

# **BILLET D'ÉTAT No. III, 2008**

**12<sup>th</sup> March, 2008**

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# PROJET DE LOI

ENTITLED

## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008**

### ARRANGEMENT OF SECTIONS

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1. Admissibility of hearsay evidence.

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## **The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008**

**THE STATES**, in pursuance of their Resolutions of the 24<sup>th</sup> day of February, 2000<sup>a</sup> and 31<sup>st</sup> of May 2006<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 Islands of Guernsey and Alderney.

### *Admissibility of hearsay evidence*

#### **Admissibility of hearsay evidence.**

1. (1) In civil proceedings, evidence shall not be excluded on the ground that it is hearsay.

(2) In this Law -

(a) "**hearsay**" means a statement made otherwise than by a person while giving oral evidence in the proceedings which is tendered as evidence of the matters stated, and

(b) references to hearsay include hearsay of whatever degree.

(3) Nothing in this Law affects the admissibility of evidence which is admissible by virtue of other enactments or under customary law.

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<sup>a</sup> Article V of Billet d'État No. VI of 2000.

<sup>b</sup> Article X of Billet d'État No. X of 2006.

(4) The provisions of sections 2 to 6 do not apply in relation to hearsay evidence admissible apart from this section, notwithstanding that it may also be admissible by virtue of this section.

*Safeguards in relation to hearsay evidence*

**Notice of proposal to adduce hearsay evidence.**

2. (1) A party proposing to adduce hearsay evidence in civil proceedings shall, subject to the following subsections, give to the other party or parties to the proceedings -

- (a) notice of that fact, and
- (b) at their request, such particulars of or relating to the evidence,

as is reasonable and practicable in the circumstances for the purpose of enabling the parties to deal with any matters arising from its being hearsay.

(2) Rules of court may make provisions -

- (a) specifying classes of proceedings or evidence in relation to which subsection (1) does not apply, and
- (b) as to the manner in which (including the time within which) the duties imposed by subsection (1) are to be complied with in the cases where it does apply.

(3) Subsection (1) may be excluded by agreement of the parties, and the requirement to give notice may, in any case, be waived by the person to whom notice is required to be given.

(4) At any stage in the proceedings, the court may relieve a party from the requirements of subsection (1) if it considers it necessary or desirable to do so.

(5) Failure to comply with subsection (1), or with rules made under subsection (2)(b), does not affect the admissibility of the evidence but may be taken into account by the court -

- (a) in considering the exercise of its powers with respect to the course of proceedings and costs, and
- (b) as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.

**Power to call witness for cross-examination on hearsay statement.**

3. Rules of court may provide that where a party to civil proceedings adduces hearsay evidence of a statement made by a person and does not call that person as a witness, any other party to the proceedings may, with the leave of the court, call that person as a witness and cross-examine him on the statement as if -

- (a) he had been called by the first-mentioned party, and
- (b) the hearsay statement were his evidence in chief.

**Considerations relevant to weighing of hearsay evidence.**

4. (1) In estimating the weight (if any) to be given to hearsay evidence in civil proceedings, the court shall have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence.

(2) Regard may be had, in particular, to the following -

- (a) whether it would have been reasonable and practicable for the party by whom the evidence was adduced to have produced the maker of the original statement as a witness,
- (b) whether the original statement was made contemporaneously with the occurrence or existence of the matters stated,
- (c) whether the evidence involves multiple hearsay,
- (d) whether any person involved had any motive to conceal or misrepresent matters,
- (e) whether the original statement was an edited account, or was made in collaboration with another or for a particular purpose,
- (f) whether the circumstances in which the evidence is adduced as hearsay suggest an attempt to prevent proper evaluation of its weight, and

- (g) any other circumstances which the court may, in the interests of justice, consider relevant.

*Supplementary provisions as to hearsay evidence*

**Competence and credibility.**

5. (1) Hearsay evidence shall not be admitted in civil proceedings if it is shown to consist of, or to be proved by means of, a statement made by a person who, when making the statement was not competent as a witness.

(2) For the purpose of subsection (1) "not competent as a witness" means suffering from such mental or physical infirmity, or lack of understanding, as would render a person incompetent as a witness in civil proceedings; but a child shall be treated as competent as a witness if he satisfies the requirement of section 5(1)(a) and (b) of the Administration of Justice (Bailiwick of Guernsey) Law, 1991.<sup>c</sup>

(3) Where in civil proceedings hearsay evidence is adduced and the maker of the original statement, or of any statement relied upon to prove another statement, is not called as a witness -

- (a) evidence which if he had been so called would be admissible for the purpose of attacking or supporting his credibility as a witness, is admissible for that purpose in the proceedings, and
- (b) evidence which tends to prove that, whether before or after he made the statement, he made any other

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<sup>c</sup> Order in Council No. I of 1991.



statement inconsistent with it, is admissible for the purpose of showing that he had contradicted himself,

Provided that evidence may not be given of any matter of which, if he had been called as a witness and had denied that matter in cross-examination, evidence could not have been adduced by the cross-examining party.

**Previous statements of witnesses.**

6. (1) The provisions of this Law as to hearsay evidence in civil proceedings also apply (but with any necessary modifications) in relation to a previous statement made by a person called as a witness in the proceedings, subject to the following provisions.

(2) A party who has called or intends to call a person as a witness in civil proceedings may only adduce evidence of a previous statement made by that person -

(a) with the leave of the court, or

(b) for the purpose of rebutting a suggestion that his evidence has been fabricated.

(3) Subsection (2) does not prevent a witness statement (that is, a written statement of oral evidence which a party to the proceedings intends to lead) from being adopted by a witness in giving evidence or treated as his evidence.

(4) Where, in any civil proceedings, Article 28 of the 1865 Law applies (*Déclarations faites hors de cour par témoin*), this Law does not authorise the adducing of evidence of a previous inconsistent or contradictory statement

except in accordance with that Article, or otherwise as the court may determine in the interests of justice.

This provision is without prejudice to any provision made by rules of court under section 3 (power to call witnesses for cross examination on hearsay statement).

(5) Nothing in this Law affects any rule of law as to the circumstances in which, where a person called as a witness in civil proceedings is cross-examined on a document used by him to refresh his memory, that document may be made evidence in the proceedings.

(6) Nothing in this section prevents a statement of any description referred to above from being admissible by virtue of section 1 (admissibility of hearsay evidence) as evidence of the matters stated.

**Evidence formerly admissible at customary law.**

7. (1) In any civil proceedings a statement which, if this Law had not been passed, would by virtue of any rule of law mentioned in subsection (2) have been admissible as evidence of any fact stated therein, shall be admissible as evidence of that fact.

(2) The rules of law referred to in subsection (1) are those where in any civil proceedings -

- (a) an admission adverse to a party to the proceedings, whether made by that party or by another person, may be given in evidence against that party for the purpose of proving any fact stated in the admission,

- (b) published works dealing with matters of a public nature (for example, histories, scientific works, dictionaries and maps) are admissible as evidence of facts of a public nature stated therein,
- (c) public documents (for example, public registers, and returns made under public authority with respect to matters of public interest) are admissible as evidence of facts stated therein, or
- (d) records (for example, the records of certain courts, Orders in Council, treaties, Crown grants, pardons and commissions) are admissible as evidence of facts stated therein.

(3) In any civil proceedings, a statement which tends to establish reputation or family tradition with respect to any matter and which, if this Law had not been passed, would have been admissible in evidence by virtue of any rule of law mentioned in subsection (4) -

- (a) is admissible in evidence in so far as it is not capable of being rendered admissible under section 2 (notice of proposal to adduce hearsay evidence) or 4 (considerations relevant to weighing of hearsay evidence) of this Law, and
- (b) if given in evidence (whether by virtue of paragraph (a) or otherwise) shall be admissible as evidence of the matter reputed or handed down,

and without prejudice to paragraph (b), reputation shall, for the purposes of this Law, be treated as a fact and not as a statement or multiplicity of statements dealing with the matter reputed.

(4) The rules of law referred to in subsection (3) are those where in any civil proceedings -

(a) evidence of a person's reputation is admissible for the purpose of establishing his good or bad character,

(b) evidence of reputation or family tradition is admissible for the purpose of -

(i) proving or disproving pedigree or the existence of the marriage, or

(ii) proving or disproving the existence of any public or general right or identifying any person or thing.

### *Privilege*

#### **Privilege against incrimination of self or spouse.**

8. (1) The right of a person in any legal proceedings, other than criminal proceedings, to refuse to answer any question or produce any document or thing if to do so might expose that person to proceedings for an offence or for the recovery of a penalty -

- (a) shall apply only as regards criminal offences under the law of Guernsey or the law of Alderney and penalties provided for by such laws, and
- (b) shall include a like right to refuse to answer any question or produce any document or thing, if to do so would tend to expose the husband or wife of that person to proceedings for any such criminal offence or for the recovery of any such penalty.

(2) In so far as any enactment conferring powers of inspection or investigation confers on a person any right otherwise than in criminal proceedings to refuse to answer any question or give any evidence tending to incriminate that person, subsection (1) shall apply to that right; and every such enactment shall be construed accordingly.

(3) In so far as any existing enactment provides that in any proceedings other than criminal proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate that person, that enactment shall be construed as providing also that in such proceedings a person shall not be excused from answering any question or giving any evidence on the ground that to do so may incriminate the husband or wife of that person.

(4) Where any existing enactment that -

- (a) confers any powers of inspection or investigation,
- (b) provides as mentioned in subsection (3), or

further provides that any answer or evidence given by a person shall not be admissible in evidence against that person in any proceedings or class of proceedings (whether criminal or not), that enactment shall be construed as providing also that any answer or evidence given by that person shall not be admissible in evidence against the husband or wife of that person in the proceedings or class of proceedings in question.

(5) In this section "**existing enactment**" means enactments passed before this Law.

**Abolition of certain privileges.**

9. The following rules of law are hereby abrogated -

- (a) the rule whereby, in any legal proceedings, a person cannot be compelled to answer any question or produce any document or thing if to do so would tend to expose him to a forfeiture,
- (b) the rule whereby, in any civil proceedings, a party to the proceedings cannot be compelled to produce any document relating solely to his own case and in no way tending to impeach that case or support the case of any opposing party,

but the rule in paragraph (a) shall not be abrogated in relation to criminal proceedings.

**Consequential amendments relating to privilege.**

10. (1) Section 1(3) of the Tribunals of Inquiry (Evidence) (Guernsey) Law, 1949 (which confers powers with respect to the taking of evidence

before certain tribunals of enquiry and provides that a witness before any such tribunal shall be entitled to the same privileges and immunities as if he were a witness before the Royal Court), shall have effect as if after the word "witness" in the second place where it occurs, there were inserted the words "in civil proceedings" and, so far as it applies to Guernsey, any other existing enactment, which in relation to any tribunal, investigation or inquiry confers on persons required to answer questions or give evidence any privilege described by reference to the privileges of witnesses in proceedings before any court shall, unless the contrary intention appears, be construed as referring to the privileges of witnesses in civil proceedings before that court.

(2) Section 8(5) applies for the purposes of this section as it applies for the purposes of section 8.

*Convictions, etc., as evidence in civil proceedings*

**Convictions as evidence in civil proceedings.**

11. (1) In any civil proceedings, the fact that a person has been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere shall, (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those proceedings, that he committed that offence -

- (a) whether he was so convicted upon a plea of guilty or otherwise, and
- (b) whether or not he is a party to the civil proceedings;

but no conviction other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been convicted of an offence by or before any court in Guernsey or Alderney or by a court martial there or elsewhere -

- (a) he shall be taken to have committed that offence unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the conviction was based, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which the person is question was convicted, shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of section 13 of this Law or any other enactment where a conviction or a finding of fact in any criminal proceedings is, for the purposes of any other proceedings, made conclusive evidence of any fact.

(4) Where in any civil proceedings the contents of any document are admissible in evidence under subsection (2), a copy of that document, or of the material part of it, purporting to be certified or otherwise authenticated by or on behalf of the court or authority having custody of that document, shall be admissible in evidence and shall be taken to be a true copy of that document or part unless the contrary is shown.

(5) In this section "**court martial**" means a court martial constituted under the Army Act 1955, the Air Force Act 1955 or the Naval



Discipline Act 1957 and in relation to a court martial "**conviction**", means a finding of guilty which is, or falls to be treated as, the finding of the court and "**convicted**" shall be construed accordingly.

**Findings of adultery and paternity as evidence in civil proceedings.**

**12.** (1) In any civil proceedings -

- (a) the fact that a person has been found to have committed adultery in any matrimonial proceedings, and
- (b) the fact that a person has been found to be the father of a child in relevant proceedings before any court in Guernsey or Alderney or elsewhere or has been adjudged to be the father of a child in affiliation proceedings before any court in Guernsey or Alderney or elsewhere,

shall (subject to subsection (3)) be admissible in evidence for the purpose of proving, where to do so is relevant to any issue in those civil proceedings, that he -

- (i) committed the adultery to which the findings relates or,
- (ii) as the case may be, is (or was) the father of that child,

whether or not he offered any defence to the allegation of adultery or paternity and whether or not he is a party to the civil proceedings.

No finding or adjudication other than a subsisting one shall be admissible in evidence under this section.

(2) In any civil proceedings in which, under this section, a person is proved to have been found guilty of adultery as mentioned in subsection (1)(a), or to have been found or adjudged to be the father of a child as mentioned in subsection (1)(b) -

- (a) he shall be deemed to have committed the adultery to which the finding relates, or as the case may be, to be (or have been) the father of that child, unless the contrary is proved, and
- (b) without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the finding or adjudication was based, the contents of any document which was before the court, or which contains any pronouncement of the court, in the other proceedings in question shall be admissible in evidence for that purpose.

(3) Nothing in this section prejudices the operation of any enactment where a finding of fact in any matrimonial or affiliation proceedings is for the purposes of any other proceedings made conclusive evidence of any fact.

(4) Section 11(4) of this Law shall apply for the purposes of this section as if the reference to subsection (2) were a reference to subsection (2) of this section.

(5) In this section -

**"affiliation proceedings"** means any action of affiliation,

**"relevant proceedings"** means any proceedings where the issue of paternity is being determined, and

**"matrimonial proceedings"** means matrimonial proceedings in the Royal Court or any division thereof or in the Magistrate's Court, of Guernsey, or in the Court of Alderney, or any appeal arising out of any such proceedings.

**Conclusiveness of convictions for purposes of defamation actions.**

13. (1) In an action for libel or slander in which the question whether a person did or did not commit a criminal offence is relevant to an issue arising in that action, proof that, at the time when that issue falls to be determined, he stands convicted of that offence shall be conclusive evidence that he committed that offence; and his conviction shall thus be admissible in evidence.

(2) In any action under subsection (1) where a person is proved to have been convicted of an offence, the contents of any document which is admissible as evidence of the conviction, and the contents of the indictment or charge on which that person was convicted, shall, without prejudice to any other admissible evidence received for the purpose of identifying the facts on which the conviction was based, be admissible in evidence for the purpose of identifying those facts.

(3) For the purposes of this section a person shall be taken to stand convicted of an offence if, but only if, there subsists against him a conviction of that offence by or before a court in Guernsey or Alderney or by a court martial there or elsewhere.

(4) Sections 11(4) and (5) shall apply for the purposes of this section as they apply for the purposes of section 11, but as if in section 11(4) the reference to subsection (2) were a reference to subsection (2) of this section.

(5) The provisions of this section shall apply for the purposes of any action begun after the passing of this Law, whenever the cause of action arose, but shall not apply for the purposes of any action begun before this Law comes into force or any appeal or other proceedings arising out of any such action.

*Other matters*

**Proof of statements contained in documents.**

**14.** (1) Where a statement contained in a document is admissible as evidence in civil proceedings, it may be proved -

- (a) by the production of that document, or
- (b) whether or not that document is still in existence, by the production of a copy of that document or of the material part of it,

authenticated in such manner as the court may approve.

(2) It is immaterial for this purpose how many removes there are between a copy and the original.

**Proof of records of business or public authority.**

**15.** (1) A document which is shown to form part of the records of a business or public authority may be received in evidence in civil proceedings without further proof.

(2) A document shall be taken to form part of the records of a business or public authority if there is produced to the court a certificate to that effect signed by an officer of the business or authority to which the records belong.

(3) For this purpose -

(a) a document purporting to be a certificate signed by an officer of a business or public authority shall be deemed to have been duly given by such an officer and signed by him, and

(b) a certificate shall be treated as signed by a person if it purports to bear a facsimile of his signature.

(4) The absence of an entry in the records of a business or public authority may be proved in civil proceedings by affidavit of an officer of the business or authority to which the records belong.

(5) In this section -

**"records"** means records in whatever form,

**"business"** includes any activity regularly carried on over a period of time, whether for profit or not, by any body (whether corporate or not) or by an individual,

**"officer"** includes any person occupying a responsible position in relation to the relevant activities of the business or public authority or in relation to its records, and

"**public authority**" includes any public or statutory undertaking, any department of the States, and any person holding office under Her Majesty.

(6) The court may, having regard to the circumstances of the case direct that all or any of the provisions of this section do not apply in relation to a particular document or record, or description of documents or records.

### **Admissibility and proof of Ogden Tables**

**16.** (1) The actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the UK Government Actuary's Department are admissible in evidence for the purpose of assessing, in an action for personal injury, the sum to be awarded as general damages for future pecuniary loss.

(2) They may be proved by the production of a copy published by, or under the authority of, Her Majesty's Stationery Office, or in such other manner as the court may consider to be just and convenient.

(3) For the purposes of this section –

- (a) "**personal injury**" includes any disease and any impairment of a person's physical or mental condition, and
- (b) "**action for personal injury**" includes an action brought by virtue of the Fatal Accidents

(Guernsey) Laws 1900 and 1961<sup>d</sup>.

**Provisions as to rules of court.**

17. (1) Any power to make rules of court regulating the practice or procedure of the court in relation to civil proceedings includes power to make such provision as may be necessary or expedient for carrying into effect the provisions of this Law.

(2) Any rules of court made for the purposes of this Law as it applies in relation to proceedings in the Royal Court or any division thereof, or in the Court of Alderney apply, except in so far as their operation is excluded by agreement, to arbitration proceedings to which this Law applies, subject to such modifications as may be appropriate.

Any question arising as to what modifications are appropriate shall be determined, in default of agreement, by the arbitrator or umpire, as the case may be.

**Rules of court with respect to expert reports and oral expert evidence.**

18. (1) Notwithstanding any enactment or rule of law by virtue of which documents prepared for the purpose of pending or contemplated civil proceedings or in connection with the obtaining or giving of legal advice are in certain circumstances privileged from disclosure, provision may be made by rules of court -

- (a) for enabling the court in any civil proceedings to direct, with respect to medical matters or matters of any other class which may be specified in the direction, that the parties or some of them shall each

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<sup>d</sup> Ordres en Conseil Vols. III p.235 (Loi Relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident) and XVIII p.283.

by such date as may be so specified (or such later date as may be permitted or agreed in accordance with the rules) disclose to the other or others in the form of one or more expert reports the expert evidence on matters of that class which he proposes to adduce as part of his case at the trial, and

- (b) for prohibiting a party who fails to comply with a direction given in any such proceedings under rules of court made under paragraph (a) from adducing in evidence except with the leave of the court, any statement (whether of fact or opinion) contained in any expert report whatsoever in so far as that statement deals with matters of any class specified in the direction.

(2) Provision may be made by rules of court as to the conditions subject to which oral expert evidence may be given in civil proceedings.

(3) Without prejudice to the generality of subsection (2), rules of court made under that subsection may make provision for prohibiting a party who fails to comply with a direction given as mentioned in subsection (1)(b) from adducing, except with the leave of the court, any oral expert evidence whatsoever with respect to matters of any class specified in the direction.

(4) Any rules of court made under this section may make different provision for different classes of cases, for expert reports dealing with matters of different classes, and for other different circumstances.



(5) References in this section to an expert report are references to a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

(6) Nothing in the foregoing provisions shall prejudice any power contained in any other enactment to make rules of court.

### **Admissibility of expert opinion and certain expressions of non-expert opinion**

**19.** (1) Subject to any rules of court made under this Law, where a person is called as a witness in any civil proceedings, his opinion on any relevant matter on which he is qualified to give expert evidence shall be admissible in evidence.

(2) It is hereby declared that where a person is called as a witness in any civil proceedings, a statement of opinion by him on any relevant matter on which he is not qualified to give expert evidence, if made as a way of conveying relevant facts personally perceived by him, is admissible as evidence of what he perceived.

(3) In this section "**relevant matter**" includes an issue in the proceedings in question.

### **Evidence of foreign law**

**20.** (1) In civil proceedings, a person who is suitably qualified to do so on account of his knowledge or experience, is competent to give expert evidence as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, irrespective of whether he has acted or is entitled to act as a legal practitioner there.

(2) For the avoidance of doubt, where more than one person gives expert evidence under subsection (1) and a dispute or conflict arises between the evidence given, the presiding judge shall decide which evidence is to be preferred in determining the proceedings.

(3) Where any question as to the law of any country or territory outside Guernsey or Alderney, or of any part thereof, with respect to any matter has been determined (whether before or after the passing of this Law) in any such proceedings as are mentioned in subsection (5), then in any civil proceedings (not being proceedings before a court which can take judicial notice of the law of that country, territory or part with respect to that matter) -

- (a) any finding made or decision given on that question in the first-mentioned proceedings shall, if reported or recorded in citable form, be admissible in evidence for the purpose of proving the law of that country, territory or part with respect to that matter, and
- (b) if that finding or decision, as so reported or recorded, is adduced for that purpose, the law of that country, territory or part with respect to that matter shall be taken to be in accordance with that finding or decision unless the contrary is proved:

Provided that paragraph (b) shall not apply in the case of a finding or decision which conflicts with another finding or decision on the same question adduced under this subsection in the same proceedings.

(4) A party to any civil proceedings shall not be permitted to adduce any finding or decision under subsection (3) unless he has -

- (a) given notice that he intends to do so, pursuant to rules of court given to every other party to the proceedings, or
- (b) obtained the leave of the court.

(5) The proceedings referred to in subsection (3) are the following, whether civil or criminal, namely –

- (a) proceedings at first instance in any of the courts in Guernsey or Alderney,
- (b) appeals arising out of proceedings mentioned in paragraph (a),
- (c) proceedings before the Judicial Committee of the Privy Council on appeal (whether to Her Majesty in Council or to the Judicial Committee as such) from a decision of any court outside Guernsey or Alderney.

(6) For the purposes of this section, a finding or decision on any such question as is mentioned in subsection (3) shall be taken to be reported or recorded in citable form, if, but only if, it is reported or recorded in writing in a report, transcript or other document which, if that question had been a question as to the law of Guernsey, or the law of Alderney, could be cited as an authority in legal proceedings in Guernsey or Alderney.

### *General*

#### **Interpretation.**

**21.** (1) In this Law -

**"civil proceedings"** includes, in addition to civil proceedings in any of the ordinary courts of law -

- (a) civil proceedings before any other tribunal, being proceedings in relation to which the strict rules of evidence apply,
- (b) an arbitration or reference, whether under an enactment or not, and
- (c) without limitation and for the avoidance of doubt, administrative proceedings,

but does not include civil proceedings in relation to which the strict rules of evidence do not apply,

**"court"** in relation to an arbitration or reference, means the arbitrator or umpire and, in relation to proceedings before a tribunal (not being one of the ordinary courts of law), means the tribunal, and **"rules of court"** shall be construed accordingly,

**"customary law"** includes common law,

**"department"** means any department, council or committee of the States of Guernsey, or the States of Alderney, howsoever called or styled,

**"document"** means anything in which information of any description is recorded, and **"copy"**, in relation to a document, means anything onto

which information recorded in the document has been copied or transcribed, by whatever means and whether directly or indirectly,

**"enactment"** includes any subordinate legislation,

**"hearsay"** shall be construed in accordance with section 1(2),

**"information"** includes data, however recorded,

**"judge"** means -

(a) the Bailiff, Deputy Bailiff, Lieutenant Bailiff or any Judge of the Royal Court, or

(b) the Chairman of the Court of Alderney,

**"legal proceedings"** includes an arbitration or reference, whether under an enactment or not,

**"the 1865 Law"** means the Law entitled "Loi relative aux Preuves" registered on 8<sup>th</sup> July, 1865, as amended<sup>e</sup>,

**"oral evidence"** includes evidence which, by reason of a defect of speech or hearing, a person called as a witness gives in writing or by signs,

**"the original statement"**, in relation to hearsay evidence, means the underlying statement (if any) by -

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<sup>e</sup> Ordres en Conseil Vol. I, p. 422; Vol. III, p. 248; Vol. XVII, p. 272; Vol. XVIII, p. 75.

- (a) in the case of evidence of fact, a person having personal knowledge of that fact, or
- (b) in the case of evidence of opinion, the person whose opinion it is,

**"rule of law"** includes any rule of customary or common law,

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

**"statement"** means any representation of fact or opinion, however made, and

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect.

(2) For the avoidance of doubt it is hereby declared that in any enactment references to a person's husband or wife do not include references to a person who is no longer married to that person.

(3) A reference in this Law to any other enactment is, unless the context otherwise requires, a reference thereto as amended, re-enacted (with or without modification), extended or applied, whether by or under any other enactment.

(4) References to giving evidence in subsections 8(4) and 22(1) are references to giving evidence in any manner, whether by furnishing information, making discovery, producing documents or otherwise.

(5) The provisions of the Interpretation (Guernsey) Law, 1948<sup>f</sup> shall apply to the interpretation of this Law.

**Savings and amendments to the 1865 Law.**

22. (1) Nothing in this Law shall prejudice the operation of any enactment or rule of law which provides that any answer or evidence given by a person in specified circumstances shall not be admissible in evidence against him or some other person in any proceedings or class of proceedings.

(2) Nothing in this Law shall prejudice -

- (a) any power of a court, in any legal proceedings, to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion, or
- (b) the operation of any agreement (whenever made) between the parties to any legal proceedings as to the evidence which is to be admissible (whether generally or for any particular purpose) in those proceedings.

(3) Nothing in this Law affects the exclusion of evidence on grounds other than that it is hearsay.

This applies whether the evidence falls to be excluded in pursuance of any enactment or rule of law, for failure to comply with rules of court or an order of the court, or otherwise.

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<sup>f</sup> Ordres en Conseil Vol. XIII, p. 355.

(4) Nothing in this Law affects the proof of documents by means other than those specified in section 14 or 15.

(5) In the 1865 Law -

- (a) Article 30 is repealed,
- (b) in Article 35, insert after "le contenu de la pièce" the words "excepté dans les cas spéciaux reconnus par la loi",
- (c) Article 36 has effect subject to the provisions of this Law.

(6) For the avoidance of doubt, the States may, in accordance with sections 23 and 24, make further amendments to the 1865 Law.

**Power to make Ordinances in relation to evidence etc.**

23. (1) The States may by Ordinance make provision for and in relation to evidence in civil proceedings.

(2) Without prejudice to the generality of subsection (1), an Ordinance under this section may make provision for and in relation to -

- (a) the matters which are to constitute evidence and the extent to which evidence is admissible,
- (b) the manner and way in which evidence is adduced,



- (c) the requirements to be satisfied before evidence may be adduced,
- (d) the circumstances in which evidence shall or may be excluded,
- (e) the weight to be given to any evidence,
- (f) the evidential means by which matters may be proved,
- (g) the procedural requirements and safeguards relating to the receipt of evidence,
- (h) the taking of evidence anywhere in Guernsey or Alderney or elsewhere, for use in civil proceedings in Guernsey or Alderney or elsewhere,
- (i) the attendance, competence and compellability of witnesses.

**Additional provision as to Ordinances.**

**24.** (1) An Ordinance under this Law may amend, extend, adapt, modify or disapply any enactment, including (without limitation) this Law and any rule of law, in so far as the same relates to evidence in civil proceedings.

(2) Notwithstanding the provisions of subsection (1), an Ordinance made under this section shall be made by the States after consultation with the Policy and Finance Committee of the States of Alderney (where the Ordinance is to have effect in Alderney).

(3) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,
- (b) may contain such transitional, consequential, incidental and supplementary provisions as the States think fit, and
- (c) may delegate to the Royal Court, or Court of Alderney, power to provide by rules of court for any matter for which provision may be made by Ordinance and in any such case the provisions of sections 21 and 22 shall apply as if for the expressions "the States" and "Ordinance" (wherever appearing) there were respectively substituted "the Royal Court" and "rules of court" or "the Court of Alderney" and "rules of court", as the case may be.

(4) Any power conferred by this Law to make an Ordinance 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.

(5) Without prejudice to the generality of the foregoing provisions, an Ordinance under this Law may make such provision of any extent as might be made by Projet de Loi other than any provision which provides that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

#### **Transitional provisions.**

**25.** (1) Subject to subsection (2), the provisions of this Law shall not apply in relation to proceedings begun before commencement.

(2) Transitional provisions for the application of the provisions of this Law to proceedings begun before commencement may be made by rules of court or practice directions.

#### **Citation.**

**26.** This Law may be cited as The Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008.

**Commencement.**

27. This Law shall come into operation on a date or dates to be appointed by Ordinance of the States; and such an Ordinance may appoint different days for different provisions and different purposes.

# PROJET DE LOI

ENTITLED

## **The Royal Court (Reform) (Guernsey) Law, 2008**

### ARRANGEMENT OF SECTIONS

#### *Judges of the Royal Court*

1. Office and functions of Judge of the Royal Court.
2. Performance by Judges of the Royal Court of other functions.
3. Appointment of Judges of the Royal Court.
4. Tenure and remuneration of Judges of the Royal Court.
5. Oath of office of Judges of the Royal Court.

#### *Lieutenant Bailiffs*

6. Extension of office of Lieutenant Bailiffs.
7. Termination of office of Lieutenant Bailiffs.

#### *Jurats of the Royal Court*

8. Number of Jurats.
9. Amendment of Reform Law and other legislation.
10. Retirement age of Jurats; and right to retain title.

#### *Jurés-Justiciers Suppléants of the Royal Court*

11. Office of Juré-Justicier Suppléant.
12. Appointment of Juré-Justicier Suppléant.

#### *Role of Jurats in civil proceedings*

13. No requirement for Jurats to determine questions of fact in civil proceedings.
14. Procedure to be adopted in civil proceedings where Jurats are sitting.
15. Amendment of Miscellaneous Reform Provisions Law.

#### *Reasoned judgments in civil proceedings*

16. Requirement to give reasoned judgments in civil proceedings.

*Appointment of assessors*

17. Appointment of assessors to assist Royal Court.

*Provisions relating to Greffier, Sheriff and Sergeant  
and their Deputies*

18. Extension of office of Deputy Greffier, Sheriff and Sergeant.
19. Employment status of Sheriff and Sergeant.
20. Appointment to and termination of office of Sheriff and Sergeant.
21. Reciprocal performance of functions of Sheriff and Sergeant.
22. Royal Court may sit without Greffier, Sheriff or Sergeant.

*Contempt of court*

23. Ordinances as to contempt of court.

*Juge Délégué*

24. Saving for office of Juge Délégué.

*General provisions*

25. Interpretation.
26. Citation.
27. Commencement.

# PROJET DE LOI

ENTITLED

## **The Royal Court (Reform) (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> June, 2007<sup>a</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 Islands of Guernsey, Herm and Jethou.

### *Judges of the Royal Court*

#### **Office and functions of Judges of the Royal Court.**

1. (1) This Law establishes the office of Judge of the Royal Court.
- (2) A Judge of the Royal Court may, on being authorised by the Bailiff -
  - (a) preside over the Royal Court, and
  - (b) discharge any judicial function of the office of Bailiff,
 but may not sit as a judge of the Court of Appeal or appoint a Lieutenant Bailiff.
- (3) Any number of Judges of the Royal Court may be appointed.

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<sup>a</sup> Article V of Billet d'État No. XVI of 2007.

**Performance by Judges of the Royal Court of other functions.**

2. (1) A Judge of the Royal Court may also -
  - (a) hold office as a Lieutenant Bailiff, and
  - (b) constitute the Magistrate's Court (and has all the functions of the Judge of the Magistrate's Court),

but may not hold any other public office except one to which he is appointed by the Crown, the States, the Royal Court or the Bailiff.

(2) The office of Jurat of the Royal Court is incompatible with that of Judge of the Royal Court.

(3) A person appointed as Judge of the Royal Court shall not, during his term of office as Judge, practise as a lawyer in the Bailiwick or elsewhere or be in partnership or professional association with another lawyer in practice in the Bailiwick or elsewhere.

**Appointment of Judges of the Royal Court.**

3. (1) A Judge of the Royal Court shall be appointed by the Royal Court and shall have been in practice as -

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of -
  - (i) the Bar of England and Wales,
  - (ii) the Bar of Northern Ireland, or



(iii) the Faculty of Advocates in Scotland, or

(c) a Solicitor -

(i) of the Supreme Court of England and Wales,

(ii) of the Supreme Court of Judicature of Northern Ireland, or

(iii) in Scotland.

for not less than 10 years (or such shorter period as the Royal Court may agree to in any particular case).

(2) The States may by Ordinance, after consultation with the Royal Court, amend the qualifications and the period set out in subsection (1).

(3) Sections 23(3) and 23(4) apply to an Ordinance under this section as it applies to an Ordinance under section 23.

**Tenure and remuneration of Judges of the Royal Court.**

4. (1) A Judge of the Royal Court shall, subject to subsections (2), (3) and (4), hold office until he attains the age of 65.

(2) A Judge of the Royal Court may be originally appointed for a term of office that expires after he attains the age of 65 (but not after he attains the age of 70).

(3) The Royal Court may extend the term of office of a Judge of the Royal Court so as to expire after he attains the age of 65 (but not after he attains the age of 70).

(4) A Judge of the Royal Court is removable from office -

(a) by Order of Her Majesty in Council, or

(b) if he informs the Bailiff that he wishes to retire, by the Royal Court.

(5) A Judge of the Royal Court shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

**Oath of office of Judges of the Royal Court.**

5. A person appointed as Judge of the Royal Court shall, before entering office, take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

*Lieutenant Bailiffs*

**Extension of office of Lieutenant Bailiffs.**

6. The term of office of a Lieutenant Bailiff shall not expire on the termination of office of the Bailiff who appointed him, but shall expire instead -

(a) in the case of a Lieutenant Bailiff appointed from among the Jurats, immediately prior to the swearing-in of the successor in office to the Bailiff who appointed him, and

- (b) in the case of any other Lieutenant Bailiff, on the expiration of a period of 6 months immediately after the date of termination of office of the Bailiff who appointed him.

**Termination of office of Lieutenant Bailiffs.**

7. (1) A Lieutenant Bailiff is removable from office -

- (a) by Order of Her Majesty in Council, or
- (b) if he informs the Bailiff that he wishes to retire, by the Royal Court.

- (2) The term of office of a Lieutenant Bailiff appointed from among the Jurats terminates on his appointment as Juré-Justicier Suppléant.

*Jurats of the Royal Court*

**Number of Jurats.**

8. (1) The number of Jurats shall after the commencement of this Law be 16 (and not 12 as hitherto).

- (2) For the avoidance of doubt the increase in the number of Jurats to 16 does not affect the number required for a quorum in the Royal Court or any division thereof, whether exercising civil or criminal jurisdiction or original or appellate jurisdiction.

**Amendment of Reform Law and other legislation.**

9. (1) In sections 4(1)(b) and 4(2)(b) of the Reform (Guernsey) Law, 1948<sup>b</sup>, for "twelve" substitute "16".

(2) Section 21 of the Reform (Guernsey) Law, 1948 is repealed.

(3) For any reference in any enactment, however expressed, to the number of 12 Jurats there is substituted a reference to the number of 16 Jurats.

**Retirement age of Jurats; and right to retain title.**

10. (1) A Jurat appointed after the commencement of this Law shall hold office until he attains -

(a) the age of 70, or

(b) with the approval of the other Jurats, the age of 72 (and not, as in the case of a Jurat appointed before the commencement of this Law, 75).

(2) A person whose office as Jurat has terminated, including a person appointed as Juré-Justicier Suppléant under section 12, retains the title of Jurat until his death.

*Jurés-Justiciers Suppléants of the Royal Court*

**Office of Juré-Justicier Suppléant.**

11. (1) This Law establishes the office of Juré-Justicier Suppléant.

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<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to

(2) A Juré-Justicier Suppléant has all the functions of Jurat, but may not by virtue of his office sit in the States of Election.

(3) Persons appointed to the office of Juré-Justicier Suppléant shall form a panel from which they shall be drawn from time to time by the Bailiff to perform the functions of Jurat.

**Appointment of Juré-Justicier Suppléant.**

12. (1) A person may be appointed as Juré-Justicier Suppléant if -

- (a) he is a Jurat of not less than 5 years' standing, and
- (b) he has attained the age of 65 but not the age of 72 (or, in the case of a Jurat appointed before the commencement of this Law, 75).

(2) A Jurat may be appointed as Juré-Justicier Suppléant by the other Jurats.

(3) A person's office as Jurat terminates on his appointment as Juré-Justicier Suppléant.

(4) For the avoidance of doubt the sanction of Her Majesty is not required for the termination of a person's office as Jurat prior to his attaining the age of 70 on his appointment as Juré-Justicier Suppléant.

(5) A Juré-Justicier Suppléant shall, subject to subsection (6), hold office until he attains the age of 75.

this Law.

- (6) A Juré-Justicier Suppléant is removable from office -
  - (a) by the Jurats, or
  - (b) if he informs the Bailiff that he wishes to retire, by the Bailiff.

*Role of Jurats in civil proceedings*

**No requirement for Jurats to determine questions of fact in civil proceedings.**

13. (1) In any civil proceedings before the Royal Court in which there are in issue questions of fact or mixed fact and law -

- (a) the parties may elect that the Bailiff shall sit unaccompanied by the Jurats, or
- (b) the Bailiff may direct that he will sit unaccompanied by the Jurats.

(2) An election of the parties under subsection (1)(a) does not have effect if the Bailiff directs that the Jurats should continue to sit.

- (3) A direction of the Bailiff under subsection (1)(b) -
  - (a) does not have effect if every party elects that the Jurats should continue to sit, and
  - (b) may be revoked or modified by the Bailiff at any stage of the proceedings.

(4) Where an election of the parties under subsection (1)(a) or a direction of the Bailiff under subsection (1)(b) has effect -

(a) the Royal Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats, and

(b) the Bailiff is the sole judge of fact.

(5) An election of the parties under subsection (1)(a) or (3)(a) or direction of the Bailiff under subsection (1)(b) or (2) shall be made at such stage of the proceedings prior to the stage at which the Jurats would otherwise ordinarily sit as the Bailiff may order.

(6) An election of the parties under subsection (1)(a) or (3)(a) or direction of the Bailiff under subsection (1)(b) or (2) continues to have effect notwithstanding the joining or removal of any person as party to the proceedings.

(7) An election of the parties under subsection (1)(a) or (3)(a) is irrevocable except with leave of the Bailiff.

(8) The following acts of the Bailiff are not subject to appeal -

(a) a direction under subsection (1)(b) or (2),

(b) a revocation or modification of a direction under subsection (3)(b),

(c) an order under subsection (5), and

(d) a refusal of leave under subsection (7).

(9) This section is without prejudice to any other enactment which provides (in whatever words) that, in any civil proceedings -

(a) the Royal Court (whether sitting as a Full Court, Ordinary Court or Court for Matrimonial Causes) is to hear and determine any matter, except where the enactment provides that the Royal Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats, or

(b) the Jurats are to sit.

(10) In this section "**the Bailiff**" includes the person presiding over the proceedings.

**Procedure to be adopted in civil proceedings where Jurats are sitting.**

**14.** (1) This section applies when in any civil proceedings before the Royal Court the Jurats (and not the Bailiff alone) are sitting.

(2) The Bailiff need not sum up but may retire with the Jurats.

(3) In this section "**the Bailiff**" means the person presiding over the proceedings.

**Amendment of Miscellaneous Reform Provisions Law.**



**15.** In the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950<sup>c</sup>, section 6(4) is repealed.

*Reasoned judgments in civil proceedings*

**Requirement to give reasoned judgments in civil proceedings.**

**16.** (1) Any judgment given by the Royal Court in civil proceedings shall be reasoned.

(2) For the avoidance of doubt, nothing in this section or in section 14(2) (Bailiff may retire with Jurats) -

(a) prejudices the power of the Bailiff -

(i) to determine questions of law and procedure,  
and

(ii) to award costs,

(b) prejudices the power of the Jurats -

(i) to determine questions of fact, and

(ii) in administrative proceedings, to determine questions of reasonableness (otherwise than reasonableness as a matter of law), or

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<sup>c</sup> Ordres en Conseil Vol. XIV, p. 388; there are amendments not material to this Law.

- (c) prevents a Jurat from delivering a dissenting finding or decision.

(3) Subject to any direction to the contrary by the Bailiff, subsection (1) does not apply if and to the extent that the parties agree that the judgment need not be reasoned or fully reasoned.

(4) The Bailiff may, for the purposes of preparing a reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting -

- (a) assist and advise the Jurats, and
- (b) draft or participate in the drafting of their findings and decisions.

(5) A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain -

- (a) the Jurats' findings and decisions,
- (b) any dissenting findings or decisions made by different Jurats,
- (c) the identity of the Jurats making dissenting findings or decisions,
- (d) the Bailiff's findings, decisions and directions of law and procedure, and

- (e) the application of his findings, decisions and directions of law and procedure to the facts.

- (6) In this section "**the Bailiff**" means the person presiding over the proceedings.

*Appointment of assessors*

**Appointment of assessors to assist Royal Court.**

17. (1) Where pursuant to the provisions of any enactment the Royal Court has power to appoint an assessor to assist it in the determination of any matter, the appointment of the assessor shall be made by the Bailiff or other person presiding.

(2) A decision of the Bailiff or other person presiding to appoint, or not to appoint, an assessor is not subject to appeal.

(3) Subsections (1) and (2) are without prejudice to any other enactment relating to the appointment and functions of assessors.

(4) The Royal Court may by Order make such provision as it thinks fit in relation to the functions of assessors and as to the conduct of proceedings involving assessors.

(5) An Order under this section -

- (a) may be amended or repealed by a subsequent Order hereunder, and

- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.
- (6) Any power conferred by this section to make an 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.

*Provisions relating to Greffier, Sheriff and Sergeant  
and their Deputies*

**Extension of office of Deputy Greffier, Sheriff and Sergeant.**

18. The term of office of a Deputy Greffier, Deputy Sheriff or Deputy Sergeant shall not expire on the termination of office of the Greffier, Sheriff or Sergeant (as the case may be) who appointed him, but shall expire instead immediately prior to the swearing-in of the successor in office to the Greffier, Sheriff or Sergeant who appointed him.

**Employment status of Sheriff and Sergeant.**

19. (1) The offices of Sheriff and Sergeant are to be regarded for the purposes of remuneration, conditions of service, retirement and pension as posts on the Established Staff of the States of Guernsey.

(2) However, the Sheriff and Sergeant -

(a) are officers of the Royal Court, and

(b) are accountable to the Royal Court for the due and diligent performance of their functions, whether personally or by officers responsible to them.

(3) For the purposes of the Employment Protection (Guernsey) Law, 1998<sup>d</sup>, the offices of Sheriff and Sergeant are not employments to which Part I of that Law ("minimum periods of notice and statement of reasons for dismissal") or Part II thereof ("right not to be unfairly dismissed") applies.

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<sup>d</sup> Order in Council No. IX of 1998; amended by No. XVIII of 2001; No. VIII of 2002; No. I of 2006; and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (No. XXXI of 2005). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

**Appointment to and termination of office of Sheriff and Sergeant.**

20. (1) Appointments to the offices of Sheriff and Sergeant shall, after the date of commencement of this Law, be made by the Royal Court after consultation with the Policy Council (and not by way of warrant of His Excellency).

(2) A person appointed as Sheriff or Sergeant must take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

(3) A person appointed as Sheriff or Sergeant after the date of commencement of this Law is removable from office only by the Royal Court after consultation with the Policy Council.

(4) The Appointment of Her Majesty's Sheriff (Guernsey) Law, 1955<sup>e</sup> is repealed.

**Reciprocal performance of functions of Sheriff and Sergeant.**

21. (1) Without prejudice to the separation of the offices of Sheriff and Sergeant, and for the avoidance of doubt-

- (a) the Sheriff (and his Deputies) may perform all the functions of the office of Sergeant, and
- (b) the Sergeant (and his Deputies) may, at the request of the Sheriff, perform all the functions of the office of Sheriff.

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<sup>e</sup> Ordres en Conseil Vol. XVI, p. 178.

(2) A function performed by, and every decision taken or other thing done by, the Sheriff or Sergeant (or their respective Deputies) pursuant to subsection (1) is for all purposes performed by, and has the same effect as if taken or done by, the Sergeant or (as the case may be) the Sheriff.

(3) The performance of a function by the Sheriff or Sergeant (or their respective Deputies) pursuant to subsection (1) does not prevent the performance of the function by the Sergeant or (as the case may be) the Sheriff.

(4) This section is without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>f</sup>.

**Royal Court may sit without Greffier, Sheriff or Sergeant.**

**22.** For the avoidance of doubt, the Royal Court may sit, and is properly constituted, whether or not the Greffier, Sheriff or Sergeant or any of their respective Deputies is present.

*Contempt of court*

**Ordinances as to contempt of court.**

**23.** (1) The States may by Ordinance make such provision as they think fit in relation to contempt of -

(a) the Magistrate's Court,

<sup>f</sup> Order in Council No. XXI of 1991.

- (b) the Royal Court and any division thereof,
- (c) the Court of Appeal,
- (d) the respective officers of those courts, and
- (e) any witness before, or other person having business in, those courts,

and whether those courts are exercising civil or criminal jurisdiction or original or appellate jurisdiction.

- (2) An Ordinance under subsection (1) may (without limitation) -
  - (a) specify acts and omissions which constitute a contempt,
  - (b) specify the circumstances in which persons may be found to be in contempt,
  - (c) specify sanctions, penalties and remedies (criminal and civil) to which such persons may be subject,
  - (d) make such other provision as may be necessary or expedient for ensuring compliance with orders, directions and summonses issued by or under the authority of the Magistrate's Court, Royal Court, Court of Appeal and their respective officers.
- (3) An Ordinance under this section -



- (a) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
  - (b) may be amended or repealed by a subsequent Ordinance hereunder, and
  - (c) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision amending any enactment.
- (4) Any power conferred by this section to make an Ordinance 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.

### *Juge Délégué*

#### **Saving for office of Juge Délégué.**

**24.** Nothing in this Law affects the office, appointment or functions of the Juge Délégué.

### *General provisions*

#### **Interpretation.**

**25.** (1) In this Law, unless the context otherwise requires -

"**civil jurisdiction**" includes jurisdiction in public law and administrative law proceedings,

"**civil proceedings**" and "**civil matters**" include public law and administrative law proceedings and matters,

"**enactment**" includes any subordinate legislation,

"**functions**" includes powers, rights, duties, obligations, privileges and prerogatives,

"**Greffier**" means Her Majesty's Greffier,

"**Jurat**" means a Juré-Justicier de la Cour Royale, but not a Juré-Justicier Suppléant,

"**Magistrate's Court**" includes, for the avoidance of doubt, the Magistrate's Court when sitting as the Juvenile Court pursuant to the Juvenile Court (Guernsey) Law, 1989<sup>g</sup>,

"**Sergeant**" means Her Majesty's Sergeant,

"**Sheriff**" means Her Majesty's Sheriff,

"**subordinate legislation**" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

#### **Citation.**

26. This Law may be cited as the Royal Court (Reform) (Guernsey) Law, 2008.

#### **Commencement.**

27. This Law shall come into force on the day appointed by Ordinance of

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<sup>g</sup> Orders en Conseil Vol. XXXI, p. 326; prospectively repealed and replaced by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

the States, and different dates may be appointed for different provisions and for different purposes.

# PROJET DE LOI

ENTITLED

## **The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> September, 2007<sup>a</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 Islands of Guernsey, Herm and Jethou.

### **Register of Non Profit Organisations.**

1. (1) The Administrator of Income Tax ("**the Administrator**") shall establish and maintain a register of non profit organisations to be called the Register of Non Profit Organisations ("**the Register**") in accordance with the Schedule.

(2) A non profit organisation wishing to be registered on the Register shall make an application in accordance with the Schedule.

(3) A non profit organisation which is not a charity will be a Guernsey Registered Non Profit Organisation whilst it is on the Register.

(4) A non profit organisation which is a charity will be a Guernsey Registered Charity whilst it is on the Register.

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<sup>a</sup> Articles VIII and IX of Billet d'État No. XX of 2007.

(5) A non profit organisation based in the Island of Guernsey, Herm or Jethou which without reasonable excuse is not registered on the Register is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

**Offences as to false or misleading information, etc.**

2. If a person -

- (a) in connection with an application for registration or renewal of registration under this Law,
- (b) in purported compliance with a requirement imposed by or under, or otherwise for the purposes of, any provision of this Law or of any Ordinance or regulation made under it, or
- (c) otherwise than as mentioned in paragraph (a) or (b) but in circumstances in which he intends, or could reasonably be expected to know, that the statement, information or document provided by him would or might be used by the Administrator for the purpose of exercising his functions conferred by or under this Law,

does any of the following -

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

- (ii) dishonestly or otherwise, recklessly makes a statement which is false, deceptive or misleading in a material particular,
- (iii) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
- (iv) dishonestly or otherwise, recklessly produces or furnishes or recklessly causes or permits to be produced or furnished any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

**Penalties.**

3. A person guilty of an offence under section 2 is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding three months or to a fine not exceeding level 5 on the uniform scale or to both.

**Regulations as to the keeping of records, etc.**

4. (1) The Department may by regulation make such provision as it thinks fit in relation to -

- (a) the making, maintenance, keeping and retention of any records and any other documents by any registered organisation, and
- (b) the disclosure and publication of any such record or document, whether by the Administrator or by any other person in possession thereof.

(2) Regulations under subsection (1) may make provision for non profit organisations who fail to comply with their obligations thereunder to be struck off the Register.

**Amendment to section 40(k) of the Income Tax (Guernsey) Law, 1975.**

5. For section 40(k) of the Law of 1975, substitute -

- "(k) the income of a Guernsey Registered Charity (registered in accordance with the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008), if and so far as the income is applied to charitable purposes only,".

**Amendment to section 40(r) of the Income Tax (Guernsey) Law, 1975.**

6. For section 40(r) of the Law of 1975, substitute -

- "(r) the income derived from investments or deposits of any body of persons or trust established in the United Kingdom or in the Island of Jersey for charitable



purposes only where the person entitled to the income proves to the satisfaction of the Administrator that the Commissioners for Her Majesty's Revenue and Customs or the Comptroller of Income Tax of the Island of Jersey, as the case may be, have allowed a claim for exemption from tax on that income under the relevant provisions of the laws relating to income tax or charities in those territories,".

**Amendment to section 65(1) of the Income Tax (Guernsey) Law, 1975.**

7. For the proviso to section 65(1) of the Law of 1975, substitute –

"Provided that in the case of a settlement made –

- (a) before the date of commencement of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, on a charity, or
- (b) after that date, on a Guernsey Registered Charity (registered in accordance with that Law),

paragraph (a) of this subsection shall have effect with the substitution of "three years" for "six years".

**Amendment to section 65(2) of the Income Tax (Guernsey) Law, 1975.**

8. (1) In section 65(2) of the Law of 1975, for the text preceding the proviso substitute –

"(2) Where, in respect of any year of charge, the amount of a covenanted donation –

- (a) before the date of commencement of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, to a charity, or
- (b) after that date, to a Guernsey Registered Charity (registered in accordance with that Law),

or the amount of covenanted donations in the aggregate to such charities made by a person under a settlement or settlements made or entered into on or after the 14<sup>th</sup> April, 1978, exceeds the approved sum, any part of such donation or donations in the aggregate in excess of the approved sum shall be deemed to be the income of the settlor: ".

(2) In section 65(2) of the Law of 1975, in paragraphs (a) and (b) of the proviso before the words "a charity or charities" wherever appearing insert "such".

#### **Offences by bodies corporate, etc.**

9. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate or any person purporting to act in any such capacity, he as well as the body corporate is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with his functions of

management as if he were a director.

(3) Where an offence under this Law is alleged to have been committed by an unincorporated body or trust, proceedings for the offence shall be brought in the name of the body or (as the case may be) the trust, and not in the name of any member, trustee, beneficiary or settlor.

(4) A fine imposed on an unincorporated body or trust on its conviction of an offence under this Law shall be paid from the funds of the body or (as the case may be) the trust.

(5) Where an offence under this Law is committed by an unincorporated body or trust and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

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

he as well as the unincorporated body or trust is guilty of the offence and may be proceeded against and punished accordingly.

**General provisions as to subordinate legislation.**

**10.** (1) The States may by Ordinance -

- (a) amend this Law, and
- (b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(3) Any Ordinance or regulation under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder,
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may, in the case of an Ordinance, and without limitation, contain provision -
  - (i) as to the creation of new liabilities, obligations, penalties and offences,

- (ii) making consequential amendments to this Law and any other enactment,
- (iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law, and
- (iv) authorising the Department to make regulations in relation to any matter in relation to which the Ordinance can make provision.

(4) Any power conferred by this Law to make any Ordinance or regulation 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.

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

**Interpretation.**

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

**"Administrator"** means the Administrator of Income Tax and includes the Assistant Administrator,

**"based in"** a place means established, administered or using business services in, or operating from or from within, that place,

**"charity"** -

- (a) means any organisation established for charitable purposes only, and
- (b) where any property or fund the income whereof is applicable to charitable purposes only is entrusted to any person, means, in relation to that property or fund and the income thereof, that person,

**"Department"** means the Treasury and Resources Department,

**"the Law of 1975"** means the Income Tax (Guernsey) Law, 1975<sup>b</sup>,

**"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,

**"organisation"** includes a body of persons (corporate or unincorporate), a trust, any other legal entity, any equivalent or similar structure or arrangement and, where paragraph (b) of the definition of "charity" applies, any such person as is referred to in that paragraph,

**"Register"** has the meaning assigned to it in section 1(1),

**"registered organisation"** means any organisation on the Register,

**"States"** means the States of Guernsey, and

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<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; Vol. XXIX, p. 214; Vol. XXXI, pp. 406 and 473; Vol. XXXII, p. 307; No. IV of 1991; No. VI of 1992; No's. IV and VIII of 1993; No. XXV of 1994; No's. III and VII of 1995; No. V of 1996; No's. IV and XXII of 1997; No's. II and VI of 1999; No. IV of 2000; No's. VI and XVII of 2001; No. VII of 2002; No's. IV, XVIII and XXVI of 2003; No's. XII and XVI of 2004; No's. V, VI and XVII of 2005; No's. II and VII of 2006; the Income Tax (Guernsey) (Amendment) Law, 2007; and (with effect from the 1<sup>st</sup> January, 2008) the Income Tax (Zero 10) (Guernsey) Law, 2007 and the Income Tax (Zero 10) (Guernsey) (No. 2) Law, 2007. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

"**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<sup>c</sup>.

(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.

**Extent.**

12. This Law shall have effect in the islands of Guernsey, Herm and Jethou.

**Citation.**

13. This Law may be cited as the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.

**Commencement.**

14. (1) Subject to subsection (2), this Law shall come into force on the date of its registration on the records of the Island of Guernsey.

(2) Section 1(5) shall come into force on the expiration of two calendar months after the date referred to in subsection (1).

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<sup>c</sup> Ordres en Conseil Vol. XXXI, p. 278; amended by Ordinance No. XXIX of 2006.



**SCHEDULE**

Section 1

**REGISTER OF NON PROFIT ORGANISATIONS****Register of Non Profit Organisations.**

1. (1) The Register shall be kept in such form as the Administrator thinks fit and may, without limitation, be kept in electronic form.

(2) The Administrator shall make arrangements for -

(a) public inspection of the Register, and

(b) subject to payment of the fee specified by him, the supply of certified or uncertified copies or extracts of entries in the Register.

(3) A copy, certified by or on behalf of the Administrator as being a correct copy of an entry in the Register, is, in any legal proceedings, evidence of the matters stated in the entry.

(4) There shall be entered in the Register -

(a) the full name and business address of the organisation, and

(b) such other matters as the Administrator thinks fit.

**Application for registration.**

2. (1) A non profit organisation based in -

- (a) the Island of Guernsey, Herm or Jethou, must,
- (b) any other Island of the Bailiwick of Guernsey, may,

apply to the Administrator to be placed on the Register, in such form as may be specified by the Administrator.

(2) An application for registration shall contain –

- (a) the full names of the persons who own, direct or control the activities of the organisation including (without limitation) its directors, officers and trustees and, for each of those persons -
  - (i) in the case of an individual, his current home and business addresses, or
  - (ii) in the case of an organisation, its registered office or anything similar under the legislation of the country of incorporation or establishment or (if it has no such office) its principal place of business,
- (b) a contact address within the Bailiwick at which all communications from the Administrator may be served,
- (c) details of the purposes, objectives and objects of the organisation, and

- (d) details of the manner in which the assets, funds and income of the organisation are applied or used.

(3) A non profit organisation not based in the Bailiwick of Guernsey may not be placed on the Register.

3. The Administrator may require any other information to be provided in connection with the application which, in his opinion, is relevant to determining whether the organisation is a non profit organisation.

4. If the Administrator is of the opinion that the organisation is a non profit organisation he must enter it in the Register either as –

- (a) a charity, which shall be known as a Guernsey Registered Charity, or
- (b) a non profit organisation that is not a charity, which shall be known as a Guernsey Registered Non Profit Organisation,

as he, in his discretion, thinks appropriate.

#### **Annual renewal of registration.**

5. (1) Each registered organisation shall apply to renew its registration at the commencement of each calendar year, in such form as may be specified by the Administrator.

(2) A registered organisation which fails to apply to renew its registration in respect of any calendar year by the end of January in that year shall

be struck off the Register, provided that the Administrator has given the organisation 2 weeks' notice of his intention to strike it off.

**6. An application for renewal -**

- (a) shall state that the organisation confirms that the information provided in the original application form is still correct, or
- (b) if the information is not still correct, shall give full particulars of any change to that information,

and the Administrator may require any other information to be provided which, in his opinion, is relevant to determining whether the organisation is still a non profit organisation.

**Refusal of registration or renewal.**

**7. (1)** If, on receipt of the application for registration or renewal, the Administrator is not satisfied that the organisation is a non profit organisation he may -

- (a) require further information or clarification from the organisation including, without limitation, documentary proof of all the facts stated in the application, or
- (b) refuse the organisation's application for registration or renewal, as the case may be.

(2) If the Administrator exercises his powers under paragraph (1)(a), and on receipt of further information he is still not satisfied that the organisation is a non profit organisation, he may refuse the application for registration or renewal, as the case may be.

**Duties of registered organisations.**

8. (1) Registered organisations must –

- (a) make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income,
- (b) file annual financial statements with the Administrator, in such form as may be specified by him, and
- (c) inform the Administrator as soon as is reasonably practicable of any change to any of the matters required to be stated in the application for registration under paragraph 2(2).

(2) The records referred to in paragraph (1)(a) -

- (a) shall be retained in a readily retrievable form for a period of not less than six years after the date of being made, and
- (b) shall be sufficiently detailed to enable verification that the organisations assets, funds and income have been applied or used in a manner consistent with the

purposes, objectives and objects of the organisation stated in the Register.

(3) The Department may by regulation exempt any, or any class or description of, registered organisations from complying with any of the obligations of subparagraph (1)(a) or (b) -

- (a) if they have assets, funds or income below a certain amount to be specified in the regulations, or
- (b) if their assets, funds and income are, except to such extent as may be specified in the regulations, applied or used exclusively within the Bailiwick.

(4) An organisation which, without reasonable excuse, fails to comply with subparagraph (1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding level 5 on the uniform scale.

(5) The provisions of this paragraph are without prejudice to the provisions of regulations under section 4 ("regulations as to the keeping of records, etc").

### **Requests for information.**

9. (1) The Administrator may by notice in writing require a registered organisation to deliver to him such documents as are in that organisation's possession or power and which in the Administrator's opinion contain, or may contain, information relevant to -

- (a) the organisation's assets, funds and income, and

- (b) the application or use of any such assets, funds or income.

(2) To comply with a notice under subparagraph (1), copies of documents may be delivered instead of originals, but -

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

and a failure to comply with a requirement under this paragraph constitutes a failure to comply with the notice under paragraph (1).

**Strike off.**

- 10.** (1) An organisation may be struck off the Register at any time if -
- (a) the Administrator has reason to believe that the organisation is not a non profit organisation,
  - (b) the organisation fails to comply with any request for information by the Administrator,
  - (c) the organisation fails to comply with any obligation or requirement imposed by or under this Law,

- (d) a person is found guilty of an offence under section 2 in respect of statements made or information or documents produced or furnished for or on behalf of the organisation, or
- (e) the organisation fails to pay any fee imposed under paragraph 11,

provided in each case that the Administrator has given the organisation 2 weeks' notice of his intention to strike it off the Register.

(2) The Administrator may publish the fact of an organisation being struck off the Register in such manner as he thinks fit (including, without limitation, by publication in La Gazette Officielle).

#### **Annual fee.**

11. The Administrator may, in his discretion, charge an annual fee for registration which shall be paid at such time as the Administrator may direct and which shall be set at a level such that it shall only cover his administrative costs in dealing with the registration of non profit organisations and the administration of the Register.

#### **Appeals from determinations of Administrator.**

12. (1) An organisation may appeal to the Court against -

- (a) the refusal of an application for registration,
- (b) the refusal of an application for renewal, or
- (c) being struck off the Register,



by a summons served on the Administrator.

The summons must state the grounds and material facts on which the appellant relies and must be served within 28 days after the date of the refusal or strike off, as the case may be.

- (2) The grounds of an appeal under this paragraph are that -
  - (a) the decision was ultra vires or there was some other error of law,
  - (b) the decision was unreasonable,
  - (c) the decision was made in bad faith,
  - (d) there was a lack of proportionality, or
  - (e) there was a material error as to the facts or as to the procedure.

(3) The Administrator may, where an appeal under this paragraph has been instituted, apply to the Court, by summons served on the appellant, for an order that the appeal shall be dismissed for want of prosecution; and on hearing the application the Court may -

- (a) dismiss the appeal or dismiss the application (in either case on such terms and conditions as the Court may direct), or

- (b) make such other order as the Court considers just.

The provisions of this subparagraph are without prejudice to the inherent powers of the Court or to the provisions of rule 52 of the Royal Court Civil Rules, 2007<sup>d</sup>.

- (4) On an appeal under this paragraph the Court may -

- (a) set the decision of the Administrator aside and, if the Court considers it appropriate to do so, remit the matter to the Administrator with such directions as the Court thinks fit, or
  - (b) confirm the decision, in whole or in part.

(5) On an appeal under this paragraph against a decision of the Administrator the Court may, on the application of the appellant, and on such terms as the Court thinks just, suspend or modify the operation of the decision pending the determination of the appeal.

(6) An appeal from a decision of the Court under this paragraph lies to the Court of Appeal on a question of law.

(7) In this paragraph "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an appeal under this paragraph the Court may appoint one or more assessors to assist it in the determination of any matter before it.

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<sup>d</sup> Order of the Royal Court No. IV of 2007.

## **The Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolution of 27<sup>th</sup> February 2008<sup>a</sup>, and in exercise of the powers conferred on them by sections 85 and 93(1) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>b</sup> and sections 23 and 24 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008<sup>c</sup>, and of all other powers enabling them in that behalf, hereby order:-

### **Making of live-link evidence direction in criminal proceedings.**

1. (1) In criminal proceedings before any court in the Bailiwick that court may give a direction ("a live-link evidence direction") that any specified witness in those proceedings, other than the defendant, is to give his evidence from a location other than the courtroom ("the remote location") if the court is satisfied (having regard to any ancillary requirements which might be attached under subsection (5)) that the conditions set out in subsection (2) are fulfilled.

(2) Those conditions are that -

- (a) the parties have been afforded the opportunity to make representations to the court,
- (b) all necessary equipment is or will be in place, and all necessary arrangements have been or will be made, so that -

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<sup>a</sup> Article \* of Billet d'Etat No. \* of 2008.

<sup>b</sup> Order in Council No. XXIII of 2003.

<sup>c</sup> Approved by the States on 12<sup>th</sup> March 2008.

- (i) the witness can be clearly seen and heard by the court, the Greffier or clerk of the court, the defendant and counsel for each of the parties, and
- (ii) the court, the defendant, and counsel for each of the parties can (subject to subsection (3)) be clearly seen and heard by the witness,
- (c) it is in the interests of justice that a live-link evidence direction should be given.

(3) The conditions in paragraph (2) (b) do not prevent the court from making any order which it might otherwise make for the purpose of screening or obscuring a defendant from the view of, or otherwise affording protection to, a vulnerable witness.

(4) For the avoidance of doubt, any party may apply to the court to give a live-link evidence direction, but the court may also give such a direction (subject to paragraph (2) (a)) of its own motion.

(5) A court may attach ancillary requirements to a live-link evidence direction, when making the direction or subsequently, and may subsequently alter any such requirements or revoke the direction.

**Effect of live-link evidence direction in criminal proceedings.**

2. (1) A witness who gives evidence in criminal proceedings pursuant to a live-link evidence direction is deemed for all purposes to be physically

present in the accustomed place from which witnesses give evidence in the courtroom where those proceedings are being conducted.

(2) A person who is to give, or who has given, evidence in criminal proceedings pursuant to a live-link evidence direction is deemed for all purposes to be a person who is to be, or who has been, physically present as described in subsection (1).

(3) Accordingly, and without limiting the generality of subsections (1) and (2) but by way of example -

- (a) the court has the like powers for securing the attendance of the witness at the specified remote location (if within the court's jurisdiction) as it has for securing the attendance of a witness at the courtroom,
- (b) the court may take the evidence of the witness on oath or affirmation,
- (c) the witness may produce any document or article which is in fact present in the courtroom by identifying it from the remote location; but the court may also receive in evidence an image, transmitted to the courtroom from the remote location, of any document or article identified there by the witness,
- (d) the witness cannot be compelled to answer any question, nor to produce any document or article, which he could not be compelled to answer or produce as a witness physically present in the courtroom,

- (e) every immunity or privilege (for example as respects the law of defamation) which would attach to statement made by a witness physically present in the courtroom similarly attaches to any statement made by a witness at the remote location (even if the remote location is beyond the court's jurisdiction); but equally
- (f) every liability (for example as respects contempt of court or perjury) which may arise out of any statement made or thing done or omitted by a witness physically present in the courtroom, may similarly arise out of any statement made or thing done or omitted by a witness at the remote location (even if the remote location is beyond the court's jurisdiction).

**Making and effect of live-link evidence direction in civil proceedings, etc.**

3. (1) Sections 1 and 2 apply to civil proceedings before any court in Guernsey or Alderney as those sections apply to criminal proceedings, but with the following modifications -

- (a) in section 1(1) for "other than the defendant" there is substituted "including a party to the proceedings",
- (b) in section 1(2)(b), for "the defendant" in both places there is substituted "each of the parties",
- (c) in section 1(3), for "a defendant" there is substituted "a party".

(2) In civil proceedings the references to ancillary requirements in section 1(5) as applied by subsection (1) of this section include -

- (a) requiring any party, in addition to paying the appropriate fees under any relevant rules of court, at that party's expense to -
  - (i) identify and secure access to an appropriate remote location,
  - (ii) ensure that all necessary equipment is in place and that all necessary arrangements have been made, to satisfy the court that the conditions set out in section 1(2)(b) are fulfilled,
- (b) orders as to the payment of costs, including orders in respect of wasted costs if a party fails to comply with such ancillary requirements.

(3) If, having considered representations of the parties to any civil proceedings in accordance with section 1(2)(a) as applied by subsection (1) of this section, the court is satisfied as mentioned in section 1(1) but -

- (a) one or more of the parties continues to oppose the giving of a live-link evidence direction, and
- (b) in the opinion of the court the interests of justice can equally be achieved by an order under this subsection,

then, instead of giving the direction, the court may direct that the full costs incurred in connection with attendance of the witness concerned in the courtroom are to be paid, in any event, by that party or those parties.

**Interpretation.**

4. (1) In this Ordinance, unless the context requires otherwise -

"**civil proceedings**" is to be interpreted in accordance with section 21(1) of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008, as adapted for clarification by subsection (2) of this section,

"**criminal proceedings**" is to be interpreted in accordance with section 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, as adapted for clarification by subsection (2) of this section,

"**live-link evidence direction**" means a direction given under section 1(1), or under that provision as applied by section 3(1),

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

"**specified**" means individually identified in, or identifiable by reference to a description of person set out in, a live-link evidence direction, and



"**witness**" includes an expert witness, a witness as to fact, and any other person called upon by a party or by the court to provide any information or opinion which may be relevant to the determination of any issue before the court at any stage of proceedings.

(2) It is hereby declared for the sake of clarity that references -

- (a) in sections 23 and 21 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008, and in this Ordinance, to "civil proceedings" include every stage in civil proceedings, from their inception until and including any appeal, in which a witness may be called upon,
- (b) in sections 85 and 86 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, and in this Ordinance, to "criminal proceedings" include every stage in criminal proceedings, from their institution until and including any appeal, in which a witness may be called upon.

**Extent.**

5. This Ordinance has effect throughout the Bailiwick, except that section 3 does not apply in Sark.

**Citation.**

6. This Ordinance may be cited as the Live-Link Evidence (Bailiwick of Guernsey) Ordinance, 2008.

**Commencement.**

7. (1) Apart from section 3, this Ordinance shall come into force on 12<sup>th</sup> March 2008.

(2) Section 3 of this Ordinance shall come into force on the date on which section 23 of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2008 comes into force.

## **The Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolutions of the 25<sup>th</sup> July, 2007<sup>a</sup>, and in exercise of the powers conferred on them by section 85 of the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them, hereby order:-

### **Amendment of the Insurance Business (Bailiwick of Guernsey) Law, 2002.**

1. The Insurance Business (Bailiwick of Guernsey) Law, 2002, as amended, is further amended as follows.

2. In the arrangement of sections -

(a) delete -

"13. Suspension of insurance licence.",

(b) immediately after the entry relating to section 28, insert the following subheading and entries -

*"Prohibition orders*

28A. Power to make prohibition orders.

28B. List of prohibition orders.

28C. Right to make representations as to prohibition orders.", and

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<sup>a</sup> Articles IV and VI of Billet d'État No. XIX of 2007.

<sup>b</sup> No. XXI of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

- (c) immediately after the entry relating to section 49, insert the following subheading and entry –

*"Notification of acquisition of voting power*

49A. Notification of acquisition of voting power."

3. Immediately after section 11(2), insert -

"(2A) A licensed insurer shall, before effecting any portfolio transfer, notify the Commission of the proposed transfer and obtain the Commission's prior written approval thereto."

4. In section 11(3), insert immediately before "Current Personal Questionnaire", "Subject to subsection (3A), a".

5. Immediately after section 11(3), insert -

"(3A) The Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensed insurer from all or any requirements of subsection (3), either generally or in any particular case or class of case."

6. Section 13 is repealed and the consequential amendments in the Schedule to this Ordinance shall have effect.

7. For section 17(2)(e), substitute –

"(e) unless the Commission determines otherwise, details of

-

- (i) the fact of any conditions of the licence or directions restricting the acceptance of new business; and
- (ii) the fact of any condition of the insurer's licence imposed under section 12(4)(h) providing that any assets shall not be made the subject of any charge, security interest, trust, assignment, lien or other dealing except with the prior written consent of the Commission; and".

8. Immediately after section 28, insert the following subheading and sections -

*"Prohibition orders*

**Power to make prohibition orders.**

**28A.** (1) If it appears to the Commission, having regard to the provisions of Schedule 7, that an individual is not a fit and proper person to perform functions on behalf of a licensee in relation to an insurance business, the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to -

- (a) any insurance business;
- (b) licensees generally or any specified class of licensee.

(3) An individual who performs or agrees to perform any

function in breach of a prohibition order is guilty of an offence.

(4) A licensee shall take reasonable care to ensure that none of his functions, in relation to the carrying on of an insurance business, is performed by a person who is prohibited from performing that function by a prohibition order.

(5) The Commission may, on the application of the individual named in a prohibition order, vary or revoke it.

(6) In this section, "specified" means specified in a prohibition order.

**List of prohibition orders.**

**28B.** (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions, or description of functions, which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish -

- (a) the list referred to in subsection (1); and
- (b) the fact that a person has been named in a prohibition order or that a prohibition order has

been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

**Right to make representations as to prohibition orders.**

**28C.** (1) If the Commission proposes to make a prohibition order against any individual, it shall serve on him a notice in writing -

- (a) stating that the Commission is proposing to make a prohibition order against him;
- (b) stating the terms of, and the grounds for, the proposed prohibition order;
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine; and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the public interest or in the interests of the reputation of the Bailiwick as a finance centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against any individual, it shall serve on him notice in writing of the decision -

(a) stating the terms of, and the grounds for, the prohibition order; and

(b) giving particulars of the right of appeal conferred by this Law."

9. In section 29(5), immediately after "A licensed insurer", insert "or a general representative of a licensed insurer".

10. For section 30(2), substitute –

"(2) For the purposes of this Law, approved assets are those determined in accordance with the provisions of the Insurance Business (Approved Assets) Regulations, 2008<sup>c</sup>".

11. Delete section 30(4).

12. For section 32(4), substitute –

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<sup>c</sup> Guernsey Statutory Instrument No. \* of 2008.



"(4) The Commission may by notice in writing served on a licensed insurer modify, subject to such conditions, if any, as may be specified in the notice, any requirement imposed by subsection (1) or (2) as respects that insurer for such amount and on such conditions as the Commission may approve."

13. In section 40(1), immediately after "licensed insurer shall", insert ", unless agreed in writing by the Commission,".

14. In section 45(3)(b), substitute "except where the Commission has given consent" for "except where the Royal Court otherwise directs".

15. In section 45(3)(c) and (d), for "21 days", substitute "42 days, or such other period that the Commission may specify not less than 21 days (provided that the Commission is satisfied that it is in the interests of the relevant policy holders),".

16. In section 48(3), substitute "an office copy" for "two office copies".

17. Immediately after section 49, insert the following subheading and section -

*"Notification of acquisition of voting power"*

**Notification of acquisition of voting power.**

**49A.** (1) Where a person who, alone or with associates, becomes entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company, or of any other company of which that company is a subsidiary, he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(2) Where a person, alone or with associates -

- (a) is already entitled to exercise, or control the exercise of 15% or more of the voting power in general meeting of a company or of any other company of which that company is a subsidiary; and
- (b) becomes entitled to exercise, or control the exercise of a further 5% or more of that voting power;

he shall notify the Commission of the proposed change and obtain the Commission's written approval thereto.

(3) For the purposes of subsections (1) and (2) –

- (a) a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever –
  - (i) becomes entitled to do so as a member of a company; or
  - (ii) acquires any interest which may entitle him to be a member of that company; and
- (b) the Commission's written approval shall be deemed to have been given in any particular case on the expiration of a period of 60 days beginning on the date of receipt by the Commission of written notification of the

proposed change unless, before the expiration of that period, the Commission serves notice on the licensee concerned that it does not approve the change."

**18.** In section 63(1), insert the following subparagraphs –

- "(j) under section 28A, to make or vary a prohibition order prohibiting the performance of any function, any specified function or any specified description of function;
- (k) to refuse to vary or revoke any such order under section 28A(5); or
- (l) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;".

**19.** In section 63(4), for "the decision was ultra vires or was an unreasonable exercise of the Commission's powers" substitute -

"\_

- (a) the decision was ultra vires or there was some other error of law;
- (b) the decision was unreasonable;
- (c) the decision was made in bad faith;
- (d) there was a lack of proportionality; or

- (e) there was a material error as to the facts or as to the procedure,".

**20.** In section 69, for "licensee" substitute "relevant person".

**21.** For section 69(11), substitute –

"(11) The provisions of this section shall apply in relation to a person who was a relevant person as they apply in relation to an existing relevant person, but only in connection with the business, ownership or control of that person -

- (a) at a time when he was a relevant person;
- (b) in the case of a person who was at any time a registered insurer under and within the meaning of the Insurance Business (Guernsey) Law, 1986, at any such time; and
- (c) in the case of a person who was at any time carrying on insurance business in such circumstances as not to require registration by virtue of section 8 of the Insurance Business (Guernsey) Law, 1986, at any such time."

**22.** Immediately after section 69(11), insert subsection (12) –

"(12) For the purposes of this section –

- (a) a "relevant person" means –

- (i) a licensee;
  - (ii) a person who appears to the Commission to be conducting unlicensed business; and
  - (iii) a person providing services to a licensee; and
- (b) "person providing services to a licensee" means a person who performs any function on behalf of a licensee in relation to an insurance business."

**23.** In paragraph 7 of Schedule 1, for "5" substitute "10".

**24.** In paragraph 1(1), (3) and (3A) of Schedule 2, for "margin of solvency" substitute "minimum margin of solvency".

**25.** Paragraph 1(2) of Schedule 2 is repealed.

**26.** Immediately after paragraph 1(3) of Schedule 2, insert –

"(3A) The Commission may at any time by notice in writing served on an insurer, a class of insurers or insurers generally, modify the requirements specified in subparagraphs (1) and (3) to be used for current and/or future computations of the margin of solvency; and for the purposes of this subparagraph, in modifying the said requirement, the Commission shall consider –

- (a) the nature and classes of business involved;

- (b) the spread of risk and the historic and industry based claims data;
- (c) the size, complexity of business and business risks of the insurer; and
- (d) any other information which is available to the Commission and which it considers relevant to evaluating the reserve requirement set out in subparagraph (1)(b).".

**27.** In paragraph 1(4)(a)(i) and (4)(b)(i) of Schedule 2, for "and reinsurance commissions" substitute "and reinsurance and other commissions".

**28.** In paragraph 1(7) of Schedule 2, substitute "net premium income" for "gross premium income".

**29.** For paragraph 2(2) of Schedule 2, substitute –

"(2) The assets which a licensed insurer must at any time have in order to maintain the margin of solvency shall be approved assets.".

**30.** Immediately after paragraph 2(2) of Schedule 2, insert –

"(2A) Notwithstanding subparagraph (2), the Commission may give permission in writing for a relevant licensee to maintain the margin of solvency, fully or in part, by way of assets which are not approved, for such period and on such conditions, if any, as it sees fit.

(2B) For the purposes of subparagraph (2A), a "relevant licensee" is a licensee who was a licensee on or before 12<sup>th</sup> March 2008."

31. Delete paragraph 2(3), (4), (5) and (6) of Schedule 2.

32. In Schedule 5 -

(a) in the definition of "controller", insert –

"(c) any person who has the power, alone or with another, to appoint or remove a director of a board or an executive committee;",

(b) immediately after the definition of "manager", insert -

"**member**" in respect of a company has the same meaning as in the Companies (Bailiwick of Guernsey) Law, 2008<sup>d</sup>;",

(c) immediately after the definition of "pool", insert –

"**prohibition order**" has the meaning given in section 28A;",

(d) in the definition of "Royal Court" insert after "Ordinary" -

"Court, and for the purposes of this Law –

(a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats; and

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<sup>d</sup> Order in Council No. ? of 2008.

- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it;",
- (e) immediately after the definition of "related company", insert -

"**relevant person**" has the meaning given in section 69(12);", and

- (f) in the definition of "significant shareholder", immediately after "subsidiary;", insert -

"and a person becomes entitled to exercise or control the exercise of voting power where he, by any means whatsoever -

- (i) becomes entitled to do so as a member of a company; or
- (ii) acquires any interest which may entitle him to be a member of that company;".

### **Interpretation.**

33. The Interpretation (Guernsey) Law, 1948<sup>e</sup> shall apply to the interpretation of this Ordinance throughout the Bailiwick.

### **Citation.**

34. This Ordinance may be cited as the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2008.

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<sup>e</sup> Ordres en Conseil Vol. XIII, p.355.



**Extent.**

35. This Ordinance shall have effect throughout the Bailiwick.

**Commencement.**

36. This Ordinance shall come into force on 12<sup>th</sup> March 2008.

SCHEDULE

Section 6

CONSEQUENTIAL AMENDMENTS UPON THE REPEAL OF SECTION 13 OF  
THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) LAW, 2002

1. In section 8(2)(b), delete ", suspension".
2. In section 9, delete "suspended under section 13,".
3. In section 12(6), delete "suspension or" on both occasions that it appears.
4. In section 16(1)(a), delete "13 or" and "suspend or".
5. In section 16(1)(b), delete "suspended or".
6. In section 16(3)(a) and (b), delete "suspend or".
7. In section 17(4)(a)(i), delete "suspension" and "13".
8. In section 17(6)(a), delete ", or a particular insurer's licence has been suspended".
9. In section 63(1)(b), delete "suspend or".

## **The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008**

**THE STATES**, in pursuance of their Resolutions of the 25<sup>th</sup> July, 2007<sup>a</sup>, and in exercise of the powers conferred on them by section 62 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them, hereby order:-

### **Amendment of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.**

1. The Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, as amended, is further amended as follows.

2. In the arrangement of sections –

(a) delete –

"8. Suspension of insurance manager's or  
insurance intermediary's licence.",

(b) after the entry relating to section 18, insert the  
following subheading and entries –

*"Prohibition orders*

18A. Power to make prohibition orders.

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<sup>a</sup> Articles IV and VI of Billet d'État No. XIX of 2007.

<sup>b</sup> No. XXII of 2002; amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003.

18B. List of prohibition orders.

18C. Right to make representations as to prohibition orders.",

- (c) after the entry relating to section 19, insert the following section -

"19A. Power to make regulations for procedures in respect of trigger events.",

- (d) after the entry relating to section 25, insert the following sections -

"25A. Notification of conditions etc. or regulatory penalties.

25B. Notification of compliance.",

- (d) after the entry relating to section 36, insert the following section-

"36A. Power to make regulations for procedures in respect of notification and objection to controllers, etc.", and

- (e) after the entry relating to section 61, insert the following subheading and entry -

*"Approved assets.*

61A. Approved assets.".

3. In section 2(5), delete "or a licensed insurance manager".

4. For section 4(2)(i)(ii), substitute -

"(ii) the applicant will maintain shareholders' funds of an amount equal to or exceeding the Minimum Capital Requirement; and".

5. Section 8 is repealed and the consequential amendments in the Schedule to this Ordinance shall have effect.

6. In section 9(1)(n) -

(a) for "section 36", substitute "regulations made under section 36A", and

(b) for "section 36 or 37", substitute "regulations made under section 36A, or under section 37".

7. Immediately after section 9(5), insert subsection (5A) -

"(5A) Where the Commission makes a decision to revoke a licence, it may give notice of that decision when it is made, notwithstanding that the decision may not have effect when notice is given.".

8. For section 12(2)(d), substitute -

"(d) unless the Commission determines otherwise, the fact of any conditions of the licence or directions restricting the acceptance of new business; and".

9. After section 18(4), insert subsection (5) –

"(5) Without prejudice to any other provision of this Law as to the consequences of any such contravention, a contravention by any person of a provision of the Conduct of Business Rules or a code issued under this part of this Law shall not of itself render him liable to any criminal proceedings; but –

(a) the Commission, in the exercise of its powers conferred by or under –

(i) this Law or any Ordinance, regulation or rule made under it; or

(ii) the regulatory Laws;

may take the provision of the Conduct of Business Rules or the code and the contravention thereof into account in determining whether and in what manner to exercise those powers; and

(b) in any legal proceedings (criminal or otherwise), whether or not under this Law, the provision of the Conduct of Business Rules or the code shall be admissible in evidence, and if the provision appears to the court or other tribunal before which the proceedings are being conducted to be relevant to any question arising in the proceedings then the provision may be taken into account in determining that question."

10. After section 18, insert the following subheading and sections -

*"Prohibition orders*

**Power to make prohibition orders.**

**18A.** (1) If it appears to the Commission, having regard to the provisions of Schedule 4, that an individual is not a fit and proper person to perform functions as or on behalf of a licensee in relation to the business of an insurance manager or an insurance intermediary (as the case may be), the Commission may make an order (a "**prohibition order**") prohibiting that individual from performing any function, any specified function or any specified description of function.

(2) A prohibition order may relate to -

- (a) any business as an insurance manager or an insurance intermediary (as the case may be);
- (b) licensees generally or any specified class of licensee.

(3) An individual who performs or agrees to perform any function in breach of a prohibition order is guilty of an offence.

(4) A licensee shall take reasonable care to ensure that none of his functions, in relation to the carrying on of the business of an insurance manager or an insurance intermediary (as the case may be), is performed by a person who is prohibited from performing that function by a prohibition order.

(5) The Commission may, on the application of the

individual named in a prohibition order, vary or revoke it.

(6) In this section "specified" means specified in a prohibition order.

**List of prohibition orders.**

**18B.** (1) The Commission shall maintain a list of all individuals to whom a prohibition order applies.

(2) The list referred to in subsection (1) shall specify the functions or description of functions which the individual concerned is prohibited from performing.

(3) The Commission shall make available to any person, on request and on payment of such charge (if any) as the Commission may reasonably demand to cover the cost of preparation, a copy of the list referred to in subsection (1).

(4) The Commission may publish -

(a) the list referred to in subsection (1); and

(b) the fact that a person has been named in a prohibition order or that a prohibition order has been varied or revoked.

(5) Any list or publication under this section may contain such information (if any) in respect of all or any of the persons named therein as the Commission may think desirable or expedient.

**Right to make representations as to prohibition orders.**

**18C.** (1) If the Commission proposes to make a prohibition



order against any individual, it shall serve on him a notice in writing -

- (a) stating that the Commission is proposing to make a prohibition order against him;
- (b) stating the terms of, and the grounds for, the proposed prohibition order;
- (c) stating that he may, within a period of 28 days beginning on the date of the notice, make written or oral representations to the Commission in respect of the proposed prohibition order in such manner as the Commission may from time to time determine; and
- (d) giving particulars of the right of appeal which would be exercisable if the Commission were to make the prohibition order.

(2) The Commission shall consider any representations made in response to a notice served under subsection (1) before giving further consideration to the proposed prohibition order.

(3) The period of 28 days mentioned in subsection (1)(c) may be reduced in any case in which the Commission considers it necessary to do so in the public interest or in the interests of the reputation of the Bailiwick as a finance centre.

(4) Where, having considered any representations made in response to a notice served under subsection (1), the Commission decides to make a prohibition order against any individual, it shall serve on him notice

in writing of the decision -

- (a) stating the terms of, and the grounds for, the prohibition order; and
- (b) giving particulars of the right of appeal conferred by this Law."

**11.** Immediately after section 19, insert the following section -

**"Power to make regulations for procedures in respect of trigger events."**

**19A.** (1) The Commission may by regulation make such provision as it sees fit in relation to the requirements and procedure in respect of trigger events which require -

- (a) the notification, or approval, of the Commission; and
- (b) remediation by a licensee.

(2) For the purposes of this section, a "trigger event" includes, but is not limited to -

- (a) a change in a director, controller, partner, manager, auditor or authorised insurance representative of a licensee;
- (b) a change in the registered office of the licensee;
- (c) any material change in the business plan of the licensee;

- (d) any breach of a provision in Schedule 4 (Minimum criteria for licensing);
- (e) the cancellation or invalidation of the professional indemnity insurance of the licensee; and
- (f) any criminal litigation, or civil proceedings, arbitration proceedings or any other claim, brought against the licensee.

(3) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by regulations made under this section is guilty of an offence.

(4) The Commission may, with the approval of Her Majesty's Procureur, specify the maximum penalty of an offence under subsection (3) but that penalty shall not exceed –

- (a) upon conviction on indictment, a term of imprisonment of 2 years;
- (b) upon summary conviction –
  - (i) a term of imprisonment of 6 months; or
  - (ii) a fine at level 5 on the uniform scale."

**12.** For section 20(2), substitute –

"(2) Regulations under subsection (1) may, without limitation, require the annual return to include or be accompanied by such

documents as the Commission sees fit."

13. For section 24(b), substitute the following paragraph -

"(b) such evidence of professional indemnity insurance cover in respect of the licensee as is required by the Commission under rules issued by the Commission from time to time concerning the licensee's professional indemnity insurance cover."

14. After section 25, insert the following sections -

**"Notification of conditions etc. or regulatory penalties."**

**25A.** (1) Where a licensee proposes to enter into a contract of professional indemnity insurance in respect of his activities as a licensee and

-

(a) his licence is or has been made subject to any condition or restriction by or under this Law;  
or

(b) he is or has been made subject to any regulatory penalty by or under this Law, the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>c</sup>, or any of the regulatory Laws;

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<sup>c</sup> Ordres en Conseil Vol. XXX, p. 243; amended by No. XX of 1991; No. XIII of 1994; No. II of 1997; No. II of 1998; No's. XVII and XXI of 2002; No's. III and XXII of 2003; the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII); and the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Ordinance, 2005 (No. XXXIV).

he shall, either directly or through the broker with whom he has arranged the proposed contract (as the case may be), notify the insurer who will provide the professional indemnity insurance of any such condition, restriction or regulatory penalty.

(2) Where a licensee must notify an insurer under subsection (1), he shall also -

- (a) provide evidence to the Commission that he has given such notification; and
- (b) inform the Commission of any consequences that may flow from this notification.

(3) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence.

**Notification of compliance.**

**25B.** (1) Where a licensee has entered into a contract of professional indemnity insurance in respect of his activities as a licensee, he shall notify the Commission of -

- (a) his compliance with -
  - (i) all warranties in or under that contract; and
  - (ii) any requirement of notification or disclosure to the insurer in or under that

contract throughout the period of validity of the contract; and

(b) any –

(i) actual or purported termination, avoidance or invalidation of the professional indemnity insurance; or

(ii) rejection of a notification or claim on the professional indemnity insurance.

(2) A licensee who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence."

**15.** In section 27(5), for "partner, manager or authorised insurance representative", substitute "partner or manager".

**16.** In section 27(5), insert the following subsection –

"(5A) Without prejudice to any other provision of this Law, a licensee shall notify the Commission of the change of any authorised insurance representative within 10 days of such change being made: provided that the Commission may, by notice in writing, and subject to such conditions as it thinks fit, exempt any licensee from all or any of the requirements of this subsection, either generally or in any particular case or class of case."

**17.** Immediately after section 36, insert the following section –

**"Power to make regulations for procedures in respect of notification and objection to controllers, etc."**

**36A.** The Commission may by regulation make such provision as it sees fit in relation to the –

- (a) requirements and procedure by which a person may become –
  - (i) a controller of a licensee which is a company;
  - (ii) a partner in a licensee which is a partnership;  
or
  - (iii) a director of a licensee which is an unincorporated body; and
- (b) procedure by which the Commission may object to a person becoming a person listed in paragraph (a)."

**18.** In section 38(a), for "section 36(1)", substitute "regulations made under section 36A".

**19.** In sections 38(b), 39(4) and 43(3), for "section 36 or 37", substitute "regulations made under section 36A, or under section 37".

**20.** For section 39(1), substitute –

"(1) The powers conferred by this section are exercisable where a person has become a shareholder controller in contravention of regulations made under section 36A or has become or continued to be such a controller after a notice of objection has been served on him under regulations made under section 36A, or under section 37."

**21.** In section 43(1), insert the following subparagraphs -

- "(j) under section 18A, to make a prohibition order prohibiting the performance of any function, any specified function or any specified description of function;
- (k) to refuse to vary or revoke any such order under section 18A(5); or
- (l) being a decision of such description as the States may by Ordinance prescribe for the purposes of this section;".

**22.** In section 43(4), for the words "the decision was ultra vires or was an unreasonable exercise of the Commission's powers", substitute -

"\_

- (a) the decision was ultra vires or there was some other error of law;
- (b) the decision was unreasonable;
- (c) the decision was made in bad faith;
- (d) there was a lack of proportionality; or
- (e) there was a material error as to the facts or as to the procedure."



**23.** In section 46, for "licensee" substitute "relevant person".

**24.** For section 46(11), substitute –

"(11) The provisions of this section shall apply in relation to a person who was a relevant person as they apply in relation to an existing relevant person, but only in connection with the business, ownership or control of that person –

- (a) at a time when he was a relevant person;
- (b) in the case of a person who was at any time a registered insurance intermediary or authorised insurance manager under and within the meaning of the Insurance Business (Guernsey) Law, 1986, at any such time; and
- (c) in the case of a person who was at any time carrying on business as an insurance intermediary in such circumstances as not to require registration by virtue of Part IVA of the Insurance Business (Guernsey) Law, 1986, at any such time."

**25.** Immediately after section 46(11), add subsection (12) –

"(12) For the purposes of this section –

- (a) a "relevant person" means –
  - (i) a licensee;

(ii) a person who appears to the Commission to be conducting unlicensed business; and

(iii) a person providing services to a licensee; and

(b) "person providing services to a licensee" means a person who performs any function on behalf of a licensee in relation to the business of an insurance manager or an insurance intermediary (as the case may be)."

26. Immediately after section 61, insert the following subheading and section –

*"Approved assets."*

**Approved assets.**

**61A.** For the purposes of this Law, approved assets will be those assets that the Commission may from time to time approve by regulation."

27. In section 65, immediately after "17(3)", insert "18A(3), 25A(3), 25B(2)".

28. In paragraph 7 of Schedule 1, for "5" substitute "10".

29. In paragraph 2(1) of Schedule 2, for "may for time" substitute "may from time".

30. In Schedule 3 –

- (a) in the definition of "auditor", delete "and who is approved by the Commission to audit the accounts of licensees;",

- (b) immediately after the definition of "manager", insert –

**"Minimum Capital Requirement"** means the amount that the Commission may from time to time determine to be the Minimum Capital Requirement;",

- (c) immediately after the definition of "policyholder", insert –

**"prohibition order"** has the meaning given in section 18A;",

- (d) immediately after the definition of "regulatory Laws", insert -

**"regulatory penalty"** means any enforcement action taken by the Commission to regulate a licensee or any person carrying out a function for or on behalf of a licensee;",

- (e) immediately after the definition of "related company", insert -

**"relevant person"** has the meaning given in section 46(12);",

- (f) in the definition of "Royal Court" insert after "Ordinary" -

"Court, and for the purposes of this Law –

- (a) the Royal Court is constituted by the Bailiff sitting unaccompanied by the Jurats; and
- (b) the Royal Court may appoint one or more assessors to assist it in the determination of any matter before it; ",
- (g) at the end of the definition of "subsidiary company", substitute a semi-colon for the full stop, and
- (h) immediately after the definition of "subsidiary company", insert -

""**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<sup>d</sup>".

### **Interpretation.**

31. The Interpretation (Guernsey) Law, 1948<sup>e</sup> shall apply to the interpretation of this Ordinance throughout the Bailiwick.

### **Citation.**

32. This Ordinance may be cited as the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) (Amendment) Ordinance, 2008.

### **Extent.**

33. This Ordinance shall have effect throughout the Bailiwick.

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<sup>d</sup> Ordres en Conseil Vol. XXXI, p.278

<sup>e</sup> Ordres en Conseil Vol. XIII, p.355.

**Commencement.**

**34.** (1) The provisions of this Ordinance, except section 4, shall come into force on 12<sup>th</sup> March 2008.

(2) Section 4 shall come into force on 12<sup>th</sup> March 2009.

## SCHEDULE

### Section 5

#### CONSEQUENTIAL AMENDMENTS UPON THE REPEAL OF SECTION 8 OF THE INSURANCE MANAGERS AND INSURANCE INTERMEDIARIES (BAILIWICK OF GUERNSEY) LAW, 2002

1. In section 5(2)(b), delete ", suspension".
2. In section 6, delete "suspended under section 8".
3. In section 7(4)(j), delete "suspension or" and "8 or".
4. In section 7(6), delete "suspension or" on both occasions that it appears.
5. In section 11(1)(a), delete "8 or" and "suspend or".
6. In section 11(1)(b), delete "suspended or".
7. In section 11(3)(a) and (b), delete "suspend or".
8. In section 12(3)(a)(i), delete "8,".
9. In section 12(4)(a), "suspension," and "8,".
10. In section 12(6)(a), delete ", or a particular insurance manager's or insurance intermediary's licence has been suspended".
11. In section 43(1)(b), delete "suspend or".

## **The Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2008**

**THE STATES**, in exercise of the powers conferred on them by section 8(2) of the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006<sup>a</sup>, and in exercise of all other powers enabling them in that behalf, hereby order:-

### **Commencement of Law.**

1. The Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 shall come into force on the 12<sup>th</sup> March, 2008.

### **Citation.**

2. This Ordinance may be cited as the Police Property and Forfeiture (Bailiwick of Guernsey) Law, 2006 (Commencement) Ordinance, 2008.

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<sup>a</sup> Order in Council No.\* of 2007

# PROJET DE LOI

ENTITLED

## **The Magistrate's Court (Guernsey) Law, 2008**

### ARRANGEMENT OF SECTIONS

#### PART I

##### CONSTITUTION OF THE MAGISTRATE'S COURT

1. Constitution and functions of the Magistrate's Court.
2. Appointment of Judges of the Magistrate's Court.
3. Tenure and remuneration of Judges of the Magistrate's Court.
4. Performance by Judges of the Magistrate's Court of other functions.
5. Deputy Judges of the Magistrate's Court.
6. Oath of office.
7. Officers of the Magistrate's Court.

#### PART II

##### CRIMINAL JURISDICTION OF THE MAGISTRATE'S COURT

8. General criminal jurisdiction of Magistrate's Court.
9. Sentencing powers of Magistrate's Court.
10. Election of trial before Royal Court.
11. Committal proceedings.
12. Power of Magistrate's Court to quash convictions, rectify mistakes, etc.
13. Power of Royal Court to quash void convictions.
14. Powers of Magistrate's Court on imposition of fine.

#### PART III

##### CIVIL JURISDICTION OF THE MAGISTRATE'S COURT

15. General civil jurisdiction of Magistrate's Court.
16. Judgments of Magistrate's Court.
17. Referral of actions between Magistrate's Court and Ordinary Court.
18. Appeals from Magistrate's Court in civil actions.
19. Scale of costs where action commenced in the Ordinary Court.
20. Power to make Orders as to wage arrests.



PART IV  
JURISDICTION OF THE MAGISTRATE'S COURT  
TO HOLD INQUESTS

- 21. Inquests.
- 22. Ordinances in respect of jurisdiction to hold inquests.

PART V  
CRIMINAL MATTERS ARISING IN ALDERNEY AND SARK

- 23. Jurisdiction of Ordinary Court as respects Alderney and Sark.
- 24. Transfer of cases beyond competence of Court of Seneschal.
- 25. Procedure to be followed by Ordinary Court.
- 26. Summary powers of Ordinary Court.
- 27. Composition of Ordinary Court.

PART VI  
CONTEMPT OF COURT

- 28. Contempt of Magistrate's Court.

PART VII  
IMMUNITY AND INDEMNIFICATION OF JUDGES  
AND OFFICERS, ETC

- 29. Immunity from action of judicial officers.
- 30. Immunity from action of court officers.
- 31. Striking out proceedings where action prohibited.
- 32. Costs in legal proceedings.

PART VIII  
RULES OF PROCEDURE, ETC

- 33. Rules of procedure: general.
- 34. Rules as to committal proceedings.
- 35. Rules as to civil actions.

PART IX  
GENERAL AND MISCELLANEOUS PROVISIONS

- 36. Power of Magistrate's Court to sit in camera.
- 37. Law Officers in Magistrate's Court.
- 38. Time and place of sitting of Magistrate's Court.

39. Administration of oath; and affidavits.
40. Magistrate's Court may sit without Greffier, Sheriff or Sergeant.
41. Position of Juvenile Court.
42. Confirmation of right of representation for States and Children's Convenor.
43. Power to enact Ordinances.
44. General provisions as to subordinate legislation.
45. Interpretation.
46. Repeals.
47. Savings and transitional provisions.
48. Criminal proceedings pending at commencement of this Law.
49. Citation.
50. Commencement.

# PROJET DE LOI

ENTITLED

## **The Magistrate's Court (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> June, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law throughout the Bailiwick (as regards Part V) and in the Islands of Guernsey, Herm and Jethou (as regards the remainder).

### PART I

#### CONSTITUTION OF THE MAGISTRATE'S COURT

##### **Constitution and functions of the Magistrate's Court.**

1. (1) The Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law, 1954<sup>b</sup> ("**the Magistrate's Court**") shall, from the date of commencement of this Law -

- (a) be constituted by a Judge of the Magistrate's Court sitting alone, and
- (b) have the summary jurisdiction in criminal matters, the jurisdiction in civil matters and the functions conferred by this Law and any other enactment.

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<sup>a</sup> Article VI of Billet d'État No. XVI of 2007.

<sup>b</sup> Ordres en Conseil Vol. XVI, p. 103.

(2) Nothing in subsection (1) shall be taken to abolish or restrict the functions or jurisdiction of the Ordinary Court in civil actions.

**Appointment of Judges of the Magistrate's Court.**

2. (1) Judges of the Magistrate's Court shall be appointed by the Royal Court and -

(a) shall have been in practice as -

(i) an Advocate of the Royal Court of Guernsey,

(ii) a member of -

(A) the Bar of England and Wales,

(B) the Bar of Northern Ireland, or

(C) the Faculty of Advocates in Scotland, or

(iii) a Solicitor -

(A) of the Supreme Court of England and Wales,

(B) of the Supreme Court of Judicature of Northern Ireland, or

(C) in Scotland, or

- (b) shall have held judicial office in the United Kingdom, Jersey or the Isle of Man,

for not less than 5 years (or such shorter period as the Royal Court may agree to in any particular case).

(2) The States may by Ordinance, after consultation with the Royal Court, amend the qualifications and the period set out in subsection (1).

**Tenure and remuneration of Judges of the Magistrate's Court.**

3. (1) A Judge of the Magistrate's Court shall, subject to subsections (2), (3) and (4), hold office until he attains the age of 65.

(2) A Judge of the Magistrate's Court may be originally appointed for a term of office that expires after he attains the age of 65 (but not after he attains the age of 70).

(3) The Royal Court may extend the term of office of a Judge of the Magistrate's Court so as to expire after he attains the age of 65 (but not after he attains the age of 70).

(4) A Judge of the Magistrate's Court is removable from office -

- (a) by Order of Her Majesty in Council, or
- (b) if he informs the Bailiff that he wishes to retire, by the Royal Court.

(5) A Judge of the Magistrate's Court shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

**Performance by Judges of the Magistrate's Court of other functions.**

4. (1) A Judge of the Magistrate's Court may also hold office as a Lieutenant Bailiff but may not hold any other public office except one to which he is appointed by the Crown, the States, the Royal Court or the Bailiff.

(2) Subject to the provisions of section 5, the office of Jurat of the Royal Court is incompatible with that of Judge of the Magistrate's Court.

(3) A person appointed as a Judge of the Magistrate's Court shall not, during his term of office as Judge, practise as a lawyer in the Bailiwick or elsewhere or be in partnership or professional association with another lawyer in practice in the Bailiwick or elsewhere.

**Deputy Judges of the Magistrate's Court.**

5. (1) The Royal Court may -

- (a) appoint one or more persons as Deputy Judge of the Magistrate's Court,
- (b) make any such appointment for such period as it thinks fit, and
- (c) determine any such appointment.

(2) A Deputy Judge of the Magistrate's Court has all the functions of a Judge of the Magistrate's Court.

(3) A person shall not be appointed as a Deputy Judge of the Magistrate's Court unless he is -

- (a) a Jurat of the Royal Court, or
- (b) qualified under section 2 for appointment as Judge of the Magistrate's Court.

(4) A Deputy Judge of the Magistrate's Court shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

**Oath of office.**

6. A person appointed as a Judge or Deputy Judge of the Magistrate's Court shall, before entering office, take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

**Officers of the Magistrate's Court.**

7. Her Majesty's Greffier, Sheriff and Sergeant shall, in relation to -

- (a) the hearing of proceedings before the Magistrate's Court, and
- (b) the execution and enforcement of judgments and orders of the Magistrate's Court,

discharge duties corresponding to those they discharge in relation to proceedings, judgments and orders of the Royal Court.

PART II  
CRIMINAL JURISDICTION OF THE MAGISTRATE'S COURT

**General criminal jurisdiction of Magistrate's Court.**

8. Subject to the provisions of this Part of this Law, the Magistrate's Court has jurisdiction to hear and determine any criminal matter other than -

- (a) an offence of treason, homicide, rape, robbery, piracy or perjury,
- (b) an attempt, conspiracy or incitement to commit such an offence, and
- (c) aiding, abetting, counselling or procuring the commission of such an offence.

**Sentencing powers of Magistrate's Court.**

9. (1) The Magistrate's Court's powers of punishment for an offence do not exceed -

- (a) imprisonment for a term not exceeding 2 years, or a fine not exceeding twice level 5 on the uniform scale, or both, or
- (b) where an enactment specifies a greater or lesser summary penalty for the offence, that greater or lesser penalty.



(2) The aggregate of sentences of imprisonment which may be imposed by the Magistrate's Court on the same occasion on an individual found guilty of more than one offence shall not exceed a total of 3 years, excluding -

- (a) any sentence of imprisonment imposed on him under section 14 by way of a conditional penalty to take effect in the event of default in payment of a fine ,
- (b) any suspended sentence activated under section 2 of the Criminal Justice (Power to Suspend Sentences) (Bailiwick of Guernsey) Law, 1972<sup>c</sup> ,
- (c) any sentence of imprisonment imposed on him under section 6 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 in consequence of a failure to comply with any requirement of section 3(1) of that Law ("requirements of community service order"), and
- (d) any sentence of imprisonment imposed on him under article 6 of the Loi relative à la Probation de Délinquants, 1929<sup>d</sup> in consequence of a failure to observe any condition of a probation order.

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<sup>c</sup> Ordres en Conseil, Vol. XXIII, p. 344.

<sup>d</sup> Ordres en Conseil, Vol. VIII, p. 363.

**Election of trial before Royal Court.**

10. (1) A person ("the accused") appearing before the Magistrate's Court for an offence triable by the Magistrate's Court, other than an offence of assault, which renders him liable to imprisonment for a term exceeding 6 months may, before he pleads to the charge but not otherwise, elect trial by the Royal Court.

(2) The Magistrate's Court shall, before the accused pleads to a charge referred to in subsection (1), address him with words to the following effect-

"In respect of this charge, you have the right to be tried by the Royal Court on indictment instead of by this Court. Do you wish to be tried by the Royal Court?"

**Committal proceedings.**

11. Where -

- (a) the accused, under section 10(1), elects trial by the Royal Court,
- (b) the offence with which the accused is charged is triable only by the Royal Court,
- (c) the Magistrate's Court decides that -
  - (i) its powers of punishment are insufficient to deal with the offence, or

(ii) by reason of the gravity of the offence, it would be more appropriate for the Royal Court to deal with it, or

(d) Her Majesty's Procureur elects trial by the Royal Court,

the Magistrate's Court shall take the evidence of the witnesses in writing and shall, if satisfied there is a prima facie case to answer, commit the accused for trial before the Royal Court.

**Power of Magistrate's Court to quash convictions, rectify mistakes, etc.**

**12.** (1) The Magistrate's Court may -

- (a) quash a conviction by the Magistrate's Court, or
- (b) vary or rescind a sentence or other order imposed or made by the Magistrate's Court when dealing with an offender,

if it appears to the Magistrate's Court to be in the interests of justice so to do.

(2) Where the Magistrate's Court quashes a conviction under subsection (1)(a), the conviction and any sentence or order imposed or made in consequence thereof shall be of no effect

(3) The power conferred by subsection (1)(b) extends to replacing a sentence or order which for any reason appears to be invalid by another sentence or order which the Magistrate's Court has power to impose or make.

(4) The power conferred by subsection (1)(a) or (b) is not exercisable in relation to any conviction by the Magistrate's Court or any sentence or order imposed or made by the Magistrate's Court when dealing with an offender if the Royal Court has determined an appeal against -

- (a) that conviction, sentence or order,
- (b) the conviction in respect of which that sentence or order was imposed or made, or
- (c) any other sentence or order imposed or made by the Magistrate's Court when dealing with the offender in respect of the conviction referred to in paragraph (b), including a sentence or order replaced by that sentence or order.

(5) Where a sentence or other order is varied under subsection (1)(b), the sentence or order as so varied shall take effect from the beginning of the day on which it was originally imposed or made, unless the Magistrate's Court directs otherwise.

(6) Where a person is convicted by the Magistrate's Court and it subsequently appears to the Magistrate's Court that it would be in the interests of justice that the case should be heard again by a different Judge of the Magistrate's Court, the Magistrate's Court may so direct.

(7) The power conferred on the Magistrate's Court by subsection (6) is without prejudice to the power conferred by subsection (1)(a) to quash a

conviction and is not exercisable in relation to a conviction if the Royal Court has determined an appeal against -

- (a) that conviction, or
- (b) any sentence or order imposed or made by the Magistrate's Court when dealing with the offender in respect of that conviction.

(8) Where the Magistrate's Court gives a direction under subsection (6), the conviction and any sentence or order imposed or made in consequence thereof shall be of no effect.

**Power of Royal Court to quash void convictions.**

13. (1) Where it is shown in respect of a conviction for an offence in the Magistrate's Court that the person convicted ought not, at the time of the conviction, as a matter of law, to have been convicted of the offence, Her Majesty's Procureur may apply to the Royal Court for the conviction to be quashed.

(2) This section is without prejudice to any rights of appeal or any rights arising in respect of a Royal Pardon.

**Powers of Magistrate's Court on imposition of fine.**

14. (1) When a person is convicted of an offence by the Magistrate's Court and sentenced to pay a fine, the Magistrate's Court may, at the time of passing sentence, and subject to such terms and conditions as it think fit -

- (a) order the fine to be paid -
  - (i) at once,

- (ii) within such period as may be specified, or
- (iii) by instalments of such amounts and at such times or intervals as may be specified, and / or
- (b) impose such conditional penalty as it thinks fit to take effect in the event of a default in payment of the fine or any part thereof.

(2) The conditional penalty which may be imposed under subsection (1)(b) is enforceable and subject to appeal in the same manner as a corresponding penalty imposed on conviction of an offence.

(3) Where under subsection (1)(a) a fine is ordered to be paid within a specified period or by instalments, the convicted person may at any time apply to the Magistrate's Court to have the period for payment, or the amounts, times or intervals of the instalments, as the case may be, reviewed.

(4) Where under subsection (1)(b) a conditional penalty is imposed, the convicted person may, at any time before the penalty is activated, apply to the Magistrate's Court to have the penalty reviewed.

(5) A decision of the Magistrate's Court on a review under subsection (3) or (4) is subject to appeal in the same manner as a sentence imposed on conviction of an offence.

(6) In this section a "penalty" means any sentence or other order that can be imposed on or made against an accused person by the Magistrate's Court when convicting him of an offence triable summarily (whether or not that sentence

or other order could have been imposed on or made against him on conviction of the offence with which he was accused).

(7) When a person is convicted of an offence by the Magistrate's Court and sentenced to pay a fine, the Magistrate's Court may, in the event of a default in payment of the fine or any part thereof, issue a summons to be served on that person ordering him to appear before the Magistrate's Court at the time and date specified.

### PART III

#### CIVIL JURISDICTION OF THE MAGISTRATE'S COURT

##### **General civil jurisdiction of Magistrate's Court.**

**15.** (1) The Magistrate's Court has jurisdiction to hear and determine any civil action -

- (a) for the recovery of debt, or
- (b) for the recovery of damages, whether arising in contract or in tort,

where the amount claimed does not exceed £10,000 or such other sum as the States may prescribe by Ordinance.

(2) In the hearing and determination of a civil action the Magistrate's Court may grant any remedy or relief that the Royal Court sitting as an Ordinary Court may grant in a civil action including (where the amount claimed or to be claimed, or the value of the subject matter of the remedy or relief sought, does not exceed the amount for the time being prescribed in subsection (1), or where there is specific statutory authority) -

- (a) an injunction, including an interim injunction, and
- (b) any order ancillary to an injunction.

(3) The States may by Ordinance provide that the Magistrate's Court has jurisdiction to hear and determine any other class or description of civil action.

**Judgments of Magistrate's Court.**

**16.** (1) Where the Magistrate's Court gives judgment in a civil action, it may order the amount payable under the judgment to be paid -

- (a) in one sum, and either at once or within such period as it may direct, or
- (b) by instalments of such amounts payable at such times or intervals as it may direct.

(2) The Magistrate's Court may vary any order made by it under subsection (1).

(3) Where under subsection (1) the Magistrate's Court makes an order requiring a sum of money to be paid -

- (a) it may empower the judgment creditor to levy execution against the personalty of the judgment debtor, or



- (b) it may, on the application of the judgment creditor, empower him to levy execution against the realty of the judgement debtor, which order has effect as a Preliminary Vesting Order.

**Referral of actions between Magistrate's Court and Ordinary Court.**

17. (1) The Magistrate's Court may, at any time prior to or during the hearing of a civil action in which it has jurisdiction, refer the action or any issue in dispute in the action (including, without limitation, any issue of fact, law or procedure) to the Ordinary Court for hearing and determination if it is of the opinion that it is desirable to do so -

- (a) because a question of law of general importance has arisen, or
- (b) for any other reason, in all the circumstances of the case and in the interests of justice.

(2) Where a civil action falling within the jurisdiction of the Magistrate's Court -

- (a) is instituted before the Ordinary Court, or
- (b) is referred by the Magistrate's Court to the Ordinary Court under subsection (1),

the Ordinary Court may, at any time prior to or during the hearing of the action, refer the action or any issue in dispute in the action (including, without limitation, any issue of fact, law or procedure) to the Magistrate's Court for hearing and

determination if it is of the opinion that it is desirable to do so in the interests of justice.

(3) A referral under subsection (1) or (2) may be made on such terms and conditions, and may contain such ancillary and consequential directions, whether as to costs or otherwise, as the Magistrate's Court or (as the case may be) the Ordinary Court thinks fit.

(4) For the avoidance of doubt the power of referral conferred by subsections (1) and (2) -

- (a) in the case of a referral by the Ordinary Court, is a matter of procedure within the meaning of section 6 of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950<sup>e</sup>, and
- (b) applies to a civil action instituted before the date of commencement of this Law.

**Appeals from Magistrate's Court in civil actions.**

**18.** (1) After the hearing and determination by the Magistrate's Court of a civil action there is a right of appeal to the Ordinary Court -

- (a) if the amount of the debt or damages claimed exceeds £200, or
- (b) on a point of law,

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<sup>e</sup> Ordres en Conseil Vol. XIV, p. 388.

in such manner and subject to such conditions as may be provided by rules made by Order of the Royal Court.

(2) Notwithstanding subsection (1)(a), section 14(a) of the Magistrate's Court (Guernsey) Law, 1954<sup>f</sup> ("appeals in civil actions") shall continue to apply to a civil action instituted before the date of commencement of this Law.

**Scale of costs where action commenced in the Ordinary Court.**

**19.** (1) Where a civil action falling within the jurisdiction of the Magistrate's Court is instituted in the Ordinary Court, then, if the plaintiff succeeds in the action, he is not entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in the Magistrate's Court.

(2) However, the Ordinary Court, if satisfied that there is sufficient reason for bringing the action in the Ordinary Court, may make an order allowing the costs on the basis applicable in relation to the Ordinary Court.

**Power to make Orders as to wage arrests.**

**20.** (1) For the avoidance of doubt, the Royal Court may by Order make such rules as it thinks fit in relation to the making, variation and administration by the Magistrate's Court and its officers of wage arrest orders and the enforcement of such orders by judgment debtors.

(2) An Order under this section may amend, repeal or replace

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<sup>f</sup> Ordres en Conseil Vol. XVI, p. 103.

any enactment or rule of customary law relating to wage arrests ("arrêts de gages").

PART IV  
JURISDICTION OF MAGISTRATE'S COURT  
TO HOLD INQUESTS

**Inquests.**

**21.** The Magistrate's Court has jurisdiction to hold inquests into the cause of death, wherever occurring.

**Ordinances in respect of jurisdiction to hold inquests.**

- 22.** (1) The States may by Ordinance amend section 21.
- (2) An Ordinance under subsection (1) may, without limitation -
- (a) make such provision in relation to the holding of inquests as the States think fit,
  - (b) transfer jurisdiction to hold inquests from the Magistrate's Court to the Royal Court or any division thereof or to such other court or office as may be specified, and
  - (c) empower the Royal Court by Order to make any provision which may be made by Ordinance under this section.
- (3) The provisions of this section are without prejudice to any

power (statutory, customary or inherent) vested in the Royal Court to enact Orders of the Royal Court.

## PART V

### CRIMINAL MATTERS ARISING IN ALDERNEY AND SARK

#### **Jurisdiction of Ordinary Court as respects Alderney and Sark.**

**23.** (1) Nothing in this Law derogates from the original summary jurisdiction vested in the Ordinary Court in criminal matters arising in Alderney and Sark.

(2) That jurisdiction is exercisable in accordance with the provisions of this Part of this Law.

(3) The Ordinary Court also has jurisdiction to deal with a case, in accordance with the provisions of this Part of this Law, transferred to it -

- (a) from the Court of the Seneschal under section 24, or
- (b) from the Court of Alderney under section 12(4) of the Government of Alderney Law, 2004<sup>g</sup>.

#### **Transfer of cases beyond competence of Court of Seneschal.**

**24.** Notwithstanding the provisions of section 23 of the Reform (Sark) Law, 1951, if the Court of the Seneschal is of the opinion that an offence with which a person is charged or the punishment appropriate to it is beyond its competence, it shall transfer the case to the Ordinary Court with a view to its being

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<sup>g</sup> No. III of 2005.

dealt with in accordance with the provisions of section 25.

**Procedure to be followed by Ordinary Court.**

**25.** (1) This section applies when -

- (a) a case is transferred to the Ordinary Court -
  - (i) from the Court of the Seneschal under section 24, or
  - (ii) from the Court of Alderney under section 12(4) of the Government of Alderney Law, 2004<sup>h</sup>, or
- (b) the Ordinary Court is seized of a case by virtue of its original summary jurisdiction referred to in section 23(1).

(2) The Ordinary Court shall, if the offence with which the accused is charged is one which it has power to deal with pursuant to section 26, hear and determine the case.

(3) However -

- (a) if the accused, under section 10(1), elects trial by the Royal Court,

<sup>h</sup> No. III of 2005.

- (b) if the offence with which the accused is charged is triable only by the Royal Court,
- (c) if the Ordinary Court decides that -
  - (i) its powers of punishment are insufficient to deal with the offence, or
  - (ii) by reason of the gravity of the offence, it would be more appropriate for the Royal Court to deal with it, or
- (d) if Her Majesty's Procureur elects trial by the Royal Court,

the Ordinary Court shall transfer the case to the Magistrate's Court with a view to the accused being committed for trial on indictment before the Royal Court.

(4) When a case is transferred from the Ordinary Court to the Magistrate's Court under subsection (3), the Magistrate's Court shall take the evidence of the witnesses in writing and, if satisfied there is a prima facie case to answer, commit the accused for trial before the Royal Court.

#### **Summary powers of Ordinary Court.**

26. The provisions of sections 8, 9, 10, 12 and 13 apply in relation to the Ordinary Court in the exercise of its summary jurisdiction under this Part of this Law as they apply in relation to the Magistrate's Court.

#### **Composition of Ordinary Court.**

**27.** For the purposes of this Part of this Law the Ordinary Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats.

## PART VI CONTEMPT OF COURT

### Contempt of Magistrate's Court.

**28.** (1) The Magistrate's Court has jurisdiction to deal with any person who -

- (a) wilfully insults or threatens -
  - (i) the Judge of the Magistrate's Court,
  - (ii) any witness before, or officer of, the Magistrate's Court, or
  - (iii) any other person having business in the Magistrate's Court,
 during his sitting or attendance in court or in going to or returning from court, or
- (b) wilfully interrupts the proceedings of the Magistrate's Court or otherwise misbehaves in court.

(2) In any such case the Magistrate's Court may -

- (a) order any officer of the court or officer of police to take the offender into custody and detain him until the



rising of the court, and

- (b) if it thinks fit -
  - (i) commit the offender to custody for a specified period not exceeding one month,
  - (ii) impose on him a penalty (which for the purposes of enforcement shall be treated as if it were a fine imposed upon conviction) not exceeding level 5 on the uniform scale, or
  - (iii) both so commit the offender to custody and impose on him such a penalty.

(3) The Magistrate's Court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(4) In this section "**the Judge of the Magistrate's Court**" includes -

- (a) the Deputy Judge of the Magistrate's Court,
- (b) any other person presiding over or chairing the Magistrate's Court, and
- (c) a Member of the Juvenile Court.

PART VII  
IMMUNITY AND INDEMNIFICATION OF JUDGES  
AND OFFICERS, ETC

**Immunity from action of judicial officers.**

**29.** (1) No action lies against a judicial officer in respect of what he does or omits to do -

(a) in the discharge of his functions as a judicial officer,  
and

(b) in relation to a matter within his jurisdiction.

(2) An action lies against a judicial officer in respect of what he does or omits to do -

(a) in the purported discharge of his functions as a judicial officer, but

(b) in relation to a matter not within his jurisdiction,

if, but only if, it is proved that he acted in bad faith.

**Immunity from action of court officers.**

**30.** (1) No action lies against a court officer in respect of what he does or omits to do in the discharge of his functions as a court officer in relation to-

(a) the Magistrate's Court, or

(b) proceedings before the Magistrate's Court.

(2) An action lies against a court officer in respect of what he does or omits to do in the purported discharge of his functions as a court officer in relation to -

- (a) the Magistrate's Court, or
- (b) proceedings before the Magistrate's Court,

if, but only if, it is proved that he acted in bad faith.

**Striking out proceedings where action prohibited.**

**31.** (1) If an action is brought in circumstances in which section 29 or 30 provides that no action lies, the court in which the action is brought may, on the application of the defendant, strike out the proceedings in the action.

(2) If the court strikes out proceedings under subsection (1), it may if it thinks fit order the person bringing the action to pay costs.

**Costs in legal proceedings.**

**32.** (1) A court may not order a judicial officer to pay costs in any proceedings in respect of what he does or omits to do in the discharge or purported discharge of his functions as a judicial officer.

(2) A court may not order a court officer to pay costs in any proceedings in respect of what he does or omits to do in the discharge or purported discharge of his functions as a court officer in relation to -

- (a) the Magistrate's Court, or

(b) proceedings before the Magistrate's Court.

(3) However, subsections (1) and (2) do not apply in relation to any proceedings in which a judicial officer or court officer -

(a) is being tried for an offence or is appealing against a conviction, or

(b) is proved to have acted in bad faith in respect of the matters giving rise to the proceedings.

## PART VIII

### RULES OF PROCEDURE, ETC

#### **Rules of procedure: general.**

33. (1) The Royal Court may by Order make such rules as it thinks fit -

(a) dealing with all procedural and incidental matters arising under this Law and generally for carrying this Law into effect,

(b) in relation to proceedings before the Magistrate's Court including, without limitation, rules in respect of-

(i) the practice and procedure to be followed in the conduct of proceedings,

- (ii) any other matters ancillary, incidental or relating to proceedings and the practice and procedure to be followed in respect thereof,
- (c) in relation to the costs of proceedings and the award, payment and recovery thereof including, without limitation, rules in respect of -
  - (i) the payment of indemnity costs and security for costs,
  - (ii) the taxation of costs,
  - (iii) the costs of legal representation,
  - (iv) the costs of the prosecution, defence, witnesses and court, and
  - (v) the costs of service and execution.

(2) In this section "**proceedings**" means all proceedings in respect of which the Magistrate's Court has jurisdiction.

**Rules as to committal proceedings.**

**34.** Rules of the Royal Court under section 33 may, in relation to committal proceedings before the Magistrate's Court, and without limitation -

- (a) make provision in respect of the means by which particular facts may be proved, the method of pleading

and the method by which evidence may be given in or in connection with committal proceedings, and

- (b) prescribe cases or circumstances, or classes or descriptions of cases or circumstances, in which committal proceedings may, notwithstanding the provisions of section 11 and 25(4), be dispensed with.

**Rules as to civil actions.**

**35.** Rules of the Royal Court under section 33 may, in relation to civil actions before the Magistrate's Court, and without limitation -

- (a) make provision in respect of -
  - (i) the institution, presentation and notification of, and representation before the Magistrate's Court in, civil actions, and
  - (ii) the means by which particular facts may be proved, the method of pleading and the method by which evidence may be given in or in connection with civil actions,
- (b) without prejudice to section 33(1)(c), prescribe maximum scales of costs in relation to civil actions; and, where a scale is so prescribed in relation to any proceeding or matter, an award of the Magistrate's Court in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed, and

- (c) make provision as to the setting aside of judgments given in default of appearance.

## PART IX

### GENERAL AND MISCELLANEOUS PROVISIONS

#### **Power of Magistrate's Court to sit in camera.**

**36.** (1) For the avoidance of doubt, the Magistrate's Court may, in any criminal proceedings or civil actions -

- (a) sit otherwise than in open court, or
- (b) exclude any person from a hearing or any part thereof,

if it considers it necessary or desirable to do so in the interests of justice.

(2) The power conferred by subsection (1) is without prejudice to any enactment empowering the Magistrate's Court to sit otherwise than in open court or to exclude any person.

#### **Law Officers in Magistrate's Court.**

**37.** (1) For the avoidance of doubt, the Magistrate's Court may sit, and is properly constituted, whether or not Her Majesty's Procureur is present.

(2) In any civil action before the Magistrate's Court Her Majesty's Procureur may advise the court on any question of law or mixed law and fact arising in the action.

(3) Nothing in this Law derogates from the right of Her Majesty's Procureur -

- (a) to require the holding of or to appear at inquests into the cause of death, or
- (b) to prosecute any criminal matter before the Magistrate's Court.

**Time and place of sitting of Magistrate's Court.**

38. (1) For the purposes of this Law the Magistrate's Court shall sit at such times and in such places as the Royal Court may direct.

(2) For the avoidance of doubt those times may include any Christmas Day, Good Friday, Saturday, Sunday or public holiday.

**Administration of oath; and affidavits.**

39. (1) The Judge of the Magistrate's Court may administer the oath or affirmation to any person before the Magistrate's Court in any criminal proceedings or civil actions.

(2) Affidavits may be sworn before the Judge of the Magistrate's Court.

**Magistrate's Court may sit without Greffier, Sheriff or Sergeant.**

40. For the avoidance of doubt, the Magistrate's Court may sit, and is properly constituted, whether or not Her Majesty's Greffier, Sheriff or Sergeant or any of their respective Deputies is present.

**Position of Juvenile Court.**

41. (1) For the avoidance of doubt, and without prejudice to section 47 (savings and transitional provisions) -



- (a) the Magistrate's Court, when sitting as the Juvenile Court pursuant to the Juvenile Court Law, shall be constituted by -
  - (i) a Judge of the Magistrate's Court, and
  - (ii) such other persons (if any) as may be specified in the Juvenile Court Law or any other enactment from time to time in force, and
- (b) the provisions of this Law are subject to the provisions of the Juvenile Court Law and any other enactment from time to time in force relating to the functions of the Magistrate's Court when sitting as the Juvenile Court.

(2) In this section the "Juvenile Court Law" means the Juvenile Court (Guernsey) Law, 1989<sup>i</sup>.

**Confirmation of right of representation for States and Children's Convenor.**

**42.** (1) For the avoidance of doubt, and without prejudice to the provisions of any rules under section 35 -

- (a) an officer of a States department authorised in that behalf by the Chief Officer of the department may

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<sup>i</sup> Ordres en Conseil Vol. XXXI, p. 326; prospectively repealed and replaced by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

represent the States in proceedings in the Magistrate's Court, and

- (b) a person appointed to the Office of the Children's Convenor established by section 30 of the Children (Guernsey and Alderney) Law, 2008<sup>j</sup> or Deputy Children's Convenor may represent the Office in proceedings in the Magistrate's Court.

(2) A States "department" includes a States committee and the Policy Council.

**Power to enact Ordinances.**

**43.** (1) The States may by Ordinance amend this Law, but not any provision of Part V (criminal matters arising in Alderney and Sark).

(2) The power conferred by subsection (1) is without prejudice to any other power conferred by this Law to enact Ordinances (and vice versa).

**General provisions as to subordinate legislation.**

**44.** (1) An Ordinance, Order or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance, Order or rule (as the case may be) hereunder,
- (b) may contain such consequential, incidental,

supplementary, transitional and savings provisions as may appear to be necessary or expedient, and

- (c) may, in the case of an Ordinance, and for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any enactment or rule of customary or common law.

(2) Any power conferred by this Law to make an Ordinance, Order or rule 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,

<sup>j</sup> The Children (Guernsey and Alderney) Law, 2008 was approved by the States on the 30<sup>th</sup> January, 2008.

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

**Interpretation.**

**45.** (1) In this Law -

"**civil action**" includes any description of civil proceedings and any stage thereof,

"**costs**" includes fees, expenses and allowances,

"**court officer**" in Part VII means Her Majesty's Greffier, Sheriff or Sergeant or any of their respective Deputies,

"**enactment**" includes any subordinate legislation,

"**functions**" includes powers, rights, duties, obligations, privileges and prerogatives,

"**Her Majesty's Procureur**" includes Her Majesty's Comptroller,

"**judicial officer**" in Part VII means -

- (a) a Judge or Deputy Judge of the Magistrate's Court,
- (b) any other person presiding over or chairing the Magistrate's Court, or
- (c) a Member of the Juvenile Court,

**"Magistrate's Court"** means the Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law, 1954<sup>k</sup>,

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

**"proceedings"** means any description of proceedings before the Magistrate's Court, whether in open court or in chambers, and includes ex parte proceedings and other matters,

**"Seneschal"** means the Seneschal of Sark,

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect,

**"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<sup>l</sup>.

(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.

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<sup>k</sup> Ordres en Conseil Vol. XVI, p. 103.

<sup>l</sup> Ordres en Conseil Vol. XXXI, p. 278.

**Repeals.**

**46.** The following enactments are repealed -

- (a) Articles 6, 7 and 8 of the Loi par rapport aux  
procédures en Crime, 1877<sup>m</sup>,
- (b) the Magistrate's Court (Guernsey) Law, 1954<sup>n</sup>,
- (c) the Magistrate's Court (Amendment) (Guernsey) Law,  
1957<sup>o</sup>,
- (d) section 4(1) of the Government of Alderney  
(Miscellaneous and Consequential Provisions)  
(Guernsey and Alderney) Law, 1987<sup>p</sup>,
- (e) section 5 of the Uniform Scale of Fines (Bailiwick of  
Guernsey) Law, 1989<sup>q</sup>,
- (f) section 7 of the Administration of Justice (Bailiwick of  
Guernsey) Law, 1991<sup>r</sup>,
- (g) section 1 of the Magistrate's Court and Miscellaneous

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<sup>m</sup> Ordres en Conseil Vol. II, p. 169.  
<sup>n</sup> Ordres en Conseil Vol. XVI, p. 103.  
<sup>o</sup> Ordres en Conseil Vol. XVII, p. 218.  
<sup>p</sup> Ordres en Conseil Vol. XXX, p. 224.  
<sup>q</sup> Ordres en Conseil Vol. XXXI, p. 278.  
<sup>r</sup> Ordres en Conseil No. I of 1991.

Reforms (Guernsey) Law, 1996<sup>s</sup>, and

- (h) section 18 of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002<sup>t</sup>.

**Savings and transitional provisions.**

**47.** (1) Any person who, immediately before the date of commencement of this Law -

- (a) held the office of Assistant Magistrate by virtue of section 7 of the Magistrate's Court (Guernsey) Law, 1954<sup>u</sup> shall, on and from that date, be deemed to have been appointed, under and subject to the provisions of this Law, to the office of Judge of the Magistrate's Court, or
- (b) held the office of Acting Magistrate shall, on and from that date, be deemed to have been appointed, under and subject to the provisions of this Law, to the office of Deputy Judge of the Magistrate's Court.

(2) Any subordinate legislation made or other thing done under an enactment repealed by this Law which could have been made or done under this Law has effect, after the date of commencement of this Law, as if made or done

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<sup>s</sup> Ordres en Conseil No. IX of 1996.

<sup>t</sup> Ordres en Conseil No. I of 2003.

<sup>u</sup> Ordres en Conseil Vol. XVI, p. 103; section 7 was substituted by No. IX of 1996.

under this Law.

- (3) Any reference in any enactment (however expressed) to -
  - (a) the Magistrate,
  - (b) an Assistant Magistrate or Acting Magistrate, or
  - (c) the Petty Debts Court,

shall be construed after the date of commencement of this Law as a reference to, respectively -

- (i) a Judge of the Magistrate's Court,
- (ii) a Deputy Judge of the Magistrate's Court, or
- (iii) the Magistrate's Court,

in each case within the meaning of this Law.

(4) Any reference in any enactment or subordinate legislation (however expressed) to an enactment repealed and re-enacted (with or without modification) by this Law shall, unless the contrary intention appears, be construed as a reference to the provision re-enacted.

(5) The repeal by this Law of the Magistrate's Court (Guernsey) Law, 1954 does not affect the continued operation of section 27 of that Law (savings for Ordinances made under enactments repealed by the 1954 Law).



**Criminal proceedings pending at commencement of this Law.**

48. A person who, before the date of commencement of this Law, is charged with a criminal offence shall be proceeded against, tried and punished in respect of that offence as if this Law had not been enacted.

**Citation.**

49. This Law may be cited as the Magistrate's Court (Guernsey) Law, 2008.

**Commencement.**

50. 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.