

ORDER IN COUNCIL

XIII
1991

ratifying a Projet de Loi

ENTITLED

**The Customs and Excise (General
Provisions) (Bailiwick of Guernsey)
(Amendment) Law, 1991**

(Registered on the Records of the Island of Guernsey
on the 30th September, 1991.)



1991

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 30th day of September, 1991 before Sir Charles Frossard, Kt., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe, Lawrence Oscar Ozanne and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 24th July, 1991, approving and ratifying a *Projet de Loi* entitled “The Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1991”, 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 SÉNÉSCHAL 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 24th day of July 1991

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 10th day of July 1991 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 30th day of November 1989 the States of Deliberation at a meeting held on the 13th day of December 1990 approved a Bill or “Projet de Loi” entitled “The Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1991”, 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 23rd day of January 1991 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 16th day of January 1991 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 as 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 Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1991”, 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 Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1991

THE STATES, in pursuance of their Resolution of the 30th day of November, 1989^(a), 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.

Interpretation

1. In this Law “the principal Law” means the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 ^(b), as amended^(c).

Amendment to Part I of the principal Law.

2. (1) Section 1(1) of the principal Law is hereby further amended as follows—

(a) for the definition of “Chief Revenue Officer” there is substituted—

““Chief Revenue Officer” means the Chief Officer of Customs and Excise for the time being appointed by the States Civil Service Board and shall include any officer of Customs and Excise acting by or under his authority;”;

^(a) Billet d'Etat XXV of 1989, Article XII.

^(b) Ordres en Conseil Vol. XXIII, p. 573.

^(c) Ordres en Conseil Vol. XXIV, p. 87; No. V of 1989.

- (b) immediately after the definition of “impôt Laws”, “Laws relating to impôts” and “enactments relating to impôts” there is inserted—

““inland clearance depôt” means a place for the time being approved by the Board under section 10A of this Law;”;

- (c) for the definition of “officer” there is substituted—

““officer” means the Chief Revenue Officer or any other person authorised by the Board to act as an officer of Customs and Excise;”;

- (d) for the definition of “States Revenue Officer” there is substituted—

““States Revenue Officer” means a person authorised by the Board to act as an officer of Customs and Excise;”;

- (e) immediately after the definition of “transit or transhipment” there is inserted—

““transit shed” means a place for the time being approved by the Board under the provisions of section 10A of this Law;”;

(2) Section 3 of the principal Law is hereby amended by inserting immediately after subsection (4)—

“ (5) The Board or the Chief Revenue Officer may at any time suspend, reduce, discharge or restore any authorisation, engagement or appointment made under the provisions of this section.

(6) The days on which and the hours between which offices of customs and excise are to be open or officers are to be available for the performance of particular duties shall be such as the Board may direct.”.

(3) In section 5 of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

(i) on summary conviction, to a fine not exceeding twice level five on the uniform scale, or to imprisonment for a term not exceeding three months, or to both; or

(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

(4) Immediately after section 5 of the principal Law there is inserted—

“Unlawful
assumption
of character
of officer etc.

5A. If, for the purpose of obtaining admission to any house or other place, or of doing or procuring to be done any act which he would not be entitled to do or procure to be done of his own authority, or for any other unlawful purpose, any person falsely assumes the name, designation or character of an officer he may be detained and shall, in addition to any other punishment to which he may have rendered himself liable, be liable—

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale, or to

imprisonment for a term not exceeding three months, or to both;

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.

Amendments to Part II of the principal Law

3. (1) Immediately after section 7(5) of the principal Law there is inserted—

“ (5A) The Board or the Chief Revenue Officer, as the case may be, may at any time for reasonable cause revoke or vary the terms of any appointment made or approval given under this section.”.

(2) Immediately after section 10 of the principal Law there is inserted—

“Approval of
transit sheds
and inland
clearance
depôts.

10A. (1) The Board may approve, for such periods and subject to such conditions and restrictions as it sees fit—

- (a) one or more transit sheds for the deposit of goods imported and not yet cleared from customs charge including goods not yet entered under this Law; and
- (b) one or more inland clearance depôts for the clearance out of customs charge of such goods.

(2) The Board may at any time for reasonable cause revoke or vary the terms of any approval given under this section.

(3) The Board may impose conditions and restrictions as respects the movement of imported goods between the place of importation and a transit shed or an inland clearance depôt.

(4) Any person contravening or failing to comply with any condition or restriction imposed by the Board under subsections (1) or (3) hereof shall be liable on conviction to a fine not exceeding level 4 on the uniform scale.”.

Amendments to Part III of the principal Law

4. (1) In section 23(1) of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

(i) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;

(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(2) Immediately after section 23(1) of the principal Law there is inserted—

“ (1A) In the case of an offence under subsection (1) hereof in connection with a prohibition or restriction on importation having effect by virtue of section 2 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, that subsection shall have effect subject to the modifications specified in the Third Schedule to this Law.”.

Amendments to Part IV of the principal Law.

5. (1) In section 24(3) of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(2) In section 26(2)(a) of the principal Law, immediately after the word “tons” there is inserted the word “register”.

(3) In section 27(2) of the principal Law, for the words from “shall be liable on conviction” in the second place where they occur to the end there is substituted—

“shall be liable—

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value the of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;

- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(4) In section 28(6) of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(5) In section 30(2) of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

- (i) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;
- (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(6) Immediately after section 30(2) of the principal Law there is inserted—

“ (3) In the case of an offence under subsection (2) hereof in connection with a prohibition or restriction on exportation having effect by virtue of section 2 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, that subsection shall have effect subject to the modifications specified in the Third Schedule to this Law.”.

Amendments to Part V of the principal Law

6. (1) In section 32(1) of the principal Law for the words “Upon request by a proper officer any” there is substituted the word “Any”.

(2) In section 33 of the principal Law for the words “this part” there is substituted the words “Parts II to VI”.

Amendment to Part VII of the principal Law

7. Section 41 of the principal Law is hereby renumbered 41(1) and the following subsection is inserted immediately thereafter—

“ (2) The Board may at any time for reasonable cause revoke or vary the terms of any approval given under this section.”.

Amendments to Part VIII of the principal Law.

8. (1) Section 55(3) of the principal Law is hereby deleted and the following substituted therefor—

“ (3) Where any person has been detained under the provisions of this section by a police officer the police officer shall, as soon as reasonably practicable, give notice of the detention to an officer.

(4) Where an officer detains a person under the provisions of this section, or where he receives notice pursuant to subsection (3) hereof that a person has been

detained by a police officer, he shall, as soon as reasonably practicable, notify Her Majesty's Procurer or Comptroller of the detention.”.

- (2) In section 68(5) of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

(a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

- (3) Section 72 of the principal Law is deleted and the following substituted therefor—

“Power to
search
persons

72. (1) Where there are reasonable grounds to suspect that any person to whom this section applies (referred to in this section as ‘the suspect’) is carrying any article—

(a) which is chargeable with any duty which has not been paid or secured; or

(b) with respect to the importation or exportation of which any prohibition or

restriction is for the time
being in force under or by
virtue of any enactment,

an officer may exercise the powers
conferred by subsection (2) below and, if
the suspect is not under arrest, may detain
him for so long as may be necessary for the
exercise of those powers and (where
applicable) the exercise of the rights
conferred by subsection (3) below.

(2) The officer may require the
suspect—

- (a) to permit such a search of any
article which he has with him;
and
- (b) subject to subsection (3)
below, to submit to such
searches of his person whether
rub-down, strip or intimate,

as the officer may consider necessary or
expedient; but no such requirement may be
imposed under paragraph (b) above without
the officer informing the suspect of the
effect of subsection (3) below.

(3) If the suspect is required to submit
to a search of his person, he may require to
be taken—

- (a) except in the case of a rub-
down search, before a Jurat of
the Royal Court or a superior
of the officer concerned; and

- (b) in the excepted case, before such a superior;

and the Jurat or superior shall consider the grounds for suspicion and direct accordingly whether the suspect is to submit to the search.

(4) A rub-down or strip search shall not be carried out except by a person of the same sex as the suspect; and an intimate search shall not be carried out except by a suitably qualified person.

(5) This section applies to the following persons, namely—

- (a) any person who is on board or has landed from any ship or aircraft;
- (b) any person entering or about to leave the Island;
- (c) any person within the limits of a port;
- (d) any person at a customs airport;
- (e) any person in, entering or leaving any transit shed or inland clearance depôt which is not in a port;
- (f) any person within the area of an approved place.

(6) In this section—

“intimate search” means any search which involves a physical examination (that is, an examination which is more than simply a visual examination) of a person’s body orifices;

“Jurat of the Royal Court” means—

(a) in relation to Guernsey, Herm and Jethou, a Jurat of the Royal Court of Guernsey;

(b) in relation to Alderney, a Jurat of the Court of Alderney; and

(c) in relation to Sark, the Prévôt ;

“rub-down search” means any search which is neither an intimate search nor a strip search;

“strip search” means any search which is not an intimate search but which involves the removal of an article of clothing which—

(a) is being worn (wholly or partly) on the trunk; and

(b) is being so worn either next to the skin or next to an article of underwear;

“suitably qualified person” means a registered medical practitioner or a registered nurse.

(7) The provisions of this section are in addition to, and not in derogation from, any power of search upon lawful arrest arising otherwise than under those provisions.”.

(4) In section 75(1) of the principal Law, for the words from “shall be liable on conviction” to “such imprisonment” inclusive there is substituted—

“shall be liable—

(i) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale, or to imprisonment for a term not exceeding three months, or to both;

(ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(5) In section 76 of the principal Law, for the words from “shall be liable on conviction” to the end there is substituted—

“shall be liable—

(i) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding three months, or to both;

- (ii) on conviction on indictment, to a fine or to imprisonment for a term not exceeding two years or to both.”.

(7) Section 77 of the principal Law is hereby renumbered 77(1) and the following subsection is inserted immediately thereafter—

“ (2) In the case of an offence under subsection (1) hereof in connection with a prohibition or restriction on importation or exportation having effect by virtue of section 2 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, that subsection shall have effect subject to the modifications specified in the Third Schedule to this Law.”.

(8) Immediately after section 77 of the principal Law there is inserted—

“ 77A. (1) Any person who attempts to commit an offence punishable under section 23(1), 30(2) or 77(1) of this Law in connection with a prohibition on importation or exportation (as the case may be) having effect by virtue of section 2 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 shall be guilty of an offence and shall be liable on conviction to such fine or such term of imprisonment or to both such fine and such imprisonment as the Court may deem just:

Provided that the Court may not impose any punishment exceeding that which the court might have imposed if the offence had been completed.

(2) If, on the trial of any person charged with any offence punishable under section 23(1), 30(2) or 77(1) of this Law in connection with a prohibition on importation or exportation (as the case may be) having

effect by virtue of section 2 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, it appears to the Court upon the evidence that the person so charged did not complete the offence charged but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, and the Court may find that person not guilty of the offence charged but guilty of the attempt to commit the same and thereupon he shall be liable to be punished accordingly.”.

Amendments to penalty provisions

9. (1) In sections 11(3) and (4), 25(3), 28(3), 47(3) and 51(3) of the principal Law, for “level 1” there is substituted “level 4”.

(2) In sections 7(6) and (7), 8(2) and (4), 12(1), 13(1) and (2), 19(2), 26(5), 27(2), 28(4), 31(2), 32(3), 37(2), 38(2), 53(1) and (3), and 67(1) and (2) of the principal Law, for “level 2” there is substituted “level 4”.

(3) In sections 10(4) and 53(1) of the principal Law, for “level 3” there is substituted “level 5”.

Amendments to the First Schedule of the principal Law

10. (1) In section 6 of the First Schedule to the principal Law, for the word “may” there is substituted the word “shall”.

(2) In section 15 of the First Schedule to the principal Law immediately after the words “as forfeited” there is inserted the words “, with the concurrence of Her Majesty’s Procureur or Comptroller”.

Addition of Schedule

11. Immediately after the Second Schedule to the principal Law there is inserted the Schedule set out in the Schedule to this Law.

References to Chief Revenue Officer etc. in other enactments

12. (1) Save where the context otherwise requires, any reference in any enactment other than the principal Law and this Law to the Chief Revenue Officer, however expressed, shall be deemed to be a reference to the Chief Officer of Customs and Excise for the time being appointed by the States Civil Service Board and shall include any person acting by or under his authority.

(2) Save where the context otherwise requires, any reference in any enactment other than the principal Law and this Law to a States Revenue Officer, however expressed, shall be deemed to be a reference to a person authorised by the Board to act as an officer of Customs and Excise.

Repeals

13. Section 25 of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974(d), and section 1(a) of the Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Law, 1988(e) are repealed.

Citation

14. This Law may be cited as the Customs and Excise (General Provisions) (Bailiwick of Guernsey) (Amendment) Law, 1991.

SCHEDULE

Section 11

“ THIRD SCHEDULE Sections 23(1A),
30(3) and 77(2)

Controlled Drugs: variation of punishments for certain offences under this Law

1. Sections 23(1), 30(2) and 77(1) of this Law shall have effect in a case where the goods in respect of which the offence

(d) Ordres en Conseil, Vol. XXIV, p. 273.

(e) Ordres en Conseil No. VI of 1988.

referred to in those sections was committed were a Class A drug as if for the words from “shall be liable” to the end there were substituted the following words—

“shall be liable—

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or six times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding twelve months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for life or to both.”.

2. Sections 23(1), 30(2) and 77(1) of this Law shall have effect in a case where the goods in respect of which the offence referred to in those sections was committed were a Class B drug as if for the words from “shall be liable” to the end there were substituted the following words—

“shall be liable—

- (a) on summary conviction, to a fine not exceeding twice level 5 on the uniform scale or six times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding twelve months, or to both;
- (b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding twenty-one years or to both.”.

3. Sections 23(1), 30(2) and 77(1) of this Law shall have effect in a case where the goods in respect of which the offence referred to in those sections was committed were a Class C drug as if for the words from “shall be liable” to the end there were substituted the following words—

“shall be liable—

(a) on summary conviction, to a fine not exceeding level 5 on the uniform scale or six times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding six months, or to both;

(b) on conviction on indictment, to a fine or to imprisonment for a term not exceeding ten years or to both.

4. In this schedule the expressions “Class A drug”, “Class B drug”, and “Class C drug” have the meanings respectively assigned to them in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended.”.