

# ORDER IN COUNCIL

**XI**  
**1988**

ratifying a Projet de Loi

ENTITLED

## **The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988**

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(Registered on the Records of the Island of Guernsey  
on the 18th day of October, 1988.)

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1988

# ORDER IN COUNCIL



## IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 18th day of October, 1988, before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume and Leonard Arthur Moss, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 26th July, 1988 approving and ratifying a *Projet de Loi* entitled “The Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988”, the Court, after the reading of the said Order in Council and after having heard Her Majesty’s Procureur thereon, ordered:

1. That the said Order in Council be registered on the records of this Island; and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:

# At the Court at Buckingham Palace

The 26th day of July 1988

PRESENT,

## The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 23rd day of June 1988 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

- ‘1. That, in pursuance of their Resolution of the 1st day of October 1987, the States of Deliberation at a meeting held on the 9th day of December 1987 approved a Bill or “Projet de Loi” entitled “The Magistrate’s Court (Criminal Appeals) (Guernsey) Law, 1988”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto.
2. That the States of the Island of Alderney at a meeting held on the 10th day of February 1988 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney.
3. That the Chief Pleas of the Island of Sark at a meeting held on the 20th day of January 1988 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark.
4. That the said Bill or “Projet de Loi” is set

forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988", and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*G. I. de Deney.*



# PROJET DE LOI

ENTITLED

## **The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988**

### ARRANGEMENT OF SECTIONS

#### *Section*

1. Application of the Law.
2. Limitations of right of appeal.
3. Effect of notice of appeal and bail.
4. Legal aid.
5. Abandonment of appeal.
6. Powers of the Royal Court.
7. Appeals to Court of Appeal.
8. Costs.
9. Rules of the Royal Court.
10. Amendment and repeals.
11. Savings.
12. Interpretation.
13. Citation.

# PROJET DE LOI

ENTITLED

## **The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988**

THE STATES, in pursuance of their Resolution of the 1st day of October, 1987, 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.

Application  
of the Law.

1. Subject to the provisions of this Law, after the hearing and determination by the Magistrate's Court of any criminal case or matter which the Magistrate's Court by any Law or Ordinance now in force or hereafter to be made, has power to hear and determine, there shall be a right of appeal to the Royal Court—

- (a) if such case results in the conviction of any person, at the instance of the person convicted, against such conviction, or sentence imposed, or both;
- (b) if such case results in the acquittal of any person, at the instance of the prosecution, against such acquittal:

PROVIDED that no appeal shall arise unless the Magistrate's Court, upon the application of the prosecution, certifies that there was in contest in the case a question of law or of mixed law and fact which it would be desirable to have decided by the Royal Court.

2. (1) No right of appeal shall arise under this Law— Limitations  
on right of  
appeal.

- (a) in any case where it is expressly provided by any other Law or by any Ordinance that the decision of the Magistrate's Court shall be final and conclusive; or
- (b) against the conviction of any person for an offence to which that person has pleaded guilty; or
- (c) against the sentence pronounced against any person where the punishment awarded does not exceed one or more of the following penalties:—
  - (i) imprisonment for a term of 7 days; or
  - (ii) a fine of £75, with or without costs; or
  - (iii) payment of compensation in an amount of £75; or
  - (iv) confiscation of goods to the value of £75, with or without costs; or
  - (v) suspension for 7 days of any licence or permit with or without costs; or
- (d) against the conviction of any person if the punishment awarded in respect of such conviction does not exceed one or more of the penalties mentioned in section 2(1)(c) above unless, on the application of the person concerned, the Magistrate's Court certifies that a question of law or of mixed law and fact is involved.

(2) Notwithstanding the provisions of subsection (1)(b) above, the Royal Court may in exceptional circumstances grant leave to appeal against convic-



tion where the appellant has pleaded guilty and notice of application for such leave shall be given to Her Majesty's Greffier within the time limit referred to in any rules made under the provisions of section 9 of this Law.

(3) In this section "costs" means such costs or allowances as the Magistrate's Court may be authorised to award.

Effect of  
notice of  
appeal and  
bail.

3. (1) Where a person has given notice of appeal to the Royal Court against the decision of the Magistrate's Court, the sentence pronounced upon that person may be suspended by the Magistrate's Court until the disposal of the appeal, and, if he is in custody, the Magistrate's Court may grant him bail:

PROVIDED that where the sentence or part of the sentence is an order for the confiscation of goods, or the suspension or withdrawal of a driving permit, delivery of the goods or of the permit in question shall be made to Her Majesty's Greffier by the convicted person for safe keeping pending the disposal of the appeal and any order suspending or withdrawing a driving permit or any order disqualifying a person from obtaining a driving permit shall remain in operation pending the disposal of the appeal.

(2) Before the granting of bail as aforesaid the Magistrate's Court shall require the person who has given notice of appeal—

- (i) to elect and name an address in the Bailiwick at which summonses and notices respecting such appeal may be validly served on him;
- (ii) to provide such security as to the Court shall appear reasonable, or any

sureties that are acceptable to the Court;

- (iii) to bind himself by an oath to be administered there and then to him that he will remain in the Bailiwick, if so required by the Court, until the appeal has been disposed of, and that he will attend the hearing of the appeal.

(3) Where, on an application made to the Magistrate's Court under this section, the Magistrate's Court has refused to suspend a sentence of imprisonment and grant bail, the applicant may make an application for the same purpose to the Royal Court, whose decision shall be final, and the Royal Court shall have the like power, exercisable on the like grounds, of suspending a sentence of imprisonment and granting bail as the Magistrate's Court.

(4) If any person shall act wilfully in contravention of any oath taken or given under this section, he shall be guilty of an offence, may be prosecuted summarily before the Royal Court and liable on conviction to a fine not exceeding £200, or to imprisonment for a term not exceeding three months, or to both such fine and such imprisonment, and to pay the costs of the prosecution. Upon such conviction any recognisance that may have been taken from him or any surety given on his behalf may be adjudged to be forfeited.

(5) Upon any such conviction as aforesaid the Royal Court may dismiss any appeal under this Law pending at the instance of the person convicted without proceeding with the hearing thereof, and, in case of such dismissal, the sentence appealed from shall stand to take effect as from such date as may be appointed by the Royal Court.

## Legal aid.

## 4. (1) Where a person—

- (a) has been convicted of an offence by the Magistrate's Court; or
- (b) has been acquitted of a charge by the Magistrate's Court and such acquittal has been appealed against by the prosecution;

and that person desires to appeal against the conviction or the sentence or to contest the appeal against the acquittal, as the case may be, but has not sufficient means to enable him to obtain legal aid for the purpose, he may make an application to the Magistrate's Court for free legal aid.

(2) If, on an application made to the Magistrate's Court under the preceding subsection, it appears to the Magistrate's Court that the means of the applicant are insufficient to enable him to obtain legal aid, and that, by reason of the nature of the offence of which the applicant was convicted or of the charge of which the applicant was acquitted, or by reason of the sentence imposed upon the applicant or of other circumstances, it is desirable in the interests of justice that the applicant should have free legal aid in the preparation and conduct of his appeal or, as the case may be, in resisting the appeal, the Magistrate's Court may grant in respect of him a certificate (in this section referred to as "an appeal aid certificate").

(3) Where, on an application made to the Magistrate's Court under this section, the Magistrate's Court has refused to grant an appeal aid certificate, the applicant may make an application for the same purpose in person to the Ordinary Court, who may require the applicant to set out the grounds of the application in writing and the Ordinary

Court shall have the like power, exercisable on the like grounds, of granting an appeal aid certificate as the Magistrate's Court.

- (4) (a) The Advocate chosen by a person in respect of whom an appeal aid certificate has been granted to represent that person in an appeal under this Law shall be entitled to remuneration in respect of his services in connection with that appeal in an amount which shall be determined by Her Majesty's Procureur:

Provided that such amount shall not, save in exceptional cases, exceed £100, and shall not in any case exceed £150 or such other sum in either case as may be specified from time to time by Ordinance of the States of Guernsey.

- (b) Where a person in respect of whom an appeal aid certificate has been granted is unable to secure the services of an Advocate in connection with an appeal under this Law, the Ordinary Court may, on the application of that person, assign to him an Advocate for the purpose and thereupon the Advocate assigned to that person shall represent that person accordingly and shall be entitled to the same remuneration in respect of his services as if he had been chosen by that person.

- (5) The remuneration of an Advocate under this section shall be paid by the States.

(6) So soon as the amount of an Advocate's remuneration has been determined in accordance with the provisions of this section, Her Majesty's Procureur shall transmit to that Advocate a certificate as to the amount thereof and that certificate shall entitle that Advocate to recover from the States Treasurer the amount stated therein.

**Abandonment of appeal.**

5. (1) Without prejudice to the power of the Royal Court to give leave for an appeal to be abandoned, an appellant may abandon an appeal in accordance with rules made under the provisions of section 9 of this Law.

(2) Where an appeal has been abandoned then—

- (a) subject to anything already suffered or done by the appellant under the decision appealed from, such decision shall be enforceable forthwith by due process of law; and
- (b) the Royal Court or the Magistrate's Court may, on the application of the other party to the appeal, order the appellant to pay to that party such costs, not exceeding £75 or such other sum as may be specified from time to time by Ordinance of the States of Guernsey and in addition to pay the costs of obtaining a transcript of the proceedings calculated in accordance with Rules of Court made under this Law, as appear to be just and reasonable in respect of expenses properly incurred by that party in connection with the appeal before notice of the abandonment was given; and
- (c) the Royal Court or the Magistrate's Court may, if it appears proper so to do, release

any security given or found in connection with such appeal, and any oath taken by the appellant to the effect that he will remain in the Bailiwick until the appeal has been disposed of and that he will attend before the Royal Court at the hearing of the appeal shall be deemed to have been fulfilled if the appellant remains in the Bailiwick until the abandonment of the appeal and then duly surrenders himself to Her Majesty's Sheriff.

(3) Costs ordered to be paid under the last preceding subsection may be recovered as a civil debt by the party to whom they are ordered to be paid and for the purposes of execution the order for the payment of costs shall have effect as a judgment of a civil court for the like amount in favour of that party.

6. (1) On the termination of the hearing of an appeal the Royal Court—

Powers of  
the Royal  
Court.

- (a) may confirm, reverse or vary the decision appealed against; or
- (b) may remit the matter with its opinion thereon to the Magistrate's Court; or
- (c) may make such other order in the matter as may be just, and by such order exercise any power which the Magistrate's Court might have exercised.

(2) If the appeal is against a conviction or a sentence, the preceding provisions of this section shall be construed as including power to award any punishment, whether more or less severe than that awarded by the Magistrate's Court whose decision is appealed against, if that is a punishment which the Magistrate's Court might have awarded.

(3) Without prejudice to the powers of the Royal Court to remit a matter to the Magistrate's Court under subsection (1)(b) above, if on any appeal at the instance of the prosecution, the Royal Court finds that the acquittal of an accused person arose out of the erroneous determination by the Magistrate's Court of the question of law or of mixed law and fact with regard to which the appeal has been brought, the Royal Court may remit the case to the Magistrate's Court together with a direction that the Magistrate's Court shall record a conviction against such person and thereupon Her Majesty's Procureur shall summon such accused person to attend the Magistrate's Court and the Magistrate's Court shall record such conviction accordingly and shall pronounce such sentence in regard thereto as may be just. The provisions of this Law with regard to the right of appeal against sentence shall apply to such sentence.

**Appeals to  
Court of  
Appeal.**

7. (1) A person whose appeal is dismissed by the Royal Court, or the prosecution whose appeal against the acquittal of an accused person is dismissed by the Royal Court, may appeal to the Court of Appeal against that conviction or acquittal, as the case may be:

PROVIDED that no such appeal may be brought without the leave of the Court of Appeal.

(2) The appeal may be—

- (a) on any ground which involves a question of law alone; or
- (b) pursuant to a certificate granted by the Bailiff that sufficient grounds of appeal exist in the case.

(3) The power of the Court of Appeal to grant leave to appeal under this section may be exercised

by any single judge of the Court of Appeal in the same manner as it may be exercised by the Court of Appeal; but if the single judge refuses leave to appeal, the appellant shall be entitled to renew his application to the Court of Appeal as duly constituted for the hearing and determining of appeals under the Court of Appeal (Guernsey) Law, 1961 (hereinafter called "the Law of 1961")(a).

(4) Part III of the Law of 1961 shall apply to appeals to the Court of Appeal under this section.

8. (1) The Royal Court, or the Court of Appeal, as the case may be, may, where it dismisses an appeal or an application for leave to appeal, order the appellant to pay to the States—

- (a) the whole or any part of the costs of any transcript of the proceedings in the court or courts below; and
- (b) such amount not exceeding £75 or such other sum as may be specified from time to time by Ordinance of the States of Guernsey, as may appear reasonably sufficient to cover the costs of the services rendered by Her Majesty's Procureur in relation to that appeal.

(2) The Royal Court, or the Court of Appeal, as the case may be, may, where it allows an appeal against conviction, order the payment out of monies provided by the States of such an amount not exceeding £75 or such other sum as may be specified from time to time by Ordinance of the States of Guernsey, as may appear reasonably sufficient to compensate the appellant for any out-of-pocket expenses



properly incurred by him in the prosecution of his appeal, including any proceedings preliminary or incidental thereto.

(3) Where the Royal Court or the Court of Appeal, as the case may be, orders the payment of costs by the appellant under this section, the payment shall be recoverable as a civil debt by the party to whom they are ordered to be paid and for the purposes of execution the order for the payment of costs shall have effect as a judgment of a civil court for the like amount in favour of that party.

**Rules of the  
Royal Court.**

9. The Royal Court may, from time to time, make rules dealing generally with all matters of procedure and incidental matters arising under this Law and for carrying this Law into effect.

**Amend-  
ment and  
repeals.**

10. (1) In section 19 of the Government of Alderney Law, 1987(b) and the marginal note thereto, immediately following the word "appeals" there is inserted "in civil matters".

(2) The Police Court Appeals Laws, 1939 and 1982(c), and Part III of the Court of Alderney (Appeals) Law, 1969(d), are hereby repealed.

**Savings.**

11. Notwithstanding anything contained in this Law, the provisions of the Police Court Appeals Laws, 1939 and 1982 and Part III of the Court of Alderney (Appeals) Law, 1969 shall continue to have effect in relation to any proceeding or matter commenced before the coming into force of this Law in all respects as if this Law had not been enacted.

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(b) Ordres en Conseil No. IV of 1987.

(c) Ordres en Conseil Vol. XI, p. 461; No. VII of 1982.

(d) Ordres en Conseil Vol. XXII, p. 192.

12. (1) In this Law, unless the context otherwise requires:— Interpretation.

“the Court of Appeal” means the court established under and by virtue of the Court of Appeal (Guernsey) Law, 1961;

“Her Majesty’s Greffier” means—

- (a) in relation to Guernsey, Herm and Jethou, Her Majesty’s Greffier;
- (b) in relation to Alderney, the Clerk of the Court of Alderney; and
- (c) in relation to Sark, the Greffier;

“Her Majesty’s Procureur” includes Her Majesty’s Comptroller;

“the Magistrate’s Court” means—

- (a) in relation to Guernsey, the Court established under and by virtue of the Magistrate’s Court (Guernsey) Law, 1954(e) including in the case of criminal matters arising in Alderney or Sark, the Ordinary Court exercising summary jurisdiction in accordance with Part IV of the said Law;
- (b) in relation to Alderney, the Court of Alderney; and
- (c) in relation to Sark, the Court of the Seneschal;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

“the Royal Court” means the Royal Court sitting as a Full Court;

"sentence" means an order of the Magistrate's Court whereby punishment is awarded on conviction of a criminal offence.

"the States" includes—

(a) in relation to Alderney, the States of Alderney; and

(b) in relation to Sark, the Chief Pleas of Sark.

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

**Citation.  
and  
Commence-  
ment.**

13. (1) This Law may be cited as the Magistrate's Court (Criminal Appeals) Law, 1988.

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

**K. H. TOUGH,**

Her Majesty's Greffier.