

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE**

AMENDMENTS TO THE COURT OF APPEAL (GUERNSEY) LAW, 1961

The States are asked to decide:-

Whether, after consideration of the Amendments to the Court of Appeal (Guernsey) Law, 1961, Policy Letter (dated 28<sup>th</sup> May, 2021) they are of the opinion:-

1. To approve, in addition to those amendments approved by the States at their meeting held on 30<sup>th</sup> November, 2011, the further amendments to the Court of Appeal (Guernsey) Law, 1961 described in paragraphs 3.2 to 3.9 of the Policy Letter, and
2. To approve the Projet de Loi entitled "The Court of Appeal (Guernsey) (Amendment) Law, 2021" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

**EXPLANATORY MEMORANDUM**

This Law amends the Court of Appeal (Guernsey) Law, 1961 to incorporate those changes approved by the States of Deliberation at its meeting of 30<sup>th</sup> November, 2011, as well as address certain other matters that had arisen during the subsequent drafting of the Law. The overall effect of the amended provisions will be to modernise the Law, bringing it into alignment with the Court of Appeal (Jersey) Law, 1961, and its subsequent amendments.

Specifically, those amendments made since 2011 will:

- enable Judges to be sworn in using an English language oath;
- require the remuneration rate of Judges to have the approval of the Bailiff;
- enable hearings of the Court of Appeal to take place remotely or outside the Bailiwick;

- allow an application for leave to appeal against an interlocutory order or judgment to be made to a single Judge;
- confer a right of appeal in certain circumstances where there has not been a conviction by the Royal Court;
- confer a right of appeal against forfeiture orders;
- allow the Bailiff to suspend, pending appeal or application for leave to appeal, an order of the Royal Court suspending or revoking a licence;
- require any goods which have been confiscated or forfeited as part of the order of the Royal Court to be kept by the Registrar of the Court of Appeal pending disposal of the appeal or application and;
- make various other minor and consequential amendments.

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**POLICY & RESOURCES COMMITTEE**

AMENDMENTS TO THE COURT OF APPEAL (GUERNSEY) LAW, 1961

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port

28<sup>th</sup> May, 2021

Dear Sir

**1. Executive Summary**

- 1.1 In November 2011, the States of Deliberation (“States”) resolved<sup>1</sup> that the Court of Appeal (Guernsey) Law, 1961<sup>2</sup>, (“the Law”) should be amended in order to modernise it and to bring it into alignment with the Court of Appeal (Jersey) Law, 1961<sup>3</sup>, which has itself been amended on numerous occasions, and directed the preparation of such legislation as may be necessary to give effect to these proposals. The Resolutions arose as a result of proposals from Her Majesty’s Procureur.
- 1.2 During the drafting process and following consultation with the Bailiff and other Judges of the Court of Appeal, it became apparent that additional amendments to the Law would be necessary or expedient in order to ensure the proper administration of justice. These amendments are detailed in paragraphs 3.2-3.9.
- 1.3 This Policy Letter seeks the States’ approval of the attached Projet de Loi (“Projet”) (Appendix 1) in line with the extant Resolutions of 2011, and sets out the additional amendments, and the reasons for them, referred to in paragraph 1.2.

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<sup>1</sup> [Billet d’État XIX of 2011, Article XII](#)

<sup>2</sup> [The Court of Appeal \(Guernsey\) Law, 1961](#)

<sup>3</sup> [The Court of Appeal \(Jersey\) Law, 1961](#)

## **2. Background**

- 2.1 The Guernsey Court of Appeal<sup>4</sup> (“the Court”) deals with appeals, mainly from decisions of the Royal Court, where jurisdiction is vested in it by statute. It has two divisions, Criminal and Civil, dependent on the nature of the appeal. The Bailiff of Guernsey is ex-officio the President of the Court, and the other Judges are appointed by warrant of the Sovereign.
- 2.2 The Court was constituted by the Court of Appeal (Guernsey) Law, 1961 (“the Law”). The Law provides for the creation and functioning of the Court, as well as the appeal process that takes place within each of the two divisions.
- 2.3 The regime was first proposed in the form of the Court of Appeal (Channel Islands) Order, 1949 to interpose a local Appeal Court between the Royal Courts of Guernsey and Jersey and the Judicial Committee of the Privy Council. However, a single Court for the Channel Islands was found to be impractical, resulting in the enactment of the Law of 1961 and the Court of Appeal (Jersey) Law, 1961 (“the Jersey Law”).
- 2.4 Both the Law and the Jersey Law were based upon the Court of Appeal (Channel Islands) Order, 1949, and so are similar to each other. However, the Jersey Law has been amended on numerous occasions since, whilst the Guernsey Law has not been substantively amended.
- 2.5 Although many of the amendments made to the Jersey Law since 1961 are of minor or clarificatory nature, some have a more significant bearing on the constitution and function of the Court. It was for this reason that Her Majesty’s Procureur recommended in 2011 that the States amend the Law so that the legislation governing the Courts in both Bailiwicks was once again broadly similar.
- 2.6 At its meeting of 30<sup>th</sup> November, 2011, the States approved the proposals for amending the Law as set out in a letter from Her Majesty’s Procureur, and directed the preparation of legislation to give effect to the decisions. The substantial changes agreed were:
- that the Deputy Bailiff, as well as the Bailiff, should be an ex officio Judge of the Court; the qualification of 10 years' practice in the Channel Islands or United Kingdom should be broadened to include the Isle of Man; and the restriction on a Judge of the Court practising at the Guernsey Bar should be extended to being concerned with any professional matter arising within the Bailiwick;
  - to clarify the jurisdiction of the Court by conferring on it a general jurisdiction

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<sup>4</sup> [The Guernsey Court of Appeal](#)

to hear and determine the appeals from any judgment or order of the Royal Court when exercising jurisdiction in any civil cause or matter, other than a decision of the Full Court involving only the exercise of original or appellate discretion where no point of law is at issue (subject to the other limitations set out in the Law);

- to repeal the existing restrictions on civil appeals based only on the monetary value of disputes;
- to provide the right for appellants to be present at any oral hearing of their appeal (via video link if the Court so directs), whatever the grounds of appeal;
- to allow for retrials following appeals in criminal cases;
- to enable Her Majesty's Procureur to refer a point of law to the Court following an acquittal;
- to enable Her Majesty's Procureur to refer a case to the Court for review of the sentence if it is considered that the sentence is unduly lenient;
- to provide explicit provision for the right of appeal from confiscation orders;
- to provide that all the time which a prisoner spends in custody pending an appeal is to be taken into account, unless the Court otherwise directs, when calculating time to be served under any sentence of imprisonment;
- to transfer the responsibility for making references to the Court relating to the prerogative of mercy<sup>5</sup> from the Secretary of State to the Lieutenant Governor;
- to extend the time for appealing against conviction or sentence from 10 days to 28 days;
- to make additional minor amendments to clarify and extend the powers of a single Judge and in relation to procedural matters and terminology.

### **3. Subsequent amendments since 2011**

- 3.1 In fulfilling the States direction to prepare the necessary legislation, and through further consultation with the Bailiff and the other Judges of the Court, it became clear that further amendments to the Law would be required. These changes and the reasons for them are set out below.

#### Oath

- 3.2 It is proposed that section 5 of the Law is amended to include an English version of the oath in addition to the current French version set out in the First Schedule. This is considered appropriate because the majority of the Judges of the Court are senior lawyers from the United Kingdom. It is also proposed that section 5 and the First Schedule be amended to make explicit reference to the option to

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<sup>5</sup> The prerogative of mercy is a royal prerogative which allows the British monarch to grant pardons to convicted persons. This prerogative is now delegated, usually to government ministers responsible for justice (for example, the Lord Chancellor in England and Wales).

affirm as an alternative for a person who does not wish to swear an oath.

### Remuneration of Judges

- 3.3 In section 6 of the Law, in addition to updating the terminology from “emoluments” to “remuneration,” it is proposed that remuneration paid to the ordinary Judges of the Court shall be such “as may be determined by or on behalf of the States with the approval of the Bailiff.” The Law originally provided for it to be prescribed by Resolution of the States, however it is no longer considered acceptable for a legislature to have the sole power to determine the remuneration of the judiciary. Such a provision is potentially incompatible with Article 6 of the European Convention on Human Rights<sup>6</sup>, because the ability of the legislature to arbitrarily reduce the remuneration of the judiciary might affect their independence and impartiality. The proposed wording is consistent with that in section 4(5) of the Royal Court (Reform) (Guernsey) Law, 2008, and section 3(5) of the Magistrate’s Court (Guernsey) Law, 2008<sup>7</sup>, in relation to the remuneration of the judiciary in those courts.

### Venue of hearings of the Court of Appeal

- 3.4 It is proposed that section 7 of the Law incorporates on a permanent basis the ability of the Court to meet remotely, by telephone or electronic means, in appropriate cases, similar to the provisions made in the Emergency Regulations of 2020 and 2021 in response to the COVID-19 pandemic<sup>8</sup>. In addition, this section should also be amended to allow the Court to sit outside, as well as inside, the Bailiwick. The overall effect will facilitate the proper and timely administration of justice by adding flexibility and efficiency to the Court’s hearings.

### Powers of a single Judge

- 3.5 It is proposed that, in section 15, an application to the Court for leave to appeal against an interlocutory order or judgment, where such leave is required, should be made to a single Judge (who may refer the matter to the full Court), and such Judge’s decision shall be final. This further addition to the powers of a single Judge is considered expedient in the interests of flexibility and efficiency and will ensure consistency with the Jersey Law in relation to the powers of a single Judge.

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<sup>6</sup> [European Convention on Human Rights](#) – Article 6, Right to a Fair Trial

<sup>7</sup> [The Royal Court \(Reform\) \(Guernsey Law\), 2008](#) and [The Magistrate’s Court \(Guernsey\) Law, 2008](#)

<sup>8</sup> Section 21 in, for example, [The Emergency Powers \(Coronavirus\) \(General Provision\) \(Bailiwick of Guernsey\) Regulations, 2021](#)

### Rights of appeal

- 3.6 It is proposed that the Law includes a right of appeal against an order of the Royal Court which does not arise from a conviction by that Court but relates to a community service order or a probation order imposed by the Magistrate's Court. Further, it is proposed to insert explicit provision of a right of appeal against the making of a forfeiture order<sup>9</sup> by the Royal Court under section 18 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002<sup>10</sup>, in addition to the right of appeal against a confiscation order which was included in the 2011 resolutions.

### Effect of appeal on suspension of licences and confiscation of goods

- 3.7 It is proposed that the Law empowers the Bailiff, where notice of appeal or an application for leave to appeal has been given, to suspend any order of the Royal Court which suspends or revokes a licence or other permit pending such disposal of the appeal or application. Similarly, where goods have been confiscated or forfeited as part of the order of the Royal Court, these goods will be kept by the Registrar of the Court of Appeal on the same basis. This provision is in similar terms to Article 38 of the Jersey Law and will achieve further consistency with the powers of the Jersey Court of Appeal.

### Other miscellaneous and consequential changes

- 3.8 For consistency and accuracy, it is proposed that all current references in the Law to "Her Majesty's Attorney General" be replaced with "Her Majesty's Procureur" which is the correct title of that office in the Bailiwick. It is particularly inappropriate to use the term "Her Majesty's Attorney General" in relation to the new powers to refer points of law in criminal cases to the Court, or to appeal against unduly lenient sentences, when Her Majesty's Procureur is the prosecuting authority.
- 3.9 It is also proposed that two minor references in the Law are corrected. First, to update the reference to the Clerk of the Court of Alderney in section 11 to the Greffier of Alderney to reflect the duties of that office. Second, reference to the Chief Executive of the States in section 36(6) is replaced by reference to the States Treasurer, the officer who has always de facto carried out the function in that subsection.

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<sup>9</sup> Forfeiture orders are made to deprive an individual of their money where it is thought to be connected to unlawful conduct. The inclusion of a right to appeal against forfeiture orders is in the interest of fairness and to ensure that everyone subject to a Court Order has the right to appeal.

<sup>10</sup> [Terrorism and Crime \(Bailiwick of Guernsey\) Law, 2002](#)

- 3.10 The above supplementary amendment proposals have been incorporated into the Court of Appeal (Guernsey) (Amendment) Law, 2021 (Appendix 1), in addition to those approved in 2011.

**4. Resource implications**

- 4.1 There are no additional resource implications to progress implementing these subsequent amendments. It is likely that these amendments will reduce Court costs in some instances, for example by not incurring the costs of having to bring Judges to Guernsey by allowing remote hearings or hearings outside of the Bailiwick.

**5. Legislative implications**

- 5.1 There are no additional legislative implications to progress these additional amendments, other than potentially some minor consequential changes to the Rules of the Court.

**6. Operational implications**

- 6.1 There are no notable operational implications if these additional amendments to the Law are approved.

**7. Timeframe**

- 7.1 The amended legislation could be enacted in the latter half of 2021, subject to Her Majesty's Royal Sanction.

**8. Conclusions and recommendations**

- 8.1 The Committee considers that the proposals should proceed to enactment without further delay and recommends that the States support the Propositions to which this Policy Letter is attached.

**9. Compliance with Rule 4**

- 9.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 9.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.



9.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions above have the unanimous support of the Committee.

9.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee as set out in section (a) of its mandate.

Yours faithfully

PTR Ferbrache  
President

HJR Soulsby MBE  
Vice-President

J P Le Tocq  
MAJ Helyar  
DJ Mahoney

# PROJET DE LOI

ENTITLED

## **The Court of Appeal (Guernsey) (Amendment) Law, 2021**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> November, 2011<sup>a</sup> and the \* 2021<sup>b</sup>, 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.

### **Amendments to 1961 Law.**

1. The Court of Appeal (Guernsey) Law, 1961<sup>c</sup> ("**the Law**") is hereby amended as follows.
2. In section 2(1) of the Law, for "The Bailiff shall be an ex-officio judge" substitute "The Bailiff and the Deputy Bailiff shall be ex officio judges".
3. In section 3 of the Law –

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<sup>a</sup> Article XII of Billet d'État No. XIX of 2011.

<sup>b</sup>

<sup>c</sup> Ordres en Conseil Vol. XVIII, p. 315; amended by Vol. XXIII, p. 188; Order in Council No. III of 2012; Ordinance No. XXXIII of 2003; No. XIII of 2017; Alderney Ordinance No. VIII of 2018; Sark Ordinance No. II of 2020.

- (a) in paragraph (a), delete "British",
- (b) in paragraph (b), for "the Island of Guernsey or in the Island of Jersey" substitute "the Bailiwick of Guernsey", and
- (c) for "England, Scotland or Northern Ireland" substitute "England and Wales, Scotland, Northern Ireland, Jersey or the Isle of Man".

4. For section 4(2) of the Law substitute –

"(2) A judge of the Court of Appeal shall not during the judge's continuance in office practise at the Bar in the Bailiwick of Guernsey or be concerned directly or indirectly, whether within or without the Bailiwick, as counsel, solicitor, arbitrator or referee in any matter arising within the Bailiwick."

5. In section 5 of the Law, for "subscribe in the Royal Court to the oath" substitute "take the oath, or make the affirmation,".

6. In section 6 of the Law –

- (a) in the heading, for "**Emoluments**" substitute "**Remuneration**",
- (b) in subsection (1), for "such emoluments as may be prescribed from time to time by Resolution of the States" substitute "such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff",
- (c) in subsection (3), for "emoluments" substitute "remuneration".

7. For section 7 of the Law substitute –

**"Venue.**

7. (1) The Court of Appeal may sit for the hearing of appeals in or outside the Bailiwick of Guernsey.

(2) For the avoidance of doubt, the Bailiff or presiding judge may give directions as to how the proceedings of the Court of Appeal shall be conducted, including (but not limited to) a direction that the proceedings, or part thereof, shall be conducted by way of telephone, live video link or any other means of telecommunications or electronic communications."

8. In section 8 of the Law –

(a) after "Bailiff" insert " or, in the absence of the Bailiff, by the Deputy Bailiff," and

(b) for the proviso substitute –

"PROVIDED that a judge of the Court of Appeal shall not sit as a judge on –

(a) the hearing of an appeal or reference from or relating to a judgment, order, conviction or sentence pronounced, made or passed by any court of which the judge was a member, or

(b) the hearing of any proceedings preliminary or incidental to any such appeal or reference."

9. For section 10 substitute –

**"Presidency.**

10. (1) Subject to subsection (2) and to section 8, the Bailiff shall be the President of the Court of Appeal.

(2) At any sitting of the Court of Appeal –

(a) if the Bailiff is unable to act, the Deputy Bailiff shall preside, and

(b) if the Bailiff and the Deputy Bailiff are unable to act, the ordinary member of the Court who has the longest service as such a member shall preside, unless the members of the Court at the sitting decide otherwise.

(3) The Bailiff or the Deputy Bailiff may decline to preside in any case in which, in the opinion of the Bailiff or Deputy Bailiff (as the case may be), it is undesirable or inconvenient to do so, and in any such case the provisions of this section shall have effect as if the Bailiff or Deputy Bailiff were unable to act."

10. In section 11 of the Law –

(a) at the end of subsection (1), insert **"(the Registrar)"**,

(b) in subsection (3), for "Clerk of the Court" substitute "Greffier", and

(c) after subsection (3) insert –

"(4) For the avoidance of doubt, the Court of Appeal may sit, and is properly constituted, whether or not the Registrar, Her Majesty's Sheriff or Her Majesty's Sergeant, or any of their respective deputies, is present."

11. In section 12 of the Law –

(a) in subsection (2), for "in connexion with any appeal" substitute "in connection with any appeal or reference", and

(b) after subsection (2) insert –

"(3) Subject as provided by rules of court, it shall be lawful for a party to an appeal under Part II or for an appellant under Part III, notwithstanding the foregoing provisions of this section, to address the Court of Appeal or any single judge thereof both on the hearing of the appeal and in any proceedings preliminary or incidental to the appeal and to do in any such office or to transact with any such officer as is mentioned in subsection (2) any act or thing required or necessary to be done in connection with any such appeal or proceedings."

12. For section 14 of the Law substitute –

**"Jurisdiction.**

14. (1) Subject as otherwise provided in this Law or in any other enactment, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the Royal Court when exercising its jurisdiction in any civil cause or matter including its appellate jurisdiction in any such cause or matter originating in the Court of Alderney or the Court of the Seneschal of Sark.

(2) For all the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the Royal Court, and shall have power, if it appears to the Court of Appeal that a new trial or hearing ought to be had,

to order that the verdict and judgment be set aside and that a new trial or hearing be had.

(3) The Court of Appeal shall exercise such additional jurisdiction as may be conferred on the Court by any enactment."

**13.** In section 15 of the Law –

- (a) the text is re-numbered as subsection "(1)",
- (b) for the words in paragraph (d) substitute "from any judgment or order of the Royal Court sitting as a Full Court, whether exercising its original or its appellate jurisdiction, where no point of law is involved,"
- (c) in sub-paragraph (e)(i), for "infants" substitute "a child", and
- (d) insert the following additional subsection –

"(2) An application to the Court of Appeal for leave under subsection (1)(e) shall be made to a single judge of that Court and upon such application –

- (a) the single judge's decision on the application shall be final, but
- (b) the single judge may at any stage refer the application to the full Court of Appeal for decision."

**14.** In section 16 of the Law, delete "except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds sterling".

15. In section 17 of the Law, for the words from "as nearly as may be" to the end substitute "(without prejudice to the discretion of the presiding judge to make such ruling in any particular case as is necessary to do justice) in such manner as may be directed, whether by Practice Direction or otherwise, by the Bailiff as President of the Court of Appeal or, in the absence of the Bailiff, by the Deputy Bailiff."

16. For section 21 of the Law substitute –

**"Powers of a single judge.**

21. (1) The powers of the Court of Appeal under this Part –
- (a) to give leave to appeal,
  - (b) to extend the time within which notice of an appeal or of an application for leave to appeal may be given,
  - (c) in any appeal pending before the Court of Appeal, to decide any matter incidental thereto not involving the decision of the appeal,
  - (d) to make any order as to costs,

may be exercised by a single judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions, and a single judge may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal as the judge may think fit.

(2) Every order made by a single judge of the Court of Appeal under this section may be discharged or varied by any judges of the Court having power to hear and determine the appeal.



(3) For the purposes of subsection (1), an appeal is pending if –

- (a) an application has been made to the Court of Appeal for leave to appeal, but has not been determined,
- (b) an application has been made to the Court for an order authorising (by whatever means) service of a notice of appeal, but has not been determined, or
- (c) an appeal has been brought, but has not yet been determined."

17. For section 23 of the Law substitute –

**"Record and transcript of proceedings in court of first instance.**

23. (1) In any proceedings in which an appeal lies to the Court of Appeal under this Part, a record of the proceedings, by electronic means or otherwise, shall be made, and on any appeal or application to the Court of Appeal a transcript of the record or of so much thereof as the presiding judge of the court whose decision is appealed from or sought to be appealed from or the Court of Appeal shall direct shall be made for the use of the Court of Appeal.

(2) A transcript of the record made under this section must be furnished to any party to the proceedings upon payment of the cost thereof for the time being prescribed by rules made under section 18(2)".

18. In section 24(1)(c)(i) of the Law, for "his conviction" substitute "the person for the offence (whether passed on the person's conviction or in subsequent proceedings)".

19. After section 24 of the Law, insert –

**"Right of appeal in cases where there has not been a conviction."**

24A. (1) Where, under –

- (a) section 7 or 10 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006, or
- (b) section 10 or 13 of the Probation (Bailiwick of Guernsey) Law, 2018,

a person has been dealt with by the Royal Court, the person may appeal under this Part to the Court of Appeal notwithstanding that the person is not a person convicted by the Royal Court.

(2) Where, under any of the provisions mentioned in subsection (1), a person has been sentenced by the Royal Court, the person may appeal against the sentence under this Part to the Court of Appeal notwithstanding that the person is not a person convicted."

20. In –

- (a) subsections (3) and (4) of section 25 of the Law, and
- (b) subsections (1), (2) and (3) of section 26 of the Law, for "at the trial" substitute "as a result of the trial".

21. After section 26 of the Law, insert -

**"Power to order retrial.**

26A. (1) Where the Court of Appeal allows an appeal against conviction and it appears to the Court that the interests of justice so require, it may order the appellant to be retried on a fresh indictment or summons to be brought in the Royal Court within the period of two months after the making of the order or such further period for which it may give leave for the indictment or summons to be brought.

(2) A person shall not under this section be ordered to be retried for any offence other than –

- (a) the offence of which the person was convicted at the original trial and in respect of which the person's appeal is allowed as mentioned in subsection (1),
- (b) an offence of which the person could have been convicted at the original trial on an indictment or summons for the first-mentioned offence, or
- (c) an offence charged in an alternative count of the indictment or summons in respect of which the Jurats were discharged from giving a verdict in consequence of convicting the person of the first-mentioned offence.

(3) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient –

- (a) for the custody or release on bail of the person ordered to be retried pending the person's retrial, or

- (b) for the retention, pending the trial, of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(4) If the person ordered to be retried was, immediately before the determination of the person's appeal, liable to be detained in pursuance of an order or direction under the Mental Health (Bailiwick of Guernsey) Law, 2010, that order or direction shall continue in force pending the retrial as if the appeal had not been allowed and any order made by the Court of Appeal under this section for the person's custody or release on bail shall have effect subject to the said order or direction.

(5) Schedule 1A shall have effect with respect to the procedure in the case of a person ordered to be retried, the sentence which may be passed if the retrial results in the person's conviction and the order for costs which may be made if the person is acquitted."

22. After section 28 of the Law, insert –

**"Effect of order.**

28A. Subject to the other provisions of this Part, an order made by the Court of Appeal on any appeal under this Part shall have the like effect and be enforced in the like manner as if it had been made by the Royal Court."

23. In section 29(1) of the Law –

- (a) in paragraph (a), for "ten" substitute "28", and
- (b) for paragraph (b) substitute –

"(b) in cases where notice of appeal or notice of application for leave to appeal is given within 28 days after the date of the conviction, until the determination of the appeal or, in any case where an application for leave to appeal is finally refused, of the application,".

**24.** In section 30 of the Law –

(a) for subsection (1) substitute –

"(1) Where a convicted person wishes to appeal under this Part to the Court of Appeal, or to obtain the leave of the Court of Appeal to appeal under this Part, the person must –

(a) in the case of an appeal against conviction, within 28 days of the date of conviction, and

(b) in the case of an appeal against sentence, within 28 days of the date on which the sentence is passed,

give notice of appeal or notice of application for leave to appeal in such manner as may be prescribed by rules of court.",

(b) in subsection (3), for "Except in the case of a conviction involving sentence of death, the" substitute "The", and

(c) subsection (4) is repealed.

**25.** For section 31 of the Law substitute –

**"Judge's report on appeal.**

31. (1) This section applies in the case of –
- (a) an appeal by a person against conviction,
  - (b) an appeal by a person against sentence,
  - (c) an application by a person for leave to appeal against conviction or sentence.

(2) The presiding judge of the court before which the person is convicted or sentenced, as the case may be, may furnish to the Court of Appeal a report giving the presiding judge's opinion upon the case or upon any point arising in the case.

(3) The presiding judge of the court before which the person is convicted or sentenced, as the case may be, shall furnish such a report to the Court of Appeal if required by the Court of Appeal so to do.

- (4) Rules of court may prescribe –
- (a) the parties to whom copies of a report furnished under this section shall be given, and
  - (b) the manner in which the copies shall be so given."

26. In section 32(1) of the Law, for "are or would, if Part II of this Law were in force, be exercisable" substitute "may for the time being be exercised".

27. For section 34 of the Law substitute –

**"Presence of appellant at hearing.**

34. (1) Subject to subsections (2) and (3), an appellant, notwithstanding that the appellant is in custody, shall be entitled to be present (if the appellant desires it) at the hearing of any oral argument –

- (a) on the hearing of the appeal, and
- (b) on the hearing of any application for leave to appeal under this Part,

but shall not be entitled to be present where the arguments are presented in writing only.

(2) An appellant shall not be entitled to be present at proceedings preliminary or incidental to the appeal except where –

- (a) rules of court provide that the appellant shall have the right to be present,
- (b) the Court of Appeal gives the appellant leave to be present, or
- (c) the appellant is not legally represented.

(3) The Court of Appeal may direct, having first given the parties the opportunity to make representations to the Court, that the appellant's entitlement to be present at any hearing or proceedings is satisfied by the presence of the appellant at a remote location connected to the courtroom by video or other live-link, enabling the appellant to see, and be seen by, the Court, the Registrar and counsel.

(4) The power of the Court of Appeal to pass any sentence under this Part may be exercised notwithstanding that the appellant is for any reason not present."

28. In section 35 of the Law –

- (a) for "Attorney General" in each place where it appears substitute "Procureur", and
- (b) subsection (3) is repealed.

29. In section 36 of the Law –

- (a) in subsection (1), for "shorthand notes" and "shorthand note" substitute "record", and
- (b) in subsection (6), for "Chief Executive of the States of Guernsey" substitute "States Treasurer".

30. In section 37 of the Law –

- (a) after subsection (1) insert –

"(1A) The Court of Appeal may, if it thinks fit, revoke bail granted to the appellant by any court.

(1B) Subsections (1) and (1A) are without prejudice to section 26A(3).", and

- (b) subsections (3) and (5) are repealed.

31. After section 37 of the Law, insert –



**"Time spent in custody pending appeal.**

37A. (1) The time during which an appellant is in custody pending the determination of the appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which the appellant is for the time being subject.

(2) Where the Court of Appeal gives a contrary direction under subsection (1), it shall state its reasons for so doing.

(3) The Court of Appeal shall not give such a direction where –

- (a) leave to appeal is granted under this Part, or
- (b) any such certificate as is mentioned in section 24(1)(b) has been given for the purposes of the appeal.

**Suspension of licences and custody of goods pending appeal.**

37B. Where notice of appeal or of an application for leave to appeal has been given in respect of a decision which includes –

- (a) an order for the suspension or withdrawal of a licence or other permit, the Bailiff may, unless it be otherwise provided by the enactment under which the licence or permit was granted, direct that the order be suspended pending the disposal of the appeal or application,
- (b) an order for the confiscation or forfeiture of goods, the goods shall be delivered into the

custody of the Registrar pending the disposal of the appeal or application."

32. For the heading to section 38 of the Law substitute "**Duties of Registrar under Part III.**".

33. For the heading to section 39 of the Law substitute "**Rules of court under Part III.**".

34. In section 40 of the Law –

- (a) for the heading substitute "**Powers under Part III which may be exercised by a single judge.**",
- (b) for "to admit an appellant to bail, and the power of the Court to give directions under the proviso to subsection (3) of section thirty-seven of this Law (which relates to admission to bail and computation of sentence)" substitute "to grant, refuse and revoke bail, and the power of the Court to give directions under section 37A of this Law (which relates to time in custody pending appeal)".

35. In section 41 of the Law –

- (a) for the heading and subsection (1) substitute –

**"Record and transcript of proceedings at trial.**

41. (1) A record of the proceedings, by electronic means or otherwise, shall be made at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part and, on any appeal or application for leave to appeal, a transcript of the record or any part thereof

shall be made if the Registrar so directs and such transcript shall be furnished to the Registrar for the use of the Court of Appeal or any judge thereof, of Her Majesty's Procureur and of the appellant:

PROVIDED that a transcript shall be furnished to any party interested, upon the payment of such amount as may be prescribed by rules of court made under subsection (2).",

(b) in subsection (2), for "note" substitute "record".

36. In section 42 of the Law –

(a) for "(other than sentence of death) passed on a person so convicted, the Secretary of State" substitute ", passed on a person so convicted, being a conviction or sentence against which an appeal lies under this Part to the Court of Appeal, His Excellency the Lieutenant-Governor and Commander-in-Chief of Guernsey", and

(b) in paragraph (b), for "the Secretary of State" substitute "His Excellency".

37. In section 43, in the definition of "**sentence**", for "made on conviction" substitute "(including a confiscation order or forfeiture order as defined in section 43M(1))".

38. After section 43, insert –

### "PART IIIA

#### *References and Appeals by Her Majesty's Procureur*

#### **Reference to Court of Appeal of point of law following acquittal.**

**43A.** (1) Where a person tried in the Royal Court on indictment or summarily has been acquitted (whether in respect of the whole or part of the indictment or summons) Her Majesty's Procureur may, if Her Majesty's Procureur desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to that Court, and that Court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of a point referred to it under this section the Court of Appeal shall hear argument –

- (a) by Her Majesty's Procureur, and
- (b) if the acquitted person desires to present any argument to the Court, by counsel on the person's behalf or, with the leave of the Court, by the acquitted person in person.

(3) Where, on a point being referred to the Court of Appeal under this section, the acquitted person appears by counsel for the purpose of presenting any argument to the Court, the person shall be entitled to costs, that is to say to the payment out of moneys provided by the States of such sums as are reasonably sufficient to compensate the person for expenses properly incurred by the person for the purpose of being represented on the reference.

(4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.

**Reference to Court of Appeal for review of sentence.**

43B. (1) This section applies to any case in which a sentence is passed on a person for –

- (a) an offence for which the maximum penalty is imprisonment for a term of five years or longer (whether or not it is one for which any other penalty may be imposed), or
- (b) an offence to which this section applies by virtue of an Ordinance made under subsection (4),

but shall not apply in respect of a confiscation order or forfeiture order.

(2) If it appears to Her Majesty's Procureur –

- (a) that the sentencing of a person in any proceedings in the Royal Court has been unduly lenient, and
- (b) that the case is one to which this section applies,

Her Majesty's Procureur may, with the leave of the Court of Appeal, refer the case to the Court of Appeal for it to review the sentencing of that person.

(3) Without prejudice to the generality of subsection (2), the condition specified in paragraph (a) of that subsection may be satisfied if it appears to Her Majesty's Procureur that the Royal Court –

- (a) erred in law as to its powers of sentencing, or

- (b) failed to impose a sentence which it was required by law to impose.

(4) The States may by Ordinance provide that this section shall apply to any offence.

**Court's powers on reference under section 43B.**

**43C.** (1) On a reference under section 43B, the Court of Appeal may –

- (a) quash any sentence passed on the person for an offence (whether passed on the person's conviction or in subsequent proceedings), and
- (b) in place of it pass such sentence as the Court thinks appropriate for the case and as the Royal Court had the power to pass when dealing with the person.

(2) In deciding under subsection (1) the appropriate sentence to pass on a person for an offence, the Court of Appeal shall not make any allowance for the fact that the person is being sentenced for a second time in relation to the offence.

**Calculation of sentence passed on review.**

**43D.** (1) The term of any sentence passed by the Court of Appeal under section 43C shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in respect of which the reference was made.

(2) Subsection (1) shall not apply to a custodial sentence which is passed in place of a non-custodial sentence.

(3) The time during which a person whose case has been referred for review under section 43B is in custody pending its review shall be reckoned as part of the term of any sentence to which the person is for the time being subject.

**Appeal by Her Majesty's Procureur in respect of confiscation order or forfeiture order.**

43E. (1) This section applies to any case in which –

- (a) sentence is passed by the Royal Court on a person for an offence,
- (b) in passing the sentence, the Royal Court has jurisdiction to make a confiscation order or forfeiture order.

(2) If, in a case to which this section applies, the Royal Court makes a confiscation order or forfeiture order, Her Majesty's Procureur may appeal to the Court of Appeal in respect of the order.

(3) If, in a case to which this section applies, the Royal Court decides not to make a confiscation order or forfeiture order, as the case may be, Her Majesty's Procureur may appeal to the Court of Appeal against the decision.

(4) Subsections (2) and (3) shall not apply to an order or decision made by virtue of any of sections 13, 14 and 19 of the 1999 Law or of any of sections 13, 14 and 19 of the 2000 Law.

(5) An appeal to the Court of Appeal under this section lies only with the leave of the Court of Appeal.

**Court's powers on appeal by Her Majesty's Procureur.**

43F. (1) On an appeal under section 43E(2), the Court of Appeal may confirm, quash or vary the confiscation order or forfeiture order, as the case may be.

(2) On an appeal under section 43E(3), the Court of Appeal may confirm the decision or, if it believes that the decision is wrong –

- (a) may itself proceed under subsections (2) to (10) of section 2 of the 1999 Law, subsections (2) to (8) of section 2 of the 2000 Law, or section 18 of the 2002 Law, as the case may be, or
- (b) may direct the Royal Court to proceed afresh under section 2 of the 1999 Law, section 2 of the 2000 Law, or section 18 of the 2002 Law, as the case may be.

(3) In directing the Royal Court under subsection (2)(b) to proceed afresh, the Court of Appeal may also give other directions, and if it does so the Royal Court shall comply with those directions in proceeding afresh in pursuance of this section.

**Matters to be taken into account on appeal in respect of confiscation order or forfeiture order.**

43G. (1) This section applies if –

- (a) the Court of Appeal makes or varies a confiscation order or forfeiture order pursuant to section 43F, or



- (b) the Royal Court makes or varies a confiscation order or forfeiture order in pursuance of a direction under subsection (2)(b) of that section.

(2) The court, in so doing, shall have regard –

- (a) to any fine imposed on the respondent in respect of the offence (or any of the offences) concerned,
- (b) in the case of an order under the 1999 Law, to any order which is specified in either of paragraphs (ii) and (iii) of section 20(1)(a) of that Law and has been made against the respondent in respect of the offence concerned (or any of the offences concerned), and
- (c) in the case of an order under the 2000 Law, to any order which is specified in either of paragraphs (ii) and (iii) of section 20(1)(a) of that Law and has been made against the respondent in respect of the offence concerned (or any of the offences concerned).

(3) The court is not required to have regard to an order to which subsection (2) refers where the order has already been taken into account by the Royal Court in deciding for the purposes of –

- (a) section 5 of the 1999 Law, or
- (b) section 5 of the 2000 Law,

as the case may be, the amount which might be realised.

(4) If, in a case in which the court is proceeding under the 1999 Law, an order has been made against the respondent in respect of the offence concerned (or any of the offences concerned) under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 –

- (a) the court shall have regard to the order, and
- (b) section 2(9) of the 1999 Law shall not apply.

(5) In a case in which the court is proceeding under the 1999 Law, in section 4(3) of that Law –

- (a) the assumptions in paragraph (a) of that subsection do not apply with regard to property first held by the respondent on or after the relevant date,
- (b) the assumption in paragraph (b) of that subsection does not apply with regard to expenditure incurred by the respondent on or after that date, and
- (c) the assumption in paragraph (c) of that subsection does not apply with regard to property received (or assumed to have been received) by the respondent on or after that date.

(6) In a case in which the court is proceeding under the 2000 Law, in section 4(3) of that Law –

- (a) the assumption in paragraph (a) of that subsection does not apply with regard to property first held by the respondent on or after the relevant date,
- (b) the assumption in paragraph (b) of that subsection does not apply with regard to expenditure incurred by the respondent on or after that date,
- (c) the assumption in paragraph (c) of that subsection does not apply with regard to property received (or assumed to have been received) by the respondent on or after that date.

(7) In this section –

"**court**" means –

- (a) the Court of Appeal, if that court is itself proceeding under subsections (2) to (10) of section 2 of the 1999 Law, subsections (2) to (8) of section 2 of the 2000 Law, or section 18 of the 2002 Law pursuant to section 43F(2)(a), or
- (b) the Royal Court, if that court is proceeding afresh under any of those sections on the direction of the Court of Appeal pursuant to section 43F(2)(b), and

"**relevant date**" means the date on which the Royal Court decided not to make a confiscation order or a forfeiture order, as the case may be.

**Right of person to be present.**

**43H.** (1) Subject to subsection (3), a person –

- (a) whose sentencing is the subject of a reference to the Court of Appeal under section 43B, or
- (a) who is a respondent in an appeal under section 43E,

shall be entitled to be present, notwithstanding that the person is in custody, on the hearing of the matter, except where the arguments are presented in writing only.

(2) Subject to subsection (3), a person in custody shall not be entitled to be present on any proceedings preliminary or incidental to a reference under section 43B or to an appeal under section 43E, unless the Court of Appeal gives the person leave to be present.

(3) The Court of Appeal may direct, having first given the parties the opportunity to make representations to the Court, that a person's entitlement to be present at any hearing, reference or appeal is satisfied by the presence of the person at a remote location connected to the courtroom by video or other live-link, enabling the person to see, and be seen by, the Court, the Registrar and counsel.

(4) The power of the Court of Appeal to pass sentence on a person under section 43C or to make any order under section 43F may be exercised even though the person is not present.

**Time for proceeding under Part IIIA.**

**43I.** (1) Notice of –

- (a) a reference to the Court of Appeal under section 43A,
- (b) an application for leave to refer a case to the Court of Appeal under section 43B,
- (c) an application for leave to appeal to the Court of Appeal under section 43E,

shall be given within 28 days from the day on which the sentence or the last of the sentences in the case was passed.

(2) The time during which notice of –

- (a) a reference, or
- (b) an application for leave to refer a case or for leave to appeal,

may be given may be extended at any time by the Court of Appeal.

**Duties of Registrar under Part IIIA.**

**43J.** If the Registrar is given notice of a reference under section 43A, an application or reference under section 43B or an application or appeal under section 43E, the Registrar shall –

- (a) take all necessary steps for obtaining a hearing of the matter, and
- (b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other

things which appear necessary for the proper determination of the matter.

**Powers under Part IIIA which may be exercised by a single judge.**

**43K.** (1) In respect of any application, reference or appeal under this Part -

- (a) the power of the Court of Appeal to give leave to refer a case to it or to appeal to it,
- (b) the power of the Court under section 43H to give leave to a person to be present at any proceedings in any case where the person is not entitled to be present without leave, or to give a direction under section 43H(3),
- (c) the power of the Court under section 43I(2) to extend the time for giving notice,
- (d) the powers of the Court to make any orders as to costs, and
- (e) such other powers to determine matters preliminary or incidental to the reference as may be prescribed,

may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions.

(2) If the single judge refuses an application to exercise any power to which subsection (1) refers, the applicant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the

hearing and determining of references under either of sections 43A and 43B or appeals under section 43E.

**Supplementary provisions as to Part IIIA.**

**43L.** In respect of any application, reference or appeal under this Part

—

- (a) section 27 shall apply to any judgment of the Court of Appeal as that section applies to a judgment of the Court under Part III,
- (b) the Court of Appeal shall, for the purposes of and subject to the provisions of this Part, have the same powers as are conferred on it by section 28 for the purposes of Part III,
- (c) subject to the provisions of this Part, section 28A shall apply to any order made by the Court of Appeal as it applies under Part III to an order made by it on any appeal,
- (d) section 31 shall apply as it applies under Part III to an appeal and an application for leave to appeal,
- (e) the Court of Appeal shall for the purposes of this Part have the same powers as are conferred on it by section 32 for the purposes of Part III,
- (f) section 33 shall apply to an acquitted person to whom section 43A refers and to a person to

whom section 43B(1) refers as it applies to an appellant under Part III, and

- (g) section 39 shall apply as it applies in relation to appeals under Part III.

**Interpretation of Part IIIA.**

**43M.** (1) In this Part –

"**1999 Law**" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"**2000 Law**" means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

"**2002 Law**" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"**confiscation order**" means a confiscation order as defined in section 2(10) of the 1999 Law or in section 2(8) of the 2000 Law,

"**forfeiture order**" means an order made in accordance with section 18 of the 2002 Law,

"**respondent**" means a person in whose case the making, or not making, of a confiscation order or forfeiture order is the subject of an appeal under section 43E.

(2) Expressions which are used in this Part and which are also used in Part III shall have the same respective meanings as they have in Part III."

**39.** In section 46 of the Law, after the definition of "**prescribed**" insert –



""**Registrar**": see section 11(1),

**"remote location"** means a location other than the courtroom, which may, however, be within the same building as the courtroom, elsewhere within the Bailiwick of Guernsey, or anywhere else in the world,".

**40.** In the First Schedule to the Law –

- (a) after "que vous devez à Dieu" insert "*[Vous affirmez et promettez solennellement et sincèrement]*",
- (b) for "l'avancement de la gloire de Dieu et" substitute "*[l'avancement de la gloire de Dieu et]*",
- (c) for "Ainsi Dieu vous aide." substitute "*[Ainsi Dieu vous aide.]*",
- (d) for "DIEU SAUVE LA REINE" substitute –

*"[DIEU SAUVE LA REINE]*

OR

You swear and promise on the faith and oath which you owe to God [*solemnly, sincerely and truly declare and affirm*] that well and faithfully you will exercise the office and charge of Judge in the Court of Appeal of the Bailiwick of Guernsey; that you will uphold [the Glory of God and] the honour of Our Sovereign Lady Elizabeth II, by the Grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories, Head of the Commonwealth, Defender of the Faith; and that you will be a true and loyal subject of Her Majesty; that well and loyally you will preserve and maintain with all your power all the laws, liberties, usages and

ancient customs of the said Bailiwick, opposing any person who might seek to violate them; and that you will administer good and concise justice to all without respect of persons.

You promise accordingly.

[So help you God]

GOD SAVE THE QUEEN".

41. After the First Schedule to the Law, insert –

"SCHEDULE 1A

Section 26A

POWERS, PROCEDURE ETC. UPON RETRIAL

1. On a retrial, a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the Royal Court, be read as evidence –

- (a) by agreement between the parties, or
- (b) if the Royal Court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find the witness or to secure the witness's attendance have been made without success,

and in either case may be so read without further proof if the Royal Court is satisfied that the transcript is a true and accurate record of the witness's evidence at the trial.

2. Where a person ordered to be retried is again convicted on retrial, the Royal Court may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.

3. Without prejudice to its power to impose any other sentence, the Royal Court may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.

4. Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of the person's sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded –

(a) any time before the person's conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed, and

(b) any time during which the person was released on bail under section 26A(3).

5. Where a person is acquitted on retrial the Royal Court may, in addition to any costs which it could have ordered to be paid at the original trial or prosecution if the person had been acquitted, make an order under section 36(2) in respect of that person's expenses on appeal if the Court of Appeal has not already done so."

**Interpretation.**

42. In this Law, unless the context otherwise requires, "**the Law**" means the Court of Appeal (Guernsey) Law, 1961.

**Extent.**

43. This Law shall extend to the Bailiwick of Guernsey.

**Citation.**

44. This Law may be cited as the Court of Appeal (Guernsey) (Amendment) Law, 2021.

**Commencement.**

45. This Law shall come into force on the day of its registration on the records of the island of Guernsey.