

PROJET DE LOI

ENTITLED

The Protection of Children (Bailiwick of Guernsey) Law, 1985 *

[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. XXIX, p. 103; as amended by the: Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); Administration of Justice (Bailiwick of Guernsey) Law, 1991 (No. I of 1991, Ordres en Conseil Vol. XXXIII, p. 49); Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002 (No. I of 2003, Ordres en Conseil Vol. XLIII(1), p. 3); Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 (No. XIII of 2006). See also the: Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 (No. XXIII of 2003, Ordres en Conseil Vol. XLIII(2), p. 617); Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009 (No. X of 2015); Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (No. IX of 2014). This Law has been repealed by the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (No. VII of 2021).

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ARRANGEMENT OF SECTIONS

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The Protection of Children (Bailiwick of Guernsey) Law, 1985

THE STATES, in pursuance of their Resolutions of the 25th day of April, 1984 and the 25th day of July, 1984, 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.

Indecent conduct towards young child.

1. Any person who commits an act of gross indecency with or towards a child or who incites a child to such an act with him or another, shall be liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding [level 4 on the uniform scale], or to both.

NOTES

In section 1, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

The following cases have referred to this Law:

*Law Officers of the Crown v. Millman (1995) 19.GLJ.74;
Law Officers of the Crown v. Kevin Peter Mauger (2004)*

(Unreported, Royal Court, 11th February & 31st March) (Guernsey Judgment No. 18/2004); 2003-04 GLR Note 13;

Mark Richard Gunter v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 22/2011);

Martin Philip Wright v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 23/2011);

Wicks, Sharp & Towers v. Law Officers of the Crown (2012) (Unreported, Court of Appeal, 22nd March) (Guernsey Judgment No. 14/2012).

In accordance with the provisions of the Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009, section 12(1), Schedule, paragraph (g), with effect from 18th May, 2015, an offence under this Law is a "sexual offence" for the purposes of that Law.

In accordance with the provisions of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, section 90(2)(b), Schedule 4, Part II, paragraph 8, with effect from 5th April, 2004, offences under this section are always serious arrestable offences for the purposes of the 2003 Law.

In accordance with the provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 1(1)(f), with effect from 29th April, 2015, an offence under this section (gross indecency with a child) is a "relevant offence" for the purposes of that Law.

Harmful publications.

2. (1) The provisions of this section apply to any book, magazine, video or photographic film or other like work which is of a kind likely to fall into the hands of children and consists wholly or mainly of stories told in pictures (with or without the addition of written matter) being stories portraying –

- (a) the commission of crimes, or
- (b) acts of violence or cruelty, or
- (c) incidents of a repulsive or horrible nature, or
- (d) human sexual activity,

in such a way that the work as a whole would tend to corrupt a child into whose hands it might fall.

(2) It is an offence for a person to print, publish, sell or let on hire a work to which this section applies, or to have any such work in his possession for the purpose of selling it or letting it on hire:

Provided that, in any proceedings taken under this subsection against a person in respect of selling or letting on hire such a work or of having it in his possession for the purpose of selling it or letting it on hire, it shall be a defence for him to prove that he had not examined the contents of the work and had no reasonable cause to suspect that it was one to which this section applies.

Indecent photographs of children.

3. (1) It is an offence for a person –
- (a) to take, or permit to be taken [or to make], any indecent photograph [or pseudo-photograph] of a child, or
 - (b) to distribute or show such indecent photographs [or pseudo-photographs], or
 - (c) to have in his possession such indecent photographs [or pseudo-photographs], with a view to their being distributed or shown by himself or others, or
 - (d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs [or pseudo-photographs], or intends to do so.

(2) For the purposes of this section, a person is to be regarded as distributing an indecent photograph [or pseudo-photographs] if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Where a person is charged with an offence under subsection (1)(b) or (c) of this section, it shall be a defence for him to prove –

- (a) that he had a legitimate reason for distributing or showing the photographs [or pseudo-photographs] or (as the case may be) having them in his possession, or
- (b) that he had not himself seen the photographs [or pseudo-photographs] and did not know, nor had any cause to suspect them to be indecent.

NOTES

In section 3,

the words in the first and second pairs of square brackets in paragraph (a) of subsection (1) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, respectively section 16(2)(a)(i) and section 16(2)(a)(ii), with effect from 20th January, 2003;

the words in square brackets in, first, paragraph (b), paragraph (c) and paragraph (d) of subsection (1), second, subsection (2) and, third, paragraph (a) and paragraph (b) of subsection (3) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, respectively section 16(2)(b), section 16(2)(c) and section 16(2)(d), with effect from 20th January, 2003.

The following cases have referred to section 3:

Mark Richard Gunter v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 22/2011);
Wicks, Sharp & Towers v. Law Officers of the Crown (2012) (Unreported, Court of Appeal, 22nd March) (Guernsey Judgment No. 14/2012).

In accordance with the provisions of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003, section 90(2)(b), Schedule 4, Part II, paragraph 8, with effect from 5th April, 2004, offences under this section are always serious arrestable offences for the purposes of the 2003 Law.

In accordance with the provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 1(1)(f), with effect from 29th April, 2015, an offence under subsection (1) of this section (taking, distributing or possessing etc., indecent photographs of children) is a "relevant offence" for the purposes of that Law.

[Possession of indecent photographs of children.]

3A. (1) It is an offence for a person to have any indecent photograph [or pseudo-photograph] of a child (meaning in this section a person under or apparently under the age of 16) in his possession.

(2) Where a person is charged with an offence under subsection (1) above, it shall be a defence for him to prove –

(a) that he had a legitimate reason for having the photograph [or pseudo-photograph] in his possession, or

(b) that he had not himself seen the photograph [or pseudo-photograph] and did not know, nor had any cause to suspect, it to be indecent, or

(c) that the photograph [or pseudo-photograph] was sent to him without any prior request made by him or on his behalf and that he did not keep it for an unreasonable time.

(3) Possession before this section comes into force is not an offence.

- [(4) A person guilty of an offence under this section is liable –
- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or to a fine, or to both,
 - (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both.]]

NOTES

Section 3A was inserted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 10(a), with effect from 28th May, 1991.

In section 3A,

the words in square brackets in, first, subsection (1) and, second, paragraph (a), paragraph (b) and paragraph (c) of subsection (2) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, respectively section 16(3)(a) and section 16(3)(b), with effect from 20th January, 2003;

subsection (4) was substituted by the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, section 10(2), with effect from 28th March, 2007.¹

The following cases have referred to section 3A:

Law Officers of the Crown v. Kevin Peter Mauger (2004) (Unreported, Royal Court, 11th February & 31st March) (Guernsey Judgment No. 18/2004); 2003-04 GLR Note 13;

Mark Richard Gunter v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 22/2011).

Evidence by spouse.

4. On a charge of an offence under section 1 or section 3(1)(a) of this Law, the wife or husband of the accused shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether

the accused is charged solely or jointly with any other person:

Provided that –

- (a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused, and
- (b) the failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

Liability of company officers for offences by company.

5. (1) Where an offence committed by a body corporate under [section 2, 3, or 3A] of this Law is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

NOTE

In section 5, the words in square brackets in subsection (1) were substituted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 10(b), with effect from 28th May, 1991.

Power of arrest.

6. (1) A police officer may arrest without warrant a person who has committed, or whom the police officer with reasonable cause, suspects of having committed an offence under this Law.

(2) This section shall not prejudice any power of arrest conferred by law apart from this section.

Search and forfeiture.

7. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person has in his custody, possession or on his premises –

- (a) any work or copy thereof to which section 2 of this Law applies, or
- (b) any plate prepared for the purpose of printing copies of the said work or any other work to which section 2 applies or any video or photographic film prepared for that purpose, or
- (c) any indecent photographs or copies thereof to which section 3 [or 3A] of this Law applies,

the Bailiff may grant a warrant to search for and seize the same; but no warrant to search for such articles shall be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under this section a police officer is authorised to search premises, he may enter and search the premises accordingly and may seize –

- (a) any copies of the work and any copies of any other work which he has reasonable cause to believe to be one to which section 2 of this Law applies, and
- (b) any plate which he has reasonable cause to believe to have been prepared for the purpose of printing copies of any such work as is mentioned in paragraph (a) of this subsection and any video or photographic film which he has reasonable cause to believe to have been prepared for that purpose, and
- (c) any articles which he has reasonable cause to believe to be or include indecent photographs of children taken or shown on the premises or kept there with a view to their being distributed or shown.

(3) The court by or before which a person is convicted of an offence under [section 2, 3, or 3A] of this Law shall order any copies of the work in question and any plate prepared for the purpose of printing copies of that work or video or photographic film prepared for that purpose or indecent photographs of children being copies which have, or a plate or film which has or photographs which have, been found in his possession or under his control, to be forfeited:

Provided that an order made under this subsection shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

NOTES

In section 7,

the word, figure and letter in square brackets in paragraph (c) of subsection (1) were inserted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 10(c), with effect from 28th May, 1991;

the words in square brackets in subsection (3) were substituted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 10(d), with effect from 28th May, 1991.

The following case has referred to section 7:

Martin Philip Wright v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 23/2011).

Punishment.

8. A person guilty of any offence under section 2 [...] of this Law shall be liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding three years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding [level 4 on the uniform scale], or to both.

NOTES

In section 8,

the words omitted in the first pair of square brackets were repealed by the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, section 10(3), with effect from 28th March, 2007;

the words and figure in square brackets in paragraph (b) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

[Punishment for offence under section 3.]

8A. A person guilty of an offence under section 3 is liable –

- (a) on conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both,
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or to a fine not exceeding level 5 on the uniform scale, or to both.]

NOTE

Section 8A was inserted by the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, section 10(4), with effect from 28th March, 2007.

Interpretation.

9. (1) In this Law –

"the Bailiff" means –

- (a) in relation to Guernsey, Herm and Jethou, the Bailiff, the Deputy Bailiff or Lieutenant Bailiff or the Juge Délégué,
- (b) in relation to Alderney, the Chairman of the Court of Alderney, and
- (c) in relation to Sark, the Seneschal,

"child" means [subject to subsection (7)] a person under the age of sixteen years,

"photographic film" includes photographic plate,

"plate" (except where it occurs in the expression **"photographic plate"**) includes block, mould, matrix and stencil,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey, and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney, and
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of Guernsey,

"premises" includes any vehicle, vessel or stall.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film) shall, if they show children and are indecent be treated for all purposes of this Law as indecent photographs of children [and so as respects pseudo-photographs].

[(4) References to a photograph include –

- (a) the negative as well as the positive version, and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.]

(5) For the purposes of section 3 [or 3A], "**photograph**" includes any form of video recording.

[(6) "**Pseudo-photograph**" means an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph.

(7) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Law as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(8) References to an indecent pseudo-photograph include –

- (a) a copy of an indecent pseudo-photograph, and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.]

NOTES

In section 9,

the words in square brackets in the definition of the expression "child" in subsection (1) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section

16(4)(a), with effect from 20th January, 2003;

the words in square brackets in subsection (3) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 16(4)(b), with effect from 20th January, 2003;

subsection (4) was substituted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 16(4)(c), with effect from 20th January, 2003;

the word, figure and letter in square brackets in subsection (5) were inserted by the Administration of Justice (Bailiwick of Guernsey) Law, 1991, section 10(e), with effect from 28th May, 1991;

subsection (6), subsection (7) and subsection (8) were inserted by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 16(4)(d), with effect from 20th January, 2003.

The following case has referred to section 9:

Martin Philip Wright v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 12th July) (Guernsey Judgment No. 23/2011).

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.

Citation.

10. This Law may be cited as the Protection of Children (Bailiwick of Guernsey) Law, 1985.

NOTE

The Law received Royal Sanction on 30th October, 1985 and was registered on the Records of the Island of Guernsey and came into force on 3rd December, 1985.

¹ Subsection (4) was previously amended by the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 16(5), with

effect from 20th January, 2003.

REPEALED