

Consolidated text

PROJET DE LOI

ENTITLED

The Charities and Non Profit Organisations (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. 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.

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* No. ** of 2010; as amended by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009 (No. VII of 2009).

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The Charities and Non Profit Organisations (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008

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The Charities and Non Profit Organisations (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008

THE STATES, in pursuance of their Resolution of the 27th September, 2007^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.

Powers of investigation: general.

1. (1) The powers of Her Majesty's Procureur under this section are exercisable in any case in which it appears to him –

- (a) on reasonable grounds that there is –
 - (i) suspected unlawful conduct, or
 - (ii) other conduct which is the subject of an investigation by a competent authority, and
- (b) that there is good reason to exercise those powers for the purpose of investigating the affairs, or any aspect of the affairs, of any non profit organisation.

^a Article VIII of Billet d'État No. XX of 2007.

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(2) Her Majesty's Procureur may by notice in writing (a "**section 1 notice**") require the non profit organisation whose affairs are being, or are to be, investigated (the "**organisation under investigation**") or any person connected to the organisation under investigation whom he has reason to believe has relevant information or documents (as the case may be) –

(a) to attend before Her Majesty's Procureur at a specified time and place to answer questions or otherwise furnish information with respect to any matter relevant to the investigation,

(b) to produce at a specified time and place any specified documents, or any documents of a specified class or description, which appear to Her Majesty's Procureur to relate to any matter relevant to the investigation, and Her Majesty's Procureur may –

(i) if any such documents are produced, take copies or extracts from them and require the person producing them to provide an explanation of any of them,

(ii) if any such documents are not produced, require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(3) Where, on the application of Her Majesty's Procureur, the Bailiff is satisfied, in relation to any documents, that there are reasonable grounds for believing that they are on the premises specified in the information and that –

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- (a) a person has failed to comply with an obligation under this section to produce them,
- (b) it is not practicable to serve a section 1 notice in relation to them, or
- (c) the service of a section 1 notice in relation to them might seriously prejudice the investigation,

he may issue a warrant.

(4) The warrant issued under subsection (3) may authorise any officer of police –

- (a) to enter (using such force as is reasonably necessary for the purpose) and search the premises, and
- (b) to take possession of any documents appearing to be documents of the class or description specified in the information or to take in relation to any documents so appearing any other steps which may appear to be necessary for preserving them and preventing interference with them.

(5) An officer of police executing a warrant issued under subsection (3) may be accompanied by a person whom Her Majesty's Procureur has authorised to accompany the officer of police.

(6) A statement by a person in response to a requirement imposed

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under this section may only be used in evidence against him –

- (a) on a prosecution for an offence under section 7, or
- (b) on a prosecution for some other offence where in giving evidence he makes a statement inconsistent with it.

(7) A person shall not under this section be required to disclose any information or produce any document which he would be entitled to refuse to disclose or produce on grounds of legal professional privilege, except that a lawyer may be required to furnish the name and address of his client.

(8) A person shall not under this section be required to disclose any information or produce any document in respect of which he owes an obligation of confidence by virtue of carrying on any banking or fiduciary business, unless –

- (a) the person to whom the obligation of confidence is owed consents to the disclosure or production, or
- (b) Her Majesty's Procureur has authorised the making of the requirement to disclose.

(9) Her Majesty's Procureur may authorise any person to exercise on his behalf all or any of the powers conferred by this Law but no such authorisation shall be granted except for the purpose of investigating the affairs, or any aspect of the affairs, of a person specified in the authorisation.

(10) To comply with a section 1 notice, copies of documents may be delivered instead of originals, but –

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- (a) the copies must be in such form as Her Majesty's Procureur may specify, and
- (b) if so required by Her Majesty's Procureur, the originals of the documents must be made available for inspection by him in accordance with the requirement,

and a failure to comply with a requirement under this subsection constitutes a failure to comply with the section 1 notice.

(11) For the purpose of this Law a "**person connected to the organisation**" means, without limitation, any trustee, director, administrator, manager, officer, partner, member of the committee or other similar governing body, employee or contractor of a non profit organisation or any other person providing services (including banking, investment, financial or professional services) to a non profit organisation, in any case by whatever name called.

Powers of investigation: where organisation is outside the Bailiwick.

2. For the avoidance of doubt, the powers contained in section 1 may be exercised when the organisation under investigation and all persons connected to it are outside the Bailiwick.

Freezing of funds in bank accounts and of other assets.

3. (1) If any organisation or person fails or refuses to comply with a section 1 notice Her Majesty's Procureur may, if it appears to him as mentioned in section 1(1), make an application to the Bailiff for an order prohibiting –

- (a) that organisation's or person's funds held in an account maintained at a bank in the Bailiwick, or any

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part of such funds, or

- (b) any other assets of that person or organisation situated in the Bailiwick,

from being transferred or withdrawn or otherwise paid out or dealt with.

Funds and accounts and other assets which are the subject of such an order are "**frozen**" for the purposes of this Law.

(2) The maximum period for an order freezing funds or other assets under subsection (1) is four months.

(3) The period for which funds or other assets are frozen under subsection (1) may be extended by a further order made by the Bailiff if the section 1 notice has still not been complied with, and provided that it continues to appear to Her Majesty's Procureur as mentioned in section 1(1), but such further order may not authorise the freezing of the funds or other assets –

- (a) beyond the end of a period of four months beginning on the date of that further order,
- (b) in any case, beyond the end of a period of two years beginning on the date of the original order under subsection (1), unless the Bailiff orders otherwise in any particular case in the interests of justice.

(4) On an application by Her Majesty's Procureur for an order under subsection (1) or (3), the Bailiff may make the order if satisfied, in relation to any funds or other assets, that there are reasonable grounds for suspecting that

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the funds or assets –

- (a) are any person's proceeds of unlawful conduct, or
- (b) are intended by any person for use in unlawful conduct,

and that –

- (i) the making of the order is justified while their origin, derivation or intended use, as the case may be, is further investigated or consideration is given to bringing proceedings in the Bailiwick or elsewhere against any person in respect of any unlawful conduct with which the funds or assets are connected, or
- (ii) proceedings described in subparagraph (i) have been started and have not been concluded.

(5) An order under subsection (1) or (3) –

- (a) may be made ex parte and in chambers,
- (b) may be made notwithstanding that notice of the application for it has not been given to any other person,
- (c) must provide for notice to be given to persons affected by it, and

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(d) may be made subject to such terms and conditions as the Bailiff thinks fit.

(6) Any interest or income accruing to the frozen funds or other assets shall also be frozen and is to be added to the funds or assets on their forfeiture or release.

(7) If an amount of funds is frozen in an account then any transfer or withdrawal from, or other payment out of, the account shall be deemed, to the extent that there is an amount of funds in the account in excess of the amount frozen, to have been paid out of that excess amount.

(8) The Bailiff may, on an application made –

(a) by a person whose account is frozen, or

(b) by or with the authority of Her Majesty's Procureur,

by order permit any funds which are frozen to be transferred to an interest-bearing account at the same bank and held there.

(9) Where an order is made under subsection (8), this Law applies in relation to –

(a) the interest-bearing account, and

(b) the funds in it,

as it applies to the account and funds frozen under subsection (1) or (3).

- (10) An order under subsection (8) –
- (a) may be made in chambers,
 - (b) may not be made until notice of the application for it has been given to Her Majesty's Procureur (where the application is made by the person whose account is frozen) or to that person (where the application is made by Her Majesty's Procureur), and
 - (c) may be made subject to such terms and conditions as the Bailiff thinks fit.

Release of frozen bank accounts and other assets.

4. (1) This section applies while any funds or other assets are frozen under section 3.

(2) The Bailiff may direct the release of the whole or any part of the funds or other assets if satisfied, on an application by the person whose account or assets were frozen, that the conditions in section 3(4) for the making of the order for the freezing of the funds or assets are no longer met in relation to the funds or assets to be released.

(3) An order for the release of funds or other assets under this section –

- (a) may be made in chambers,
- (b) may not be made until notice of the application for it

has been given to Her Majesty's Procureur, and

- (c) may be made subject to such terms and conditions as the Bailiff thinks fit.

(4) A police officer may, with the authority of Her Majesty's Procureur, and without an order of the Bailiff under this section, release the whole or any part of the funds or other assets which are frozen if satisfied that the freezing of the funds or other assets to be released is no longer justified.

De minimis restriction on Her Majesty's Procureur's powers under this Law.

5. (1) Her Majesty's Procureur may not exercise his powers under this Law where he has reasonable grounds to believe that a non profit organisation has gross assets of less than £100,000 (or any equivalent amount) in the Bailiwick or receives gross annual income of less than £20,000 per annum (or any equivalent amount) from sources within the Bailiwick.

(2) Notwithstanding subsection (1) Her Majesty's Procureur may exercise his powers under this Law where he has evidence that the non profit organisation is engaged in any unlawful conduct.

Right of appeal to Royal Court.

6. (1) A person aggrieved by a decision of Her Majesty's Procureur to give him a section 1 notice may, subject to subsection (3), appeal against the decision to the Royal Court on the grounds that –

- (a) the decision was ultra vires or unreasonable in law or that some other error of law has been made, or
- (b) a material error as to the facts has been made.

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(2) A person appealing against a decision to give notice is referred to in this section as "**the appellant**".

(3) An appeal against a decision to give notice –

- (a) must be instituted by summons served on Her Majesty's Procureur stating the grounds and material facts on which the appellant intends to rely, and
- (b) must be made within a period of 28 days immediately following the date of the notice.

(4) Her Majesty's Procureur may, where an appeal against a decision to give notice has been instituted, apply to the Royal Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and, on hearing such an application, the Royal Court may –

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the relevant tribunal may direct), or
- (b) make such other order as the relevant tribunal considers just.

(5) The provisions of subsection (4) are without prejudice to the inherent powers of the court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007^b.

^b O.R.C. No. IV of 2007.

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(6) On an appeal against a decision to give notice the Royal Court may –

- (a) set the notice aside and, if the Royal Court considers it appropriate to do so, remit the matter to Her Majesty's Procureur with such directions as the Royal Court thinks fit, or
- (b) confirm the notice, in whole or in part.

(7) Pending the determination of an appeal against a decision to give notice, the notice does not have effect unless the Royal Court, on the application of Her Majesty's Procureur and on such terms and subject to such modifications as the Royal Court thinks just, directs otherwise.

(8) The Royal Court, on an appeal against a decision to give notice, may order the appellant –

- (a) to lodge with the court all or any of the documents sought by Her Majesty's Procureur in the notice,
- (b) to provide any information (whether or not under oath or affirmation) relating to any such documents or their whereabouts (including, without limitation, a list of documents), and
- (c) to enter into such undertakings on such terms as may be specified,

and a contravention of an order or undertaking under this subsection is punishable as a contempt of court.

(9) An appeal from a decision of the Royal Court made under this section lies, with leave of the Royal Court or the Court of Appeal, to the Court of Appeal on a question of law.

(10) Section 21 of the Court of Appeal (Guernsey) Law, 1961^c ("powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under subsection (11) as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

(11) The Royal Court sitting as a Full Court may by Order make rules for the purposes of appeals and applications under this section, and such rules may (without limitation) modify any provision of this section.

Offences of non-compliance with section 1.

7. (1) A person who without reasonable excuse fails to comply with a requirement under section 1 is guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

(2) A person who, in purported compliance with a requirement under section 1 –

(a) makes a statement which he knows to be false or misleading in a material particular, or

^c Ordres en Conseil Vol. XVIII, p. 315.

- (b) recklessly makes a statement which is false or misleading in a material particular,

is guilty of an offence and liable –

- (i) on conviction on indictment, to imprisonment or a term not exceeding 2 years or to a fine or to both, and
- (ii) on summary conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding level 5 on the uniform scale or to both.

Offences in relation to falsification, etc, of documents.

8. (1) A person who –

- (a) knows or suspects that Her Majesty's Procureur is conducting or proposing to conduct an investigation using his powers under this Law, and
- (b) falsifies, conceals, destroys or otherwise disposes of, or causes or permits the falsification, concealment, destruction or disposal of, documents which he knows or suspects are or would be relevant to such an investigation,

is guilty of an offence and liable –

- (i) on conviction on indictment, to imprisonment

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for a term not exceeding 7 years or to a fine or to both, and

- (ii) 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.

(2) A person does not commit an offence under subsection (1) –

(a) if he proves that he had no intention of concealing the facts disclosed by the documents from persons carrying out such an investigation, or

(b) if he acts –

(i) with the written permission of Her Majesty's Procureur,

(ii) after the document has been delivered to Her Majesty's Procureur and thereafter returned, or

(iii) after a copy has been delivered in accordance with section 1 and the original has been inspected.

Offences as to "tipping off".

9. (1) A person who –

(a) knows or suspects that Her Majesty's Procureur is

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conducting or proposing to conduct an investigation using his powers under this Law, and

- (b) discloses to any other person information or any other matter which is likely to prejudice such an investigation,

is guilty of an offence and liable –

- (i) on conviction on indictment, to imprisonment for a term not exceeding 5 years or to a fine or to both,
- (ii) 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.

(2) Nothing in subsection (1) makes it an offence for a professional legal adviser to disclose any information or other matter –

- (a) to, or to a representative of, a client of his in connection with the giving by the adviser of legal advice to the client, or
- (b) to any person –
 - (i) in contemplation of, or in connection with, legal proceedings, and

(ii) for the purpose of those proceedings.

(3) Subsection (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under subsection (1), it is a defence to prove that he did not know or suspect that the investigation or proposed investigation was likely to be prejudiced.

(5) No person authorised to act under section 1(9) is guilty of an offence under this section in respect of anything done by him in the course of his acting under the said authority.

Her Majesty's Procureur's information sharing powers.

10. (1) Where any information or document is subject to an obligation of confidentiality or secrecy imposed by or under any enactment (including an enactment passed after this Law) the obligation does not prohibit the disclosure of that information or document for the purposes of this Law to Her Majesty's Procureur or any person authorised by Her Majesty's Procureur under section 1(9).

However, any information or document disclosed under this subsection may only be further disclosed by a person so authorised for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings in the Bailiwick or elsewhere.

(2) Without prejudice to his power to enter into agreements apart from this subsection, Her Majesty's Procureur may enter into an agreement for the supply of information or documents to or by him for the purposes of this Law

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subject, in either case, to an obligation not to disclose the information or document concerned other than in specified circumstances or for a specified purpose.

(3) Subject to subsection (1) and to any provision of an agreement for the supply of information or documents which restricts the disclosure of the information or documents supplied, information or documents obtained under this Law by Her Majesty's Procureur or any person authorised under section 1(9) may be disclosed –

- (a) for the purposes of the investigation, prevention or detection of crime or with a view to the instigation of, or otherwise for the purposes of, any criminal proceedings in the Bailiwick or elsewhere,
- (b) where Her Majesty's Procureur has grounds to suspect that they relate to any unlawful conduct or other conduct mentioned in section 1(1)(a), in which case the information or documents may be shared with any competent authority provided that, in the case of a competent authority having functions exercisable exclusively outside the Bailiwick, Her Majesty's Procureur is satisfied that that competent authority would be able to provide him with similar information or documents on a reciprocal basis in similar circumstances,
- (c) to the [Director of Income Tax^d],

^d The [Director] is appointed under section 205 of the Income Tax (Guernsey) Law, 1975.

- (d) with the consent of the person to whom they relate and (if different) the person from whom they were acquired, or
- (e) to comply with an order of a court.

(4) A person who discloses or causes or permits the disclosure of any document or information in contravention of this section is guilty of an offence and liable, on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the uniform scale or to both.

NOTE

In section 10, the words in square brackets (and in the corresponding footnote) were substituted by the Administrator of Income Tax (Guernsey) (Transfer of Functions) Ordinance, 2009, section 1, with effect from 25th February, 2009, subject to the savings and transitional provisions in section 2 of the 2009 Ordinance.

Powers to make Ordinances.

11. (1) The States may by Ordinance –
- (a) amend sections 1, 3, 4, 5, 10, 12 or 13, where it appears to the States to be necessary for any of the purposes described in subsection (5), and
 - (b) make such additional provision as they think fit for the purposes of carrying this Law into effect.
- (2) Any Ordinance, regulation or Order under this Law –

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- (a) may be amended, repealed or revoked by a subsequent Ordinance, regulation or Order, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.

(3) Any power conferred by this Law to make any Ordinance, regulation or Order 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,
- (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,
 - (iii) any such provision either unconditionally or

subject to any prescribed conditions.

(4) Regulations under this Law shall be laid before a meeting of the States as soon as possible after being made; and, if at that or the next meeting the States resolve that the regulations be annulled, then they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

(5) The purposes are –

- (a) enhancing or protecting the reputation or economic interests of the Bailiwick,
- (b) improving or enhancing the investigation, prevention or detection of crime,
- (c) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
- (d) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
- (e) discharging any international obligation to which the Bailiwick is subject, and
- (f) assisting, in the interests of the public or otherwise –
 - (i) any competent authority, or
 - (ii) any authority which appears to the States to

exercise in a place outside the Bailiwick functions corresponding to any of the functions of Her Majesty's Procureur or the police under this Law.

Interpretation.

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

"Bailiff" means the Bailiff, Deputy-Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"bank" means a holder of a banking licence granted under the Banking Supervision (Bailiwick of Guernsey) Law, 1994^e,

"charity" means any organisation established for charitable purposes only,

"competent authority" means –

- (a) any person or body having in the Bailiwick supervisory, regulatory or disciplinary functions in relation to financial services, any profession or any area of commercial activity,
- (b) any person or body having in a country or territory outside the Bailiwick functions corresponding to any of the functions mentioned in subparagraph (a),

^e Order in Council No. XIII of 1994.

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- (c) any person or body having in a country or territory outside the Bailiwick functions relating to the supervision, regulation, registration or oversight of non profit organisations or their affairs,
- (d) any person or body appointed to investigate the affairs of a non profit organisation in the Bailiwick or elsewhere, and
- (e) any person or body, or any class or description of person or body, prescribed for the purposes of this section by regulations of the Policy Council,

"contravention" includes failure to comply,

"document" includes information stored or recorded in any form (including, without limitation, in electronic form); and, in relation to information stored or recorded otherwise than in legible form, references to its production, however expressed, include (without limitation) references to the production of the information in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form,

"electronic form", in relation to the storage or recording of documents, includes storage or recording by means of any form of information storage technology,

"frozen" and related expressions: see section 3(1),

"Her Majesty's Procureur" includes Her Majesty's Comptroller and any person authorised under section 1(9),

"non profit organisation" means any organisation established either for the non-financial benefit of its members or for the benefit of society or any class or part of society and, without limitation, includes any organisation established solely or principally for social, fraternal, educational, cultural or religious purposes, or for the carrying out of any other types of good works, and includes a charity,

"officer of police" means, in relation to –

- (a) 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) 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 special constable appointed pursuant to section 47 of the Government of Alderney Law, 2004^f,
- (c) Sark, the Constable, the Vingtenier and a member of the said salaried police force,

^f Order in Council No. III of 2005.

"organisation" includes a body of persons (corporate or unincorporate), a trust, any other legal entity and any equivalent or similar structure or arrangement,

"organisation under investigation": see section 1(2),

"person connected to the NPO": see section 1(11),

"Royal Court" means the Royal Court sitting as an Ordinary Court,

"section 1 notice": see section 1(2),

"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^g, and

"unlawful conduct": see section 13.

(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.

(3) The Interpretation (Guernsey) Law, 1948^h applies to the interpretation of this Law throughout the Bailiwick of Guernsey.

^g Ordres en Conseil Vol. XXXI, p. 278; amended by Ordinance No. XXIX of 2006.

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

"Unlawful conduct".

13. (1) Conduct which occurs in any place in the Bailiwick is "**unlawful conduct**" if it is unlawful under the criminal law of that place.

(2) Conduct which –

(a) occurs in a country or territory outside the Bailiwick and is unlawful under the criminal law of that country or territory, and

(b) if it occurred in any place in the Bailiwick, would be unlawful under the criminal law of that place,

is also unlawful conduct.

Citation.

14. This Law may be cited as the Charities and Non Profit Organisations (Investigatory Powers) (Bailiwick of Guernsey) Law, 2008.

NOTE

The Law received Royal Sanction on 31st March, 2010 and was registered on the Records of the Island of Guernsey on 15th April, 2010.
