

# ORDER IN COUNCIL

**XIV**

**1987**

ratifying a Projet de Loi

ENTITLED

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

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(Registered on the Records of the Island of Guernsey  
on the 1st day of December, 1987.)

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**1987**

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 1st December, 1987, before Sir Charles Frossard, Kt., Bailiff; present:—Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, and Leonard Arthur Moss, Esquire, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 21st day of October, 1987 approving and ratifying a *Projet de Loi* of the States of Alderney entitled “The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987”, 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 for registration on the records of that Island, of which Order in Council the tenor followeth:—

## At the Court of Saint James

The 21st day of October 1987

PRESENT,

### The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 17th day of September 1987, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 6th day of August 1987 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 a humble Petition of Jon Kay-Mouat, Esquire, President of the States of Alderney, setting forth:

‘That at a meeting of the States of Alderney held on the 8th day of April 1987 the States adopted a Resolution that a *Projet de Loi* entitled “The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987” be approved: That at the meeting of the

States aforesaid Your Humble Petitioner was authorised to present to Your Majesty in Council a Petition that the said Projet de Loi be sanctioned: That the said 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 Projet de Loi entitled "The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987" and to order that the same shall have force of law within the Island of Alderney.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the Projet de Loi annexed thereto 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."

NOW, THEREFORE, His Royal Highness The Prince Andrew, Duke of York, and Her Royal Highness The Princess Royal, being authorised thereto by the said Letters Patent, having taken the said Report into consideration, are pleased, by and with the advice of Her Majesty's 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 Island of Alderney.

AND the said Counsellors of State do 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 of the said Island of Guernsey, and also the Jurats of the said Island of Alderney, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*G. I. de Deney.*

Projet de Loi referred to in the foregoing  
Order in Council

## PROJET DE LOI

ENTITLED

### **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.

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.

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

(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.

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.

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

(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 propor-

tion 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's 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.

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

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

(a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding £1,000, 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 £1,000, or to both;

(b) in any other case, to imprisonment for a term not exceeding two months, or to a fine not exceeding £400, 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 £400.

(5) A person guilty of an offence under section 7 of this Law shall be liable on summary conviction to a fine not exceeding £100.

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.

## 10. The Laws entitled—

Repeals.

“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.

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:— Interpretation.

“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 Island Police Committee;

“carriage” means any wheeled vehicle, not being a motor vehicle, 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);

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(a) Ordres en Conseil Vol. IX, p. 418.

(b) Ordres en Conseil Vol. XVII, p. 471.

(c) Ordres en Conseil Vol. XI, p. 299.

“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;

“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.

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

K. H. TOUGH,  
Her Majesty's Greffier.