall affect the validity of legal proceedings commenced by the Central Committee before the commencement of this Law; and for the purposes of this section, "commenced" has the meaning given by Rule 89 of the Royal Court Civil Rules, 2007^c.

Citation.

3. This Law may be cited as the Loi relative aux Douits (Amendment) Law, 2013.

Commencement.

4. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

^c Order of the Royal Court No. IV of 2007; amended by No. II of 2008.

Copies may be purchased from
Her Majesty's Greffier, Royal Court House, Guernsey

PRICE £4.00

Printed by Colour Monster Printshop, Lowlands Building, Lowlands Industrial Estate, Guernsey GY3 5XH.