

# BILLET D'ÉTAT No. XV, 2011

28<sup>th</sup> SEPTEMBER 2011

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# PROJET DE LOI

ENTITLED

## **The Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 2011**

**THE STATES**, in pursuance of their Resolution of the 31<sup>st</sup> May, 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 Bailiwick of Guernsey.

### **Amendment of the Law of 1972.**

1. The Third Schedule to the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>b</sup> is amended as follows.

2. In each of paragraphs 1 and 2, for the expression "twice level 5", substitute the expression "three times level 5".

3. In paragraph 3, for the words "ten years", substitute the expression "14 years".

### **Interpretation.**

4. (1) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the

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<sup>a</sup> Article XX of Billet d'État No. XIV of 2007.

<sup>b</sup> Ordres en Conseil Vol. XXIII, p. 573; Vol. XXIV, p. 87; Vol. XXXI, p. 277; Vol. XXXIII, p. 217; Order in Council No. X of 2004; Ordinance Nos. XXXV and XLVIII of 2007; No. LV of 2008 and No. XLIV of 2009.

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

interpretation of this Law throughout the Bailiwick.

(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.

**Transitional and savings provisions.**

**5.** (1) This Law has effect only in relation to an offence committed on or after the date on which it comes into force.

(2) The maximum penalty to which an offender is liable for an offence committed before the date on which this Law comes into force must, in any proceedings commenced on or after that date, be determined as if this Law were not in force.

**Citation.**

**6.** This Law may be cited as the Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 2011.

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011**

### ARRANGEMENT OF SECTIONS

#### PART 1

#### MINIMUM TERMS FOR MANDATORY SENTENCES OF LIFE IMPRISONMENT

1. Starting points.
2. Starting point for exceptionally serious cases.
3. Starting point for particularly serious cases.
4. Starting point for sufficiently serious cases.
5. Starting point for other cases where offence committed while offender was an adult.
6. Starting point for other cases where offence committed while offender was a child.
7. Aggravating and mitigating factors.
8. Court to set minimum term of imprisonment.
9. Determination of minimum term of imprisonment.
10. Court must give reasons for minimum term.
11. Power to amend Part by Ordinance.
12. Meaning of "murder which is racially or religiously aggravated".
13. Meaning of "murder which is aggravated by sexual orientation or disability".

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#### MINIMUM TERMS FOR DISCRETIONARY SENTENCES OF LIFE IMPRISONMENT

14. Court to set minimum term of imprisonment.
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17. Effect of release in another jurisdiction on sentence in the Bailiwick of Guernsey.
18. Transitional provisions – application to offences.
19. Provisions relating to Ordinances and regulations.
20. Amendments.
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Schedule - Amendments.

# PROJET DE LOI

ENTITLED

## **The Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011**

**THE STATES**, in pursuance of their Resolution of the ?<sup>rd</sup> day of ?, 2011<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 Bailiwick of Guernsey.

### PART 1

#### MINIMUM TERMS FOR MANDATORY SENTENCES OF LIFE IMPRISONMENT

##### Starting points.

1. Where a court sentences an offender to a mandatory sentence of life imprisonment for an offence, it shall set, in accordance with sections 2, 3, 4, 5 and 6, as the case may be, the appropriate starting point in relation to the offender for the purposes of section 8.

##### Starting point for exceptionally serious cases.

2. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the whole of the offender's life if –

- (a) the offender was aged 21 or over when he committed the offence, and

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<sup>a</sup> Article \*\* of Billet d'État No. \*\* of 2011.

- (b) the court considers that –
  - (i) the offence, or
  - (ii) the combination of the offence and any other offence committed by him which is associated with that offence,

is exceptionally serious.

(2) Without limiting the generality of subsection (1), cases that would normally be considered as exceptionally serious include the following –

- (a) murder of 2 or more persons, where each murder involves any of the following –
  - (i) a substantial degree of premeditation or planning,
  - (ii) the abduction of the victim, or
  - (iii) sexual or sadistic conduct,
- (b) murder of a child, if the murder involves the abduction of the child or sadistic or sexual motivation,
- (c) murder for the purposes of advancing a political, religious, racial or ideological cause, and

- (d) murder by an offender previously convicted of murder.

**Starting point for particularly serious cases.**

3. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 30 years if –

- (a) the case does not fall within section 2(1),
- (b) the offender was aged 18 or over when he committed the offence, and
- (c) the court considers that –
  - (i) the offence, or
  - (ii) the combination of the offence and any other offence committed by him which is associated with that offence,

is particularly serious.

(2) Without limiting the generality of subsection (1), cases that would normally be considered as particularly serious include the following –

- (a) murder of a police officer, or prison officer, in the course of the officer's duty,
- (b) murder involving the use of a firearm or explosives,



- (c) murder for gain (such as murder in the course of a robbery or burglary, or for payment or in the expectation of gain as a result of death),
- (d) murder done with the intention of obstructing or interfering with the course of justice,
- (e) murder involving sexual or sadistic conduct,
- (f) murder of 2 or more persons,
- (g) murder which is racially or religiously aggravated,
- (h) murder which is aggravated by sexual orientation or disability, and
- (i) murder falling within section 2 committed by an offender who was aged under 21 when he committed the offence.

**Starting point for sufficiently serious cases.**

4. (1) The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 25 years if –

- (a) the case does not fall within section 2(1) or 3(1),
- (b) the offender was aged 18 or over when the offender committed the offence, and

(c) the offence falls within subsection (2).

(2) The offence falls within this subsection if the offender took a knife or other weapon to the scene intending to -

(a) commit any offence, or

(b) have it available to use as a weapon,

and he used that knife or other weapon in committing the murder.

**Starting point for other cases where offence committed while offender was an adult.**

5. The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 15 years if -

(a) the case does not fall within section 2(1), 3(1) or 4(1), and

(b) the offender was aged 18 or over when he committed the offence.

**Starting point for other cases where offence committed while offender was a child.**

6. The appropriate starting point in relation to an offender who is sentenced to a mandatory sentence of life imprisonment for an offence shall be the period of 12 years if the offender was aged under 18 when he committed the offence to which the starting point relates.

**Aggravating and mitigating factors.**

7. (1) After having set a starting point in relation to an offender, the court shall take into account any aggravating or mitigating factors, to the extent that it has not already allowed for those factors in fixing the starting point.

(2) Aggravating factors that may be relevant to the offence of murder include the following –

- (a) the factors mentioned in sections 2(2), 3(2) and 4(2),
- (b) a significant degree of planning or premeditation,
- (c) that the victim was particularly vulnerable because of age or disability,
- (d) mental or physical suffering inflicted on the victim before death,
- (e) the abuse of a position of trust,
- (f) the use of duress or threats against another person to facilitate the commission of the offence,
- (g) that the victim was providing a public service or performing a public duty, and
- (h) concealment, destruction or dismemberment of the body.

(3) Mitigating factors that may be relevant to the offence of murder include the following –

- (a) an intention to cause serious bodily harm rather than to kill,
- (b) lack of premeditation,
- (c) that the offender suffered from any mental disorder or abnormality of mind which, although not within section 2 of the Homicide and Suicide (Bailiwick of Guernsey) Law, 2006<sup>b</sup>, lowered the degree of culpability of the offender,
- (d) that the offender was provoked (for example by prolonged stress) in a way not amounting to the defence of provocation,
- (e) that the offender acted to any extent in self-defence or in fear of violence,
- (f) a belief by the offender that the murder was an act of mercy, and
- (g) the age of the offender.

**Court to set minimum term of imprisonment.**

**8.** (1) The court shall, after having –

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<sup>b</sup> Order in Council No. XX of 2009.

- (a) set a starting point under section 1, and
- (b) considered any aggravating or mitigating factors under section 7,

set in relation to the offender a minimum term of imprisonment in respect of the offence.

- (2) If the court sets a minimum term of imprisonment –
  - (a) for the whole of the offender’s life, early release provisions shall not apply in relation to him in respect of that offence at any time during the remainder of his life, or
  - (b) that is less than the whole of the offender’s life, early release provisions shall, after the end of the term specified, apply in relation to the offender in respect of that offence.

**Duration of minimum term of imprisonment.**

9. (1) Subject to subsection (2), the court may set a minimum term of imprisonment of any length, including a term that is the whole of the offender’s life, irrespective of the starting point fixed by the court.

(2) The court may only set a minimum term of imprisonment that is the whole of the offender’s life if –

- (a) the offender was 21 or over when he committed the offence, and
- (b) the court is satisfied that early release provisions should not apply to the offender at any time because of the seriousness of –
  - (i) the offence, or
  - (ii) the combination of the offence and any other offence committed by him which is associated with the offence.

(3) In determining the length of a minimum term of imprisonment in relation to an offender, the court may take into account any period that, before the offender was sentenced for the offence to which the minimum term of imprisonment relates, he spent on remand in relation to the offence.

**Court must give reasons for minimum term.**

**10.** After setting a minimum term under section 8(1) the court shall state in open court, in ordinary language, its reasons for setting that minimum term.

**Power to amend Part by Ordinance.**

**11.** The States may by Ordinance amend –

- (a) any age, or
- (b) any starting point,

contained in Part 1.

**Meaning of "murder which is racially or religiously aggravated".**

**12.** (1) For the purposes of section 3, a murder is racially or religiously aggravated if –

- (a) at the time of, or immediately before or after, committing the murder the offender demonstrates towards the victim of the offence hostility based on the victim's membership of (or presumed membership of), or association with, a racial or religious group, or
- (b) the offence is motivated wholly or partly by hostility –
  - (i) towards members of a racial or religious group based on their membership of that group, or
  - (ii) towards persons who associate with a racial or religious group.

(2) For the purposes of subsection (1)(a) or (b), it is immaterial whether or not the offender's hostility is also based, to any extent, on –

- (a) the fact or presumption that any person or group of persons belongs to any racial or religious group, or
- (b) any other factor not mentioned in that subsection.

(3) In this section –

**"presumed"** means presumed by the offender,

**"racial group"** means a group of persons that may be defined by reference to colour, race, nationality (including citizenship) or ethnic or national origins, and

**"religious group"** means a group of persons defined by reference to religious belief or lack of religious belief.

**Meaning of "murder which is aggravated by sexual orientation or disability".**

**13.** (1) For the purposes of section 3, a murder is aggravated by sexual orientation or disability if –

- (a) at the time of, or immediately before or after, committing the murder, the offender demonstrates towards the victim of the offence hostility based on –
  - (i) the sexual orientation (or presumed sexual orientation) of the victim, or
  - (ii) a disability (or presumed disability) of the victim, or
- (b) the offence is motivated wholly or partly –
  - (i) by hostility towards persons who are of a particular sexual orientation, or



- (ii) by hostility towards persons who have a disability or a particular disability.

(2) In this section –

**"disability"** means any physical or mental impairment,

**"presumed"** means presumed by the offender, and

**"sexual orientation"** of a person includes whether the person engages in prostitution.

## PART 2

### MINIMUM TERMS FOR DISCRETIONARY SENTENCES OF LIFE IMPRISONMENT

#### Court to order minimum term of imprisonment.

**14.** (1) Where a court sentences an offender to a discretionary sentence of life imprisonment for an offence, it shall set in relation to the offender a minimum term of imprisonment in respect of that offence.

(2) If the court sets a minimum term of imprisonment –

(a) for the whole of the offender's life, early release provisions shall not apply in relation to him in respect of that offence at any time during the remainder of his life, or

(b) that is less than the whole of the offender's life, early release provisions shall, after the end of the term

specified, apply in relation to the offender in respect of that offence.

**Duration of minimum term of imprisonment.**

**15.** (1) Subject to subsection (2), the court may set a minimum term of imprisonment of any length, including a term that is the whole of the offender's life.

(2) The court may only set a minimum term of imprisonment that is the whole of the offender's life if –

(a) the offender was 21 or over when he committed the offence, and

(b) the court is satisfied that early release provisions should not apply to the offender at any time because of –

(i) the seriousness of the offence, or

(ii) the seriousness of the combination of the offence and any other offence committed by him which is associated with the offence.

(3) In determining the length of a minimum term of imprisonment in relation to an offender, the court may take into account –

(a) the seriousness of the offence,

- (b) the seriousness of the combination of the offence and any other offence committed by him which is associated with the offence, and
- (c) any period that, before the offender was sentenced for the offence to which the minimum term of imprisonment relates, he spent on remand in relation to the offence.

**Court must give reasons for minimum term.**

16. After setting a minimum term under section 14(1) the court shall state in open court, in ordinary language, its reasons for setting that minimum term.

PART 3

MISCELLANEOUS PROVISIONS

**Effect of release in another jurisdiction on sentence in the Bailiwick of Guernsey.**

17. If a person who is sentenced by a court to a sentence of life imprisonment –

- (a) serves part of that sentence in a prison in any of the other British Islands, and
- (b) returns to any part of the Bailiwick after being released from custody,

the person is not to be taken to be unlawfully at large in any part of the Bailiwick only because he has not served all of the sentence ordered by the court.

**Transitional provisions – application to offences.**

**18.** (1) Nothing is to be taken to prevent or limit the application of this Law to a person who commits an offence before this Law comes into force.

(2) The Home Department may by regulations make such transitional provisions as it deems appropriate and which, without prejudice to the generality of the foregoing, may –

(a) permit a recommendation made by a court which sentenced an offender to a sentence of life imprisonment –

(i) on or after 18<sup>th</sup> December 2003, but

(ii) before the commencement of this Law,

to be deemed to be a minimum term of imprisonment as if it was made under section 8, and

(b) where the sentencing court was the Royal Court, establish a right of appeal to the Court of Appeal against such a deemed minimum term of imprisonment.

**Provisions relating to Ordinances and regulations.**

**19.** (1) An Ordinance or regulations made under this Law –

(a) may be amended or repealed by a subsequent Ordinance or regulations hereunder, and

- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(2) Any power conferred by this Law to make an Ordinance or regulations 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.

(3) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; 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.

**Amendments.**

**20.** The Schedule to this Law shall have effect.

**Interpretation.**

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

**"the Bailiwick"** means the Bailiwick of Guernsey,

**"child"** means a person who is aged under 18,

**"enactment"** means any Act of the Westminster Parliament, Law, Ordinance or subordinate legislation,

**"minimum term of imprisonment"** has the meaning given in sections 8 and 14,

**"murder which is aggravated by sexual orientation or disability"** has the meaning given in section 13,

**"murder which is racially or religiously aggravated"** has the meaning given in section 12,

**"prescribed"** means prescribed by regulations made by the Home Department,

**"starting point"**, in relation to an offender, means a period calculated under section 2, 3, 4, 5 or 6 in relation to the offender,

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

**"youth detention"** means a custodial sentence of youth detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990<sup>c</sup>.

(2) In this Law –

- (a) a mandatory sentence of life imprisonment means a sentence of life imprisonment which a court must by law impose if it finds an offender guilty of the offence of murder,
- (b) a discretionary sentence of life imprisonment means a sentence of life imprisonment which the court has imposed in respect of an offence, for which the maximum penalty is life imprisonment,
- (c) a reference to a sentence of life imprisonment includes –

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<sup>c</sup> Ordres en Conseil Vol. XXXII, p. 106; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003). See also the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004 (No. IX of 2005).

- (i) a sentence of youth detention for life pursuant to section 1(1A) of the Homicide (Guernsey) Law, 1965, and
  - (ii) detention during Her Majesty's pleasure pursuant to section 1(2) of that Law,
- (d) "**early release provisions**" means the prescribed provisions of any enactment of Guernsey, Alderney or Sark, or of any of the other British Islands, that are provisions in accordance with which an offender who is in prison, custody or detention under a sentence of life imprisonment may be released from the imprisonment, custody or detention before the completion of the sentence, and
- (e) unless the context otherwise requires, references to the "**Royal Court**" shall include references to the Court of Appeal where that court sentences an offender to a sentence of life imprisonment for an offence.

(3) The provisions of the Interpretation (Guernsey) Law, 1948<sup>d</sup> apply to the interpretation of this Law throughout the Bailiwick.

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

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



**Citation.**

**22.** This Law may be cited as the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011.

**Commencement.**

**23.** (1) This Law shall come into force on such date as the States may by Ordinance appoint.

(2) An Ordinance under subsection (1) may appoint different dates for different provisions of this Law and for different purposes.

## SCHEDULE

Section 20

## AMENDMENTS

The following Laws are amended in the manner indicated -

**Homicide (Guernsey) Law, 1965.**

1. In section 1(1), for "the next succeeding subsection" substitute "subsections (1A) and (2)".
2. Immediately after subsection (1), insert the following subsection –

"(1A) Where a person aged under 21 who is found guilty of murder appears to the Royal Court to have been aged eighteen years or over at the time that the offence was committed, such person shall not be sentenced to imprisonment for life under subsection (1) of this section but in lieu thereof the Royal Court shall sentence him to youth custody for life."

**Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.**

3. After section 1(9), insert the following subsection –

"(10) Subject to any provision relating to custodial sentences for life, a sentence of youth detention for life made under section 1(1A) of the Homicide (Guernsey) Law, 1965 is a sentence of youth detention for the purposes of this Law."

**Court of Appeal (Guernsey) Law, 1961<sup>e</sup>.**

4. For section 24, substitute the following section -

**"Right of appeal.**

**24.** (1) A person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court on or after such day as shall be appointed in that behalf by Ordinance of the States may appeal under this Part of this Law to the Court of Appeal -

- (a) against his conviction, on any ground of appeal which involves a question of law alone;
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who presided at his trial that it is a fit case for appeal against his conviction, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal; and
- (c) with the leave of the Court of Appeal -
  - (i) against the sentence passed on his conviction, unless the

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<sup>e</sup> Ordres en Conseil Vol. XVIII, p. 315, as amended.

sentence is one fixed by law,  
and

- (ii) against the minimum term of imprisonment, where he has been sentenced to life imprisonment.

(2) For the purposes of subsection (1)(c)(ii), "life imprisonment" shall include any sentence of youth detention for life and detention at Her Majesty's pleasure. "

5. Immediately after section 25(3), insert the following subsection -

"(4) On an appeal against a minimum term of imprisonment, the Court of Appeal shall if it thinks that a different minimum term should have been set, quash the minimum term set at the trial, and set such other minimum term warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal. "

## **The Income Tax (Guernsey) (Approval of Agreements with Indonesia and Mexico) Ordinance, 2011**

**THE STATES**, in exercise of the powers conferred on them by section 75C of the Income Tax (Guernsey) Law, 1975, as amended<sup>a</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Approval of Agreements.**

1. The agreements providing for the obtaining and exchanging of information in relation to tax, made between the States of Guernsey and the Governments of –

- (a) the Republic of Indonesia, signed on the 27<sup>th</sup> April 2011, and
- (b) the United Mexican States, signed on the 27<sup>th</sup> June 2011,

are, pursuant to section 75C of the Income Tax (Guernsey) Law, 1975, as amended, hereby specified for the purposes of that Law.

### **Citation.**

2. This Ordinance may be cited as the Income Tax (Guernsey) (Approval of Agreements with Indonesia and Mexico) Ordinance, 2011.

### **Commencement.**

3. This Ordinance shall come into force on the 28<sup>th</sup> September 2011.

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<sup>a</sup> Ordres en Conseil Vol. XXV, p. 124; section 75C was inserted by section 5 of the Income Tax (Guernsey) (Amendment) Law, 2005 (Order in Council No. XVII of 2005).

## **The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (Amendment) Ordinance, 2011**

**THE STATES**, in pursuance of their Resolution of the 31<sup>st</sup> May, 2007<sup>a</sup> and in exercise of the powers conferred on them by section 35 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974<sup>b</sup>, hereby order:-

### **Amendment of the 1974 Law.**

1. The Third Schedule to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 is amended as follows.

2. In each of the entries relating to sections 3(2), 3(3), 4(3), 7, 11(6) and 12(4) respectively, in the fifth column in relation to a prosecution on indictment (where a class B drug is involved), for the word "life", substitute the expression "21 years".

### **Interpretation.**

3. (1) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

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<sup>a</sup> Article XX of Billet d'État No. XIV of 2007.

<sup>b</sup> Ordres en Conseil Vol. XXIV, p. 273; as amended by Vol. XXVIII, p. 307; Vol. XXXI, pp. 47 and 278; Vol. XXXIII, p. 217; Vol. XXXIV, p. 172; Vol. XXXVI, p. 396; Vol. XL, pp. 34 and 131; Order in Council No. IV of 2006; No. XIII of 2006; Recueil d'Ordonnances Tome XX, p. 271; Tome XXII, p. 483; Tome XXIV, p. 477; Tome XXV, pp. 38 and 325; Tome XXIX, p. 406; G.S.I. No. 19 of 1997; G.S.I. No. 5 of 2004; G.S.I. No. 42 of 2006; G.S.I. No. 20 of 2008; G.S.I. Nos. 22, 33, 82 and 98 of 2010; see also Recueil d'Ordonnances Tome XXVII, p. 247.

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

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

**Transitional and savings provisions.**

4. (1) This Ordinance has effect in relation to –
- (a) any offence committed on or after the commencement date, and
  - (b) any offence committed before the commencement date, if proceedings for that offence are commenced on or after that date.

(2) The maximum penalty to which an offender is liable for an offence committed before the commencement date must, in any proceedings commenced before the commencement date, be determined as if this Ordinance were not in force.

(3) In this section, "**the commencement date**" means the date specified in section 7 for this Ordinance to come into force.

**Extent.**

5. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation.**

6. This Ordinance may be cited as the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (Amendment) Ordinance, 2011.

**Commencement.**

7. This Ordinance shall come into force on the 1<sup>st</sup> October, 2011.



## **The Land Planning and Development (Planning Covenants) Ordinance, 2011**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> May 2010<sup>a</sup>, and in exercise of the powers conferred on them by sections 23(6) and 89 of the Land Planning and Development (Guernsey) Law, 2005<sup>b</sup>, and of all other powers enabling them in that behalf, hereby order:-

### **Purposes for which a planning covenant may be entered into.**

1. (1) The owner of any land may enter into a planning covenant not only for the purposes of the Law but also for the purposes specified in subsection (2).

(2) The purposes referred to in subsection (1) are the purposes of ensuring the provision of affordable or social housing.

### **Interpretation.**

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

**"affordable housing"** means -

(a) social housing provided for persons on low incomes,  
and

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<sup>a</sup> Article VIII of Billet d'État No. XI of 2010.

<sup>b</sup> Order in Council No. XVI of 2005 as amended by Order in Council No. XIII of 2010, Recueil d'Ordonnances Vol. XXXII pp. 224, 257, 369, 419 and 439 and the Land Planning and Development (Fees and Miscellaneous Amendments) Ordinance, 2011.

(b) intermediate housing,

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"Guernsey Housing Association"** means the Guernsey Housing Association LBG (limited by guarantee company),

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

**"intermediate housing"** means dwellings owned or controlled by the Housing Department, the Guernsey Housing Association or any other person or legal arrangement which are offered -

(a) to persons whose housing needs, as identified by the Housing Department, are not met by the private sale or rental market for dwellings,

(b) on a basis which may include provision for part ownership, part share of equity or low cost ownership or any similar scheme (however named), and

(c) to persons who meet the criteria set, from time to time, by the Housing Department, the Guernsey Housing Association or other person or legal arrangement, as the case may be, for the occupation of such dwellings,

**"the Law"** means the Land Planning and Development (Guernsey)

Law, 2005,

"**legal arrangement**" includes a trust as defined in the Trusts (Guernsey) Law, 2007<sup>c</sup> or any other vehicle whatsoever which has a similar legal effect,

"**planning covenant**" has the meaning given by section 23(1) of the Law,

"**social housing**" means dwellings owned or controlled by the Housing Department, the Guernsey Housing Association or any other person or legal arrangement which are offered to persons on low incomes or with other needs identified by the Housing Department -

- (a) whose housing needs, as identified by the Housing Department, are not met by the private sale or rental market for dwellings, and
- (b) who meet the criteria set, from time to time, by the Housing Department, the Guernsey Housing Association or other person or legal arrangement, as the case may be, for the occupation of such dwellings,

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

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<sup>c</sup> Order in Council No. III of 2008.

other terms have the same meaning as in the Law.

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

**Citation and Commencement.**

3. This Ordinance may be cited as the Land Planning and Development (Planning Covenants) Ordinance, 2011 and shall come into force on the 28<sup>th</sup> day of September, 2011.

## **The Dog Tax (Amendment) (Guernsey) Ordinance, 2011**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> June, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 1 of the Dog Licences (Guernsey) Law, 1969<sup>b</sup>, and of the powers conferred on them by section 1 of that Law, as modified by the Alderney (Application of Legislation) (Dog Licences) Ordinance, 1969<sup>c</sup>, hereby order:-

### **Amendment of the 1990 Ordinance.**

1. The Dog Tax (Guernsey) Ordinance, 1990<sup>d</sup> ("**the 1990 Ordinance**") is amended as follows -

- (a) in section 1(1), for "£5" substitute "£10", and
- (b) in section 1(2), for "£2.50" substitute "£5".

### **Amendment to have effect in Alderney.**

2. The amendments to the 1990 Ordinance made by section 1 shall have effect in the Island of Alderney as they have effect in the Island of Guernsey.

### **Citation.**

3. This Ordinance may be cited as the Dog Tax (Amendment) (Guernsey) Ordinance, 2011.

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<sup>a</sup> Article III of Billet d'État No. XV of 2010.

<sup>b</sup> Ordres en Conseil Vol. XXII, p. 296.

<sup>c</sup> Recueil d'Ordonnances Tome XVI, p. 202.

<sup>d</sup> Recueil d'Ordonnances Tome XXV, p. 155.

**Commencement.**

4. This Ordinance shall come into force on the 1<sup>st</sup> January, 2012.

## **The Parochial Taxation (Reserve Funds) (Amendment) Ordinance, 2011**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> June, 2010<sup>a</sup>, and in exercise of the powers conferred on them by section 1(3) of the Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997<sup>b</sup>, hereby order:-

### **Amendment of the 1997 Law.**

1. In section 1(3) of the Parochial Taxation (Reserve Funds) (Guernsey) Law, 1997 for “£100,000” substitute “£250,000”.

### **Citation.**

2. This Ordinance may be cited as the Parochial Taxation (Reserve Funds) (Amendment) Ordinance, 2011.

### **Commencement.**

3. This Ordinance shall come into force on the 28<sup>th</sup> September, 2011.

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<sup>a</sup> Article III of Billet d'État No. XV of 2010.

<sup>b</sup> Ordres en Conseil Vol. XXXVII, p.168; as amended by Order in Council No. IX of 2002 and Ordinance No. XVI of 2004.

*ORDINANCE LAID BEFORE THE STATES*

**The Police Powers and Criminal Evidence (Bailiwick of  
Guernsey) (Amendment) Ordinance, 2011**

**THE STATES LEGISLATION SELECT COMMITTEE**, in pursuance of the Resolutions of the States of the 1<sup>st</sup> day of August, 2002 and the 1<sup>st</sup> day of August, 2003<sup>a</sup>, and in exercise of the powers conferred on the States by section 93(1) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>b</sup>, and on the Committee by Article 66(3) of the Reform (Guernsey) Law, 1948<sup>c</sup>, hereby orders:-

**Amendment of the PPACE Law.**

1. The PPACE Law, is amended as follows -

(a) in the arrangement of sections -

- (i) for the section heading of section 56, substitute "Re-arrest where new evidence comes to light.", and
- (ii) immediately after the section heading of section 56, insert "56A. Calculation of periods

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<sup>a</sup> Article VIII of Billet d'État No. XIX of 2002 and Article II of Billet d'État No. XIX of 2003.

<sup>b</sup> No. XXIII of 2003; as amended by the Fraud (Bailiwick of Guernsey) Law, 2009 (No. XVI of 2009); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (Tome XXIX, p. 406); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009).

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



of detention.",

- (b) immediately after section 48(7), insert the following subsection -

"(8) For the avoidance of doubt, the "relevant time" in relation to a person who has been released on bail and who -

(a) subsequently surrenders to custody, shall be the time of his surrender to custody,

(b) is arrested under section 57, shall be the time he first arrives at a designated place of detention after his arrest under that section,

save that any period for which the person has already been detained shall be included in the calculation of any subsequent period of detention thereafter.",

- (c) in section 37(6), after "shall be deemed to be that offence", insert "; but this subsection is subject to section 56A(1) (which provides for the calculation of certain periods, where a person has been granted bail under this Part, by reference to time when the person is in police detention only)",

- (d) for section 56, substitute the following section -

**"Re-arrest where new evidence comes to light."**

**56.** Nothing shall prevent the re-arrest of a person released on bail subject to a duty to attend at a police station or designated place of detention if new evidence justifying a further arrest has come to light since his release.", and

- (e) immediately after section 56, insert the following section -

**"Calculation of periods of detention."**

**56A. (1)** Where a person who has been granted bail -

- (a) has attended at the police station or designated place of detention in accordance with the grant of bail, or
- (b) has been arrested under section 57,

and is detained at the police station or a designated place of detention, any time during which he was in police detention prior to being granted bail shall be included as part of any period which falls to be calculated under this Part, and, for the avoidance of

doubt, any time during which he was on bail shall not be so included.

(2) Where a person who was released on bail subject to a duty to attend at a police station is re-arrested, this Part shall apply to him as it applies to a person arrested for the first time, but this subsection does not apply to a person who is arrested under section 57 or has attended a police station in accordance with the grant of bail (and who is accordingly deemed by section 37(6) to have been arrested for an offence).".

**Interpretation.**

2. (1) In this Ordinance -

"**enactment**" means any Law, Ordinance or subordinate legislation,

"**the PPACE Law**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, and

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

(2) The Interpretation (Guernsey) Law, 1948<sup>d</sup> applies to the interpretation of this Ordinance throughout the Bailiwick of Guernsey.

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

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

**Extent.**

3. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Citation and commencement.**

4. This Ordinance -
  - (a) may be cited as the Police Powers and Criminal Evidence (Bailiwick of Guernsey) (Amendment) Ordinance, 2011, and
  - (b) shall come into force on the 25<sup>th</sup> July, 2011.