

PROJET DE LOI

ENTITLED

The Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950 *

[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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* Ordres en Conseil Vol. XIV, p. 388; as amended by the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961 (Ordres en Conseil Vol. XVIII, p. 355); the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Royal Court (Reform) (Guernsey) Law, 2008 (No. XXII of 2008). See also the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (Ordres en Conseil Vol. XVII, p. 178); the Service of Process and Taking of Evidence (Guernsey) Law, 1957 (Ordres en Conseil Vol. XVII, p. 203); the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (Ordres en Conseil Vol. XXX, p. 145); the Land Planning and Development (Guernsey) Law, 2005 (No. XVI of 2005, Ordres en Conseil Vol. XLV, p. 272).

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ARRANGEMENT OF SECTIONS

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THE STATES have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

The present Jurats.

1. Subject to the provisions of this Law, the Jurats of the Royal Court (Jurés Justiciers de la Cour Royale) who are in office on the coming into force of this Law, shall continue in their judicial office.

NOTE

The following cases have referred to this Law:

Haywood v. Law Officers of the Crown (1972) (Unreported, Court of Appeal, 22nd June, 1971 and 31st January, 1972) (Court of Appeal Judgments, 1964-89, p. 69);

Tilley v. Law Officers of the Crown (1973) (Unreported, Court of Appeal, 19th & 20th June, 27th November) (Court of Appeal Judgments, 1964-89, p. 88);

Law Officers of the Crown v. MacCafferty (1991) 11.GLJ.14;

Saromaje Limited v. Janet Holdings Limited (1993) 15.GLJ.53;

Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;

Law Officers of the Crown v. Whales (1993) 16.GLJ.87;

Law Officers of the Crown v. Warmisham (1995) 20.GLJ.19;

Walters v. States Housing Authority (1997) 24.GLJ.76;

Roger v. Roger 2003-04 GLR 1;

Storm Residential & Commercial Management Limited v. Sarnia Developments Limited 2009-10 GLR 427.

The future Jurats.

2. Subject to the provisions of this Law and of any other enactment for the time being in force, Jurats of the Royal Court shall be elected, as hitherto, by the States of Election of the Island of Guernsey as constituted from time to time.

Qualification for office of Jurat.

3. (1) A person who is an alien shall not be qualified to be elected to or to discharge the office of Jurat of the Royal Court.

(2) It is hereby declared that –

- (a) a person, by reason of that person's religious belief or absence of religious belief,
- (b) a woman, by reason of her sex or marriage, and
- (c) a person, by reason of that person's trade or profession,

shall not be disqualified from being elected to or from discharging the office of Jurat of the Royal Court.

Oath and Affirmation.

4. (1) Such variations shall be made in every customary form of oath of office taken before the Royal Court as may be necessary to enable a person of the Roman Catholic faith conscientiously to subscribe thereto.

(2) A person, if he declare that he is precluded by reason of religious scruples from subscribing to an oath or that he possesses no religious belief, may, instead of taking a customary form of oath of office, affirm, in so near a form to that of the oath as is possible, that he will well and faithfully perform the duties of the

office.

Retirement of Jurats.

5. (1) A Jurat of the Royal Court in office when this Law comes into force and who has then attained the age of seventy years or who attains that age during the thirty days next succeeding the date on which this Law comes into force shall cease to hold office on the expiration of the thirty days next succeeding the date of the coming into force of this Law and any other Jurat of the Royal Court in office when this Law comes into force or entering office thereafter shall cease to hold office after the date upon which he attains the age of seventy years:

PROVIDED that a majority of the Bailiff and Jurats of the Royal Court, sitting in chambers, if they consider it desirable in the public interest that a Jurat who, not having attained the age of seventy-five years, would cease to hold office under the provisions of this section should continue to hold office by virtue of this proviso, may extend the period of office of that Jurat by one or more periods so however that any such period shall not extend beyond the date on which that Jurat attains the age of seventy-five years:

PROVIDED FURTHER that a Jurat of the Royal Court who, for a continuous period of twelve months fails, without good reason, to discharge the duties of his office or who, in the opinion of a majority of the Bailiff and Jurats of the Royal Court, sitting in chambers, is permanently unable, through physical or mental incapacity or for any other reason efficiently to carry out the duties of his office, may be called upon by the Bailiff to resign and unless he, within a reasonable time, presents to the Royal Court, for transmission to His Majesty in Council, a petition praying that His Majesty in Council may be pleased to permit him to resign that office, he shall be removable by Order of His Majesty in Council on the petition of the Bailiff and Jurats of the Royal Court in that behalf.

(2) As from the date on which this Law comes into force, the concurrence of the States in the resignation of a Jurat of the Royal Court shall not be necessary and any Jurat desirous of resigning his office shall present to the Royal Court, for transmission, a petition in that behalf to His Majesty in Council.

(3) A Jurat ceasing to hold office on account of age shall continue to enjoy during the remainder of his life the honours and privileges appertaining to the office of Jurat.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Powers of Bailiff and Jurats.

6. (1) Subject to the provisions of this and the next succeeding section, the judicial functions, powers and duties of the Royal Court shall continue to be exercised as hitherto.

- (2) (a) The Bailiff shall be the sole judge of Law and of questions of procedure in all causes and matters heard in a court over which he presides and shall award the costs, if any, and, for the purposes of the determination of any question of which he is the sole judge, the Royal Court shall be properly constituted if it consists of the Bailiff sitting unaccompanied by the Jurats or any of them.

- (b) Paragraph (a) of this subsection shall come into operation when appointed so to do by Order of the Royal Court and different dates may be so appointed for the coming into operation of that paragraph as regards criminal causes and matters and civil causes and matters respectively.

(3) Subject to the provisions of subsection (5) of this section, any matter which, under the provisions of this Law, is within the competence of the Jurats to decide, shall, if they be not of one opinion, be decided by a majority of the Jurats sitting.

(4) ...

(5) In all causes and matters, the Bailiff shall have a casting vote whenever the Jurats are so divided in opinion that the giving of a casting vote is necessary for the finding of a majority opinion.

(6) The provisions of this section shall apply whether the Royal Court is exercising original or appellate jurisdiction.

NOTES

In section 6, subsection (4) was repealed by the Royal Court (Reform) (Guernsey) Law, 2008, section 15, with effect from 29th October, 2008.

Paragraph (a) of subsection (2) of this section was brought into force on 4th June, 1964, as regards criminal causes and matters and civil causes and matters, by the Royal Court (Powers of Bailiff and Jurats) Order, 1964, article 1.

The following cases have referred to section 6:

Haywood v. Law Officers of the Crown (1972) (Unreported, Court of

Appeal, 22nd June, 1971 and 31st January, 1972) (Court of Appeal Judgments, 1964-89, p. 69);

Tilley v. Law Officers of the Crown (1973) (Unreported, Court of Appeal, 19th & 20th June, 27th November) (Court of Appeal Judgments, 1964-89, p. 88);

Law Officers of the Crown v. MacCafferty (1991) 11.GLJ.14;

Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;

Law Officers of the Crown v. Whales (1993) 16.GLJ.87;

Walters v. States Housing Authority (1997) 24.GLJ.76

Roger v. Roger 2003-04 GLR 1;

Storm Residential & Commercial Management Limited v. Sarnia Developments Limited 2009-10 GLR 427.

The following Order has been made by the Royal Court under section 6:

Royal Court (Powers of Bailiff and Jurats) Order, 1964.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

In accordance with the provisions of, first, the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987, section 17, with effect from 18th March, 1988, second, the Land Planning and Development (Guernsey) Law, 2005, section 55(2), with effect from 6th April, 2009 and, third, the Magistrate's Court (Guernsey) Law, 2008, section 17(4)(a), with effect from 1st September, 2009, the following are, respectively, deemed to be matters of procedure for the purposes of paragraph (a) of subsection (2) of this section:

an application under Part I or Part II of the 1987 Law;

an application for such an authorisation as is referred to in section 55(1) of the 2005 Law;

the power of referral, as is conferred by subsections (1) and (2) of section 17 of the 2008 Law, in the case of a referral by the Ordinary Court.

Findings of Jurats.

7. (1) In a criminal case, after such consultation as aforesaid, the senior Jurat of the Royal Court present shall communicate to the Bailiff in open Court

—

- (a) that the Jurats, unanimously, or by a majority (in which case he shall announce the number of the majority and minority votes) find the accused guilty, or not guilty or [not guilty by reason of insanity], as the case may be, or
 - (b) that the Jurats are equally divided as to the guilt of the accused or as to whether the accused is [not guilty by reason of insanity], or
 - (c) in any other case, the findings of the various groups of Jurats and the number of each group.
- (2) In a civil case, the Jurats of the Royal Court shall, whether they have retired for consultation or not, give their individual decisions in open Court.

NOTES

In section 7, the words in square brackets in subsection (1) were substituted by the Criminal Justice (Special Verdicts) (Guernsey) Law, 1961, section 7, with effect from 17th October, 1961.

The following cases have referred to section 7:

Tilley v. Law Officers of the Crown (1973) (Unreported, Court of Appeal, 19th & 20th June, 27th November) (Court of Appeal Judgments, 1964-89, p. 88);

Roger v. Roger 2003-04 GLR 1.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Retirement for consideration of sentence and abolition of "conclusions".

8. (1) Where a verdict of guilty is recorded against any person, the Bailiff and the Jurats of the Royal Court shall, unless the punishment for the offence is fixed by law, confer in private as to the punishment to be imposed and thereafter the Bailiff shall announce the sentence of the Court and shall sentence the accused accordingly.

(2) The Law Officers of the Crown shall not, in future, tender to the Court their "conclusions" as to punishment after a verdict of guilty.

NOTES

The following cases have referred to section 8:

Law Officers of the Crown v. Warmisham (1995) 20.GLJ.19;

Roger v. Roger 2003-04 GLR 1;

William Anthony Collins v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 14th December) (Guernsey Judgment No. 37/2011).

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Abolition of "Causes en adjonction".

9. Proceedings by way of "causes en adjonction" are hereby abolished.

NOTE

The following case has referred to the abolition of proceedings by way of causes en adjonction:

R.J. Bach and K. Bach v. Law Officers of the Crown 2007-08 GLR 272.

Law Officers and Constitution of Courts.

10. Notwithstanding any law or custom to the contrary, the presence in court of the Law Officers of the Crown or of either of them shall no longer be necessary to the proper constitution of the Court at any sitting thereof.

Interpretation.

11. (1) For the purposes of this Law, the expression "**the Bailiff**" shall include any person designated from time to time to perform the judicial functions of the Bailiff, and unless the context otherwise requires, the expression "**the Royal Court**" shall include a reference to every Division of the Royal Court.

(2) On the office of Bailiff becoming vacant from time to time, the Jurats of the Royal Court shall, as hitherto, appoint a Juge-Délégué to perform[, in the absence or incapacity of the Deputy Bailiff,] the judicial functions of the Bailiff while such office continues vacant. The person so appointed need not, as hitherto, be a Jurat of the Royal Court but shall be a person possessing sufficient legal qualifications and experience for the proper performance of those judicial functions.

NOTES

In section 11, the words and punctuation in square brackets in subsection (2) were inserted by the Deputy Bailiff (Guernsey) Law, 1969, section 4, Schedule, with effect from 9th September, 1969.

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Rules of Procedure.

12. The power of the Royal Court, in pursuance of the provisions of Article 64 of the Reform (Guernsey) Law, 1948, to make, vary, modify and revoke rules of procedure in the Royal Court and any division thereof, shall include power to make rules of procedure varying, modifying or revoking any rule of procedure operative in pursuance of customary or enacted Law.

NOTES

The following have been made by Order of the Royal Court under section 12:

Saisie Procedure (Simplification) (Bailiwick) Order, 1952;
Maintenance Orders (Facilities for Enforcement) (Guernsey) Rules, 1955;
Judgments (Reciprocal Enforcement) (Guernsey) Rules, 1972;
Judgments (Reciprocal Enforcement) (Amendment) (Guernsey) Rules, 1975;
Royal Court (Despatch of Business) Order, 1982;
Royal Court (List of Advocates) Order, 1982;
Royal Court (Plaids d'Héritage) Order, 1982;
Committal Proceedings (Written Statements) Rules, 1983;
Committal Proceedings (Written Statements) (Amendment) Rules, 1986;
Eviction Actions Order, 1986;
Royal Court (Non-contentious Applications) Rules, 1988;
Curatelle Rules, 1989;
Companies (Application for change of name) Procedure Rules, 1989;
Royal Court (Non-contentious Applications) (Amendment) Rules, 1989;
Eviction Procedures Rules, 1989;
Saisie Procedure (Simplification) (Bailiwick) (Amendment) Order, 1989;
Royal Court (Affidavits) Civil Rules, 1990;
Royal Court (Non-contentious Applications) (Amendment) Rules, 1990;
Juvenile Court (Criminal Cases) Rules, 1990;
Royal Court (Criminal Procedure) Rules, 1991;
Juvenile Court (Criminal Cases) (Amendment) Rules, 1994;
Royal Court (Election of Counsel) Order 1994;
Royal Court (Plaids d'Héritage) Order, 1995;
Royal Court (Non-contentious Applications) Rules, 1995;
Royal Court (Signing of Summonses) Order, 2003;
Royal Court (Publication of Notices, etc) Order, 2006;
Royal Court Civil Rules, 2007;
Royal Court Civil Rules (Amendment) Order, 2008.

The following case has referred to section 12:

Saromaje Limited v. Janet Holdings Limited (1993) 15.GLJ.53.

In accordance with the provisions of the Service of Process and Taking of Evidence (Guernsey) Law, 1957, section 9, as and when that section enters into force, the power of the Royal Court to make rules of court under this section shall include a power to make rules of court from time to time—

- (a) for any purpose for which rules of court may be made under Part II of the 1957 Law, and*
- (b) for the purposes of giving effect to Part III of the 1957 Law and regulating the procedure thereunder.*

In accordance with the provisions of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957, with effect from 6th April, 1957, the power of the Royal Court to make rules of court under this section shall include power to make rules of court for the purposes set in section 5 of the 1957 Law.

Commencement.

13. This Law shall come into force on the thirtieth day next succeeding the date of the registration on the Records of the Island of Guernsey of the Order of His Majesty in Council sanctioning this Law.

NOTE

The Law received Royal Sanction on 21st July, 1950 and was registered on the Records of the Island of Guernsey on 12th August, 1951.
