

PROJET DE LOI

ENTITLED

The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXX, p. 203; as amended by the Uniform Scale of Fines (Alderney) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 306); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Resolution of the States of Guernsey of 24th April, 1991 (Billet XI, proposition 1(4)).

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The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987

ARRANGEMENT OF SECTIONS

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The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987

THE STATES, in pursuance of their Resolution of the 8th day of April 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 Island of Alderney.

Driving, or being in charge, when under influence of drink or drugs.

1. (1) A person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road is unfit to drive through drink or drugs shall be guilty of an offence.

(2) For the purposes of subsection (1) of this section a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as he remained unfit to drive through drink or drugs.

(3) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

Driving, or being in charge, with blood-alcohol concentration above the prescribed limit.

2. (1) In this section "**the prescribed limit**" means 80 milligrammes of alcohol in 100 millilitres of blood, or 107 milligrammes of alcohol in 100 millilitres of urine, or such other proportion as may be prescribed from time to time by Ordinance of the States.

(2) A person who drives or attempts to drive, or is in charge of, a motor vehicle on a road, having consumed alcohol in such a quantity that the

proportion thereof in his blood or urine exceeds the prescribed limit shall be guilty of an offence.

(3) For the purposes of the last foregoing subsection, a person shall be deemed not to be in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving it so long as there was any probability of his having alcohol in his blood or urine in a proportion exceeding the prescribed limit.

(4) In determining for the purposes of the last foregoing subsection the likelihood of a person driving a motor vehicle when he is injured or the vehicle is damaged, the court may disregard the fact that he had been injured or that the vehicle had been damaged.

Provision of specimens for analysis.

3. (1) In the course of an investigation whether a person has committed an offence under section 1(1) or section 2(2) of this Law, an officer of police may, subject to the following provisions of this section and section 4 of this Law, require that person to provide a specimen of blood from a venepuncture site determined at the discretion of a medical practitioner, or two urine samples within a period of one hour of being formally requested to do so, for a laboratory test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road, an officer of police may –

- (a) if he has reasonable cause to believe that a person was driving or attempting to drive or was in charge of the vehicle at the time of the accident, and
- (b) if he has reasonable cause to suspect that person of having committed an offence under section 1(1) or section 2(2) of this Law,

require that person to provide a specimen of blood or urine in the same manner as under subsection (1) of this section, for a laboratory test.

(3) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital.

(4) The question whether a specimen required in pursuance of this section is to be a specimen of blood or a specimen of urine shall be decided by the officer of police making the requirement, except that if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.

(5) The first specimen of urine provided in pursuance of a request under subsections (1) or (2) of this section shall be disregarded for the purposes of section 1(1) and section 2(2) of this Law.

(6) A person who, without reasonable excuse, fails or refuses to provide a specimen when required to do so in pursuance of a requirement imposed under this section shall be guilty of an offence.

(7) An officer of police shall, on requiring any person under this section to provide a specimen for a laboratory test –

- (a) warn him that failure to provide it may render him liable to prosecution, and
- (b) offer to supply to that person, in a suitable container, part of the specimen or, where it is not practicable to divide the specimen, another specimen which that person may consent to have taken.

Protection for hospital patients.

4. (1) While a person is at a hospital as a patient he shall not be required to provide a specimen for a laboratory test unless the medical practitioner in immediate charge of his case has been notified of the proposal to make the requirement; and –

- (a) if the requirement is then made it shall be for the provision of a specimen at the hospital, but

- (b) if the medical practitioner objects on the grounds specified in subsection (2) of this section, the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the provision of a specimen or the requirement to provide it or a warning under section 3(7) of this Law, would be prejudicial to the proper care or treatment of the patient.

Evidence in proceedings for an offence under section 1 or section 2.

5. (1) The following provisions apply with respect to proceedings for an offence under section 1 or section 2 of this Law.

(2) Evidence of the proportion of alcohol or any drug in a specimen of blood or urine provided by the accused shall, in all cases, be taken into account, and it shall be assumed that the proportion of alcohol in the accused's blood or urine at the time of the alleged offence was not less than in the specimen; but if the proceedings are for an offence under section 2 of this Law, or for an offence under section 1 of this Law in a case where the accused is alleged to have been unfit through drink, the assumption shall not be made if the accused proves –

- (a) that he consumed alcohol after he had ceased to drive, attempt to drive or be in charge of a motor vehicle on a road and before he provided the specimen, and
- (b) that had he not done so the proportion of alcohol in his blood or urine would not have exceeded the prescribed limit and, if the proceedings are for an offence under section 1 of this Law, would not have been such as to impair his ability to drive properly.

(3) Evidence of the proportion of alcohol or a drug in a specimen of blood or urine may, subject to subsections (5) and (7) of this section, be given by the production of a document purporting to be a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or

urine identified in the certificate.

(4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner; but evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner.

(5) A document purporting to be such a certificate as is mentioned in subsection (3) or (4) of this section is admissible in evidence on behalf of the prosecution in pursuance of this section only if a copy of it has been served on the accused not later than seven days before the hearing; but a document purporting to be a certificate (or so much of a document as purports to be a certificate) is not so admissible if the accused, not later than three days before the hearing or within such further time as the court may in special circumstances allow, has served notice on Her Majesty's Procureur requiring the attendance at the hearing of the person by whom the document purports to be signed.

(6) If it is proved that the accused, when requested by an officer of police at any such time, refused to consent to the taking or providing of a specimen of blood or urine for analysis, his refusal may, unless reasonable cause therefor is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence, with respect to his condition at that time.

(7) Where, in any proceedings as aforesaid, the accused, at the time a specimen of blood or urine was taken from or provided by him in pursuance of a requirement imposed under the last foregoing section, asked to be supplied with such a specimen, evidence of the proportion of alcohol or of any drug found in the specimen shall not be admissible on behalf of the prosecution unless –

- (a) the specimen is either one of two taken on the same occasion or is part of a single specimen which was divided into two parts at the time it was so taken, and
- (b) the other specimen or part was supplied to the accused.

(8) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on Her Majesty's Procureur may be served personally or sent by registered post or recorded delivery service.

Cycling when under influence of drink or drugs.

6. (1) A person who, when riding a cycle, on a road, is unfit to ride through drink or drugs shall be guilty of an offence.

(2) In this section "**unfit to ride through drink or drugs**" means, as regards a person riding a cycle, under the influence of drink or a drug to such an extent as to be incapable of having proper control of it.

Drunk in charge of carriage or livestock.

7. A person who is drunk while in charge on any road of any carriage or livestock shall be guilty of an offence.

Penalties.

8. (1) A person guilty of an offence under section 1 or section 2 of this Law shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding [level 5 on the Alderney uniform scale], or to both,
- (b) on conviction on indictment before the Royal Court of Guernsey to imprisonment for a term not exceeding twelve months or to a fine, or to both.

(2) A person guilty of an offence under section 3(6) of this Law shall be liable, on summary conviction –

- (a) where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive, to

imprisonment for a term not exceeding three months, or to a fine not exceeding [level 5 on the Alderney uniform scale], or to both,

- (b) in any other case, to imprisonment for a term not exceeding two months, or to a fine not exceeding [level 4 on the Alderney uniform scale], or to both,

(3) A person convicted of an offence under section 1, section 2 or section 3(6) if liable to punishment in accordance with subsection 2(a) of this section shall unless the court for special reasons thinks fit to order otherwise and without prejudice to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a driving licence.

(4) A person guilty of an offence under section 6 of this Law shall be liable on summary conviction to a fine not exceeding [level 4 on the Alderney uniform scale].

(5) A person guilty of an offence under section 7 of this Law shall be liable on summary conviction to a fine not exceeding [level 2 on the Alderney uniform scale].

NOTE

In section 8, the words and figures in square brackets were substituted by the Uniform Scale of Fines (Alderney) Law, 1989, section 2(2), with effect from 1st October, 1989.

Detention of persons affected by alcohol or a drug.

9. A person required to provide a specimen of blood or urine may thereafter be detained at a police station until it appears to an officer of police that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under section 1 or section 2 of this Law; but –

- (a) a person shall not be detained in pursuance of this

section if it appears to an officer of police that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his blood or urine exceeds the prescribed limit, and

- (b) an officer of police shall consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice.

Repeals.

10. The Laws entitled –

"Loi par rapport aux Personnes Ivres ayant le soin de Véhicules sur les Voies Publiques", registered on the 1st day of December, 1934^a,

"Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1958", registered on the 30th day of August, 1958^b,

are hereby repealed.

Interpretation.

11. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"authorised analyst" means a person for the time being authorised to act as an analyst for the purposes of this Law by the States of Guernsey [Committee for Home Affairs],

"carriage" means any wheeled vehicle, not being a motor vehicle,

^a Ordres en Conseil Vol. IX, p. 418.

^b Ordres en Conseil Vol. XVII, p. 471.

propelled by a man or an animal,

"cycle" means a bicycle, tricycle or cycle having four or more wheels, not being in any case a motor vehicle,

"driving licence" has the same meaning as in the Law entitled "Loi Supplémentaire relative aux Automobiles (Autorisations à Conduire), 1939", registered on the 17th day of June, 1939^c,

"drug" includes any intoxicant other than alcohol,

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

"hospital" means an institution which provides medical or surgical treatment for in-patients or out-patients,

"laboratory test" means the analysis of a specimen provided for the purpose,

"livestock" includes cattle, horses, asses, mules, hinnies, deer, sheep, pigs, goats and poultry,

"medical practitioner" means a person authorised to practise in Alderney by the Court of Alderney for the purposes of this Law as a medical practitioner,

"motor vehicle" has the same meaning as the expression **"automobile"** has in the law entitled "Loi relative aux Automobiles", registered on the 11th day of December, 1926^d,

"officer of police" means a member of the salaried police force of the Island of Guernsey and a member of any police force which may be established by the States of Alderney,

^c Ordres en Conseil Vol. XI, p. 299.

^d Ordres en Conseil Vol. VIII, p. 56.

"road" means any road, street, lane, way or place which is a public highway or to which the public have access, and includes any road or car-park owned by the States of Alderney or by the States of Guernsey which is not a public highway,

"Royal Court of Guernsey" means the Royal Court of Guernsey sitting as a Full Court,

"the States" means the States of Alderney.

(2) A person does not provide a specimen of blood or urine for analysis unless the specimen is sufficient to enable the analysis to be carried out.

(3) A person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner and it is so taken.

(4) Except where the context otherwise requires, any reference in this Law to an enactment shall be construed as including a reference to that enactment as amended, extended, repealed and replaced by or under any other enactment.

NOTES

In accordance with their Resolution of 24th April, 1991, concerning Billet d'État No. XI, dated 12th April, 1991, the States directed that the Island Police Committee as established under Article 2 of the Loi ayant rapport à la Police Salariée pour l'Île entière, 1920, the States Committees (Amendment) Law, 1948 and the Police Committee (Amendment) Law, 1990 should be the States Committee for Home Affairs. The functions, rights and liabilities of the States Committee for Home Affairs and of its President arising under or by virtue of this Law were subsequently transferred to and vested in, respectively, the States of Guernsey Home Department and its Minister by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 9, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance. In accordance with the provisions of the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, the reference to the States of Guernsey Home Department was substituted with a reference to the States of Guernsey Committee for Home Affairs; and the functions, rights and liabilities of the States of Guernsey Home Department and its Minister arising under or by virtue of this Law were transferred to

and vested in, respectively, the States of Guernsey 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 that same date, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Loi Supplémentaire relative aux Automobiles (Autorisations à Conduire), 1939 has since been repealed by the Driving Licences (Guernsey) Ordinance, 1995, section 26, Schedule 9, with effect from 1st September, 1995, subject to the savings in section 26(3) of the 1995 Ordinance.

The Loi relative aux Automobiles, 1926 has since been repealed by the Motor Taxation (Abolition) (Guernsey) Ordinance, 2006, section 3(1), Schedule, Part I, with effect from 1st January, 2008.

Citation.

12. This Law may be cited as the Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987.

NOTE

The Law received Royal Sanction on 21st October, 1987 and was registered on the Records of the Island of Guernsey and came into force on 1st December, 1987.
