

# PROJET DE LOI

ENTITLED

## **The Parole (Guernsey) Law, 2009 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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\* No. IV of 2011; as amended by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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### ARRANGEMENT OF SECTIONS

1. The Parole Review Committee.
2. Composition of the Committee.
3. Duties and powers of the Committee.
4. Power to make Ordinances.
5. General provisions as to Ordinances, etc.
6. Power of the Committee for Home Affairs to make regulations.
7. General provisions as to regulations.
8. Application of Law.
9. Repeals.
10. Interpretation.
11. Citation.
12. Commencement.

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## **The Parole (Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> April, 2005<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 Island of Guernsey.

### **The Parole Review Committee.**

1. (1) The Committee originally established by the Parole Review Committee (Guernsey) Law, 1989<sup>b</sup>, and known as the Parole Review Committee ("**the Committee**"), shall continue to exist for the purposes of this Law and of any other enactment under which functions are assigned to it; and the Committee shall carry out the functions assigned to it by or under this Law as if it had been constituted under and in accordance with this Law.

(2) The composition of the Committee shall be determined, from time to time, in accordance with section 2.

(3) The States may, by Ordinance, and subject to section 2, make such provision relating to the operation of the Committee, including, without limitation –

- (a) the terms and conditions of the appointment, including any qualifications or other requirements, of the members of the Committee,
- (b) the remuneration and/or allowances payable to members of the Committee,

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<sup>a</sup> Article VII of Billet d'État No. IV of 2005.

<sup>b</sup> Ordres en Conseil, Vol. XXXI, p. 414; Recueil d'Ordonnances, Tome XXIX, p. 448.

- (c) arrangements relating to the proceedings of the Committee, including the number of members required to constitute a quorum,
- (d) the circumstances in which the Chairman, or one or more other members of the Committee, may discharge, under the general direction of the Committee, the functions of the Committee,
- (e) the employment of one or more persons to assist the Committee in the exercise of its functions and the remuneration and conditions of service of such persons,
- (f) the arrangements under which the Committee shall report to the States on the performance of its functions, and
- (g) the limitation of the civil liability of the members and officers of the Committee, and any person exercising any power under this Law, in respect of acts done in the performance of their functions,

as they shall think fit.

**Composition of the Committee.**

- 2.** (1) The Committee shall be composed of –
- (a) a Chairman and a Deputy Chairman, appointed by the States, and
  - (b) nine ordinary members, or such other number of ordinary members as may from time to time be prescribed by regulations made under section 6, appointed from time to time by the Royal Court.

- (2) No person who is –
- (a) a Jurat or Advocate of the Royal Court,
  - (b) a member of, or employed by, the States, or
  - (c) a member of a department or committee of the States,

shall be eligible to be appointed to the Committee.

**Duties and powers of the Committee.**

3. (1) It shall be the duty of the Committee, subject to the provisions of any Ordinance or regulations made under this Law, to be responsible for –

- (a) the early release on licence ("**parole**") of any person ("**prisoner**") serving a sentence of imprisonment or youth detention in Guernsey,
- (b) the conditions to be attached to such licence,
- (c) the variation or revocation of any such conditions,
- (d) the revocation of any such licence and recall to prison of the prisoner, and
- (e) any other matter connected with the release on parole or recall to prison of any such prisoner.

(2) Subject to subsection (3), the Committee shall have the power to release on parole any prisoner who is eligible to be considered for parole pursuant to an Ordinance made under section 4(b), and whose case has been referred to it by [the Committee for Home Affairs].

(3) Where a prisoner is entitled to be released on parole under regulations made under section 6(1)(a), the Committee shall have all the duties and

powers imposed or granted under this Law except the power to refuse to release on parole such prisoner.

(4) Unless the Committee orders otherwise in any particular case, and without prejudice to the powers conferred on the Committee by or under this Law, it shall be a condition of a prisoner's licence that he shall be under the supervision of a Probation Officer, who shall be assigned by the Chief Probation Officer.

(5) The Committee's duties under this Law are in addition, and without prejudice, to its duties under the Criminal Justice (Supervision of Offenders) (Bailiwick of Guernsey) Law, 2004<sup>c</sup>.

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**NOTE**

*In section 3, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Power to make Ordinances.**

4. The States may, by Ordinance –

- (a) prescribe the purposes of parole to which the Committee shall have regard when exercising its functions under this Law,
- (b) prescribe the conditions governing the eligibility of prisoners to be considered for parole, including, without limitation –
  - (i) the nature or seriousness of the offence of which the prisoner was convicted,
  - (ii) the length of the term of imprisonment imposed

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<sup>c</sup> Order in Council No. IX of 2005.

by the sentencing court, and

- (iii) the proportion of his total sentence, or the minimum period, which the prisoner must have served,
- (c) empower the Committee –
  - (i) to defer its decision on an application for parole,
  - (ii) to determine the date on which a prisoner shall be released on parole,
  - (iii) to attach conditions to parole licences, and to vary or revoke any conditions so attached,
  - (iv) to revoke a parole licence and recall the prisoner to prison,
- (d) make provision for the consequences of revocation of a parole licence and of the commission by the prisoner of offences during the period of parole,
- (e) confer any power upon the Committee which, in the opinion of the States, is necessary in order for the Committee effectively to discharge its functions,
- (f) empower [the Committee for Home Affairs] to make or issue orders, rules, regulations, codes or guidance, whether as to matters in respect of which an Ordinance can be made under this Law or otherwise, for the purposes of this Law or any Ordinance made under it.

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**NOTE**

*In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**General provisions as to Ordinances, etc.**

5. (1) An Ordinance under this Law –
- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
  - (b) may contain such consequential, incidental, supplementary, savings and transitional provisions as may appear to be necessary or expedient, including provision amending any enactment.
- (2) 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.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law –

- (a) may, subject to subsection (4), make provision in relation to the creation, trial (summarily or on indictment) and punishment of offences,
- (b) may provide that no liability shall be incurred by any specified person, body or office in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith,
- (c) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (d) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law,
- (e) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by *Projet de Loi*, but may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance.

(4) The power conferred by virtue of subsection (3) shall not include power –

- (a) to provide for offences to be triable only on indictment,

- (b) to authorise the imposition, on summary conviction of any offence, of any term of imprisonment or of a fine exceeding the limits of jurisdiction imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

**Power of [the Committee for Home Affairs] to make regulations.**

6. (1) [The Committee for Home Affairs] may by regulations –
- (a) prescribe the circumstances in which parole shall be granted as of right, whether by reference to certain classes of prisoners, to the length of sentence imposed by the sentencing court, to the nature and/or the seriousness of the offence in relation to which sentence was imposed, or otherwise; and the proportion of his total sentence, or the minimum period, which a prisoner in relation to whom such circumstances apply must have served before he is entitled to be released on parole,
  - (b) prescribe the matters to be taken into account by the Committee in determining applications for parole,
  - (c) prescribe the practice and procedure to be followed in connection with the exercise by the Committee of its functions, including (without limitation) provision for recording, and notifying the prisoner, the court, Her Majesty's Procureur, the Chief Officer of Police and the Chief Probation Officer of, any decisions made under this Law,
  - (d) prescribe the conditions which the Committee must

attach to parole licences unless the Committee considers, in any case, that there is good reason not to attach such conditions,

- (e) without fettering the discretion of the Committee, prescribe other conditions which the Committee might consider attaching to parole licences,
- (f) prescribe the circumstances in which the Committee shall or may reconsider an application in a case where it has refused to grant an application for parole,
- (g) give guidance to the Committee concerning the revocation of parole licences and the recall of prisoners, including provision for reconsideration of each case,
- (h) prescribe the information to be made available to the Committee for the purposes of enabling the Committee to carry out its functions, and authorise and/or require persons holding such information to disclose it to the Committee,
- (i) prescribe the circumstances in which such information may, or may not, be disclosed to the prisoner,
- (j) prescribe the circumstances in which the Committee may, or must, conduct oral hearings for the purpose of determining any matter relating to parole,
- (k) make provision facilitating the legal representation of prisoners in connection with applications for parole,
- (l) without prejudice to the generality of paragraph (g), make provision for the procedure to be followed where a prisoner is required to be recalled to prison as

a matter of urgency, and

- (m) provide for any other matter which, in the opinion of [the Committee for Home Affairs], is desirable or expedient for the purpose of the exercise of the Committee's functions under this Law.

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**NOTE**

*In section 6, the words "T/the Committee for Home Affairs" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**General provisions as to regulations.**

**7. (1) Regulations under this Law –**

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplementary, savings and transitional provisions as may appear to [the Committee for Home Affairs] to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**(2) Any power conferred by this Law to make 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.

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**NOTE**

*In section 7, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Application of Law.**

8. The provisions of this Law shall not apply to a person in respect of whom sentence was passed before the commencement of this Law, and in the case of such a person the provisions of the Parole Review Committee (Guernsey) Law, 1989, as amended<sup>d</sup> shall continue to apply.

**Repeals.**

9. The following enactments are repealed –

- (a) the Parole Review Committee (Guernsey) Law, 1989,

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<sup>d</sup> Ordres en Conseil, Vol. XXXI, p. 414; Order in Council No. IX of 2005. Recueil d'Ordonnances, Tome XXV, p. 230; Tome XXIX, p. 448.

- (b) the Parole Review Committee Ordinance, 1991<sup>e</sup>,
- (c) the Parole Review Committee (Amendment) Ordinance, 1993<sup>f</sup>, and
- (d) the Parole Review Committee (Amendment) Ordinance, 2004<sup>g</sup>.

**Interpretation.**

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

**"Chief Officer of Police"** means the Chief Officer of the salaried police force of the island of Guernsey,

**"Chief Probation Officer"** means any person employed in that capacity by [the Committee for Home Affairs],

**"the Committee"** means the Parole Review Committee constituted in accordance with this Law,

**"[the Committee for Home Affairs]"** means the States of Guernsey [Committee for Home Affairs],

**"enactment"** means a Law, an Ordinance and any subordinate legislation,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller,

**"parole"** means the early release on licence under this Law,

**"prison"** means the prison in the Island of Guernsey,

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<sup>e</sup> Recueil d'Ordonnances, Tome XXV, p. 230.

<sup>f</sup> Recueil d'Ordonnances, Tome XXVI, p. 150.

<sup>g</sup> Recueil d'Ordonnances, Tome XXIX, p. 448.

**"prisoner"** means any person serving a sentence of imprisonment or youth detention in the Island of Guernsey,

**"Probation Officer"** means any person employed in that capacity by [the Committee for Home Affairs], and

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any Law or Ordinance 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.

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#### NOTES

*In section 10, the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee for Home Affairs" and, third, the words "the Committee for Home Affairs" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(3), Schedule 3, paragraph 7, section 2, Schedule 1, paragraph 6(a) and section 5(3), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

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#### Citation.

11. This Law may be cited as the Parole (Guernsey) Law, 2009.

#### Commencement.

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

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**NOTE**

*The Law is not yet in force.*

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LAW NOT YET IN FORCE