

ORDER IN COUNCIL

XIX
2001

ratifying a Projet de Loi

ENTITLED

The Video Recordings (Guernsey) Law, 2000

(Registered on the Records of the Island of Guernsey
on the 4th September, 2001.)



2001

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 4th day of September, 2001 before Andrew Christopher King Day, Esquire, Deputy Bailiff; present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass, Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith Bichard, OBE, Esquires, Michael John Wilson, Michael Henry De La Mare and Michael John Tanguy, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 18th day of July, 2001, approving and ratifying a Projet de Loi entitled “The Video Recordings (Guernsey) Law, 2000”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island.

At the Court at Buckingham Palace

The 18th day of July, 2001

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 3rd day of July 2001 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 31st day of March, 1999, the States of Deliberation at a meeting held on the 29th day of November, 2000 approved a Bill or “Projet de Loi” entitled “The Video Recordings (Guernsey) Law, 2000”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. 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 Video Recordings (Guernsey) Law, 2000”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou.”

“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 Islands of Guernsey, Herm and Jethou.

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.

A. K. Galloway

PROJET DE LOI

ENTITLED

The Video Recordings (Guernsey) Law, 2000

ARRANGEMENT OF SECTIONS

1. Interpretation.
2. Exempted works.
3. Exempted supplies.
4. Supplying video recording of unclassified work.
5. Possession of video recording of unclassified work for the purposes of supply.
6. Supplying video recording of classified work in breach of classification.
7. Supply of video recording not complying with requirements as to labels, etc.
8. Supply of video recording containing false indication as to classification.
9. Supply of pirated video work.
10. General defence to offences under this Law.
11. Penalties.
12. Offences by bodies corporate.
13. Entry, search and seizure.
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16. Repeals.
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PROJET DE LOI

ENTITLED

The Video Recordings (Guernsey) Law, 2000

THE STATES, in pursuance of their Resolution of the 31st day of March 1999^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 Islands of Guernsey, Herm and Jethou.

Interpretation.

1. (1) The provisions of this section shall have effect for the interpretation of terms used in this Law.

(2) In this Law-

"**business**", except in section 3(4), includes any activity carried on by a club;

"**classification certificate**" means a certificate issued in respect of a video work by the designated authority;

"**Committee**" means the States of Guernsey Broadcasting Committee;

"**designated authority**" means the authority for the time being designated by the Secretary of State under section 4 of the Video Recordings

^a Article VII of Billet d'État No. VI of 1999.

Act 1984^b;

"pirated" means a video work the making of which constituted an infringement of the copyright in the work or, in the case of an imported video work, would have constituted an infringement of copyright if the video work had been made in the place into which it was imported;

"police officer" means 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;

"premises" includes any vessel, vehicle or stall;

"supply" means supply in any manner, whether or not for reward, and therefore includes supply by way of sale, letting on hire, exchange or loan; and references to a supply are to be construed accordingly;

"video recording" means any disc or magnetic tape or any other device capable of storing data electronically containing information by the use of which the whole or a part of a video work may be produced;

"video work" means any series of visual images (with or without sound) -

- (a) produced electronically by the use of information contained on any disc or magnetic tape or any other device capable of storing data electronically; and

^b 1984 c 39.

(b) shown as a moving picture.

(3) For the purposes of this Law, a video recording contains a video work if it contains information by the use of which the whole or any part of the work may be produced; but where a video work includes any extract from another video work, that extract is not to be regarded for the purposes of this paragraph as a part of that other work.

(4) Where any alteration is made to a video work in respect of which a classification certificate has been issued, the classification certificate is not to be treated for the purposes of this Law as issued in respect of the altered work; and, in this subsection, "**alteration**" includes addition.

(5) Any reference in this Law to an enactment, statutory instrument or rule of court is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

Exempted works.

2. (1) Subject to subsection (2), a video work is for the purposes of this Law an exempted work if, taken as a whole -

- (a) it is designed to inform, educate or instruct;
- (b) it is concerned with sport, religion or music; or
- (c) it is a video game.

(2) A video work is not an exempted work for those purposes if, to any significant extent, it depicts -

- (a) a human sexual activity or act of force or restraint associated with such activity;
- (b) mutilation or torture of, or other acts of gross violence towards, humans or animals;
- (c) human genital organs or human urinary or excretory function;
- (d) techniques likely to be useful in the commission of offences;

or is likely to any significant extent to stimulate or encourage anything falling within paragraph (a) or, in the case of anything falling within paragraph (b), is likely to any extent to do so.

(3) A video work is not an exempted work for those purposes if, to any significant extent, it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences.

Exempted supplies.

3. (1) The provisions of this section apply to determine whether or not a supply of a video recording is an exempted supply for the purposes of this Law.

(2) The supply of a video recording by any person is an exempted supply if it is neither -

- (a) a supply for reward; nor
- (b) a supply in the course or furtherance of a business.

(3) Where on any premises facilities are provided in the course of furtherance of a business for supplying video recordings, the supply by any person of a video recording on those premises is to be treated for the purposes of subsection (2) as a supply in the course or furtherance of a business.

(4) Where a person (in this subsection referred to as the "original supplier") supplies a video recording to a person who, in the course or furtherance of a business, makes video works or supplies video recordings, the supply is an exempted supply -

- (a) if it is not made with a view to any further supply of that recording; or
- (b) if it is so made, but is not made with a view to the eventual supply of that recording to the public or is made with a view to the eventual supply of that recording to the original supplier;

and, for the purposes of this subsection, any supply is a supply to the public unless it is -

- (i) a supply to a person who, in the course of a business, makes video works or supplies video recordings;
- (ii) an exempted supply by virtue of any of subsections (2) and (5) to (10) of this section;
- (iii) a supply outside Guernsey.

(5) Where a video work -

- (a) is designed to provide a record of an event or occasion for those who took part in the event or occasion or are connected with those who did so;
- (b) does not, to any significant extent, depict anything falling within paragraph (a), (b) or (c) of section 2(2); and
- (c) is not designed to any significant extent to stimulate or encourage anything falling within paragraph (a) of that subsection or, in the case of anything falling within paragraph (b) of that subsection, is not designed to any extent to do so;

the supply of a video recording containing only that work to a person who took part in the event or occasion or is connected with someone who did so is an exempted supply.

(6) The supply of a video recording for the purpose only of the exhibition of any video work contained in the recording in premises other than a dwelling house, being premises authorised for the exhibition of cinematograph films is an exempted supply.

(7) The supply of a video recording with a view only to its use for or in connection with a programme service (within the meaning of the Broadcasting

Act 1990^c, is an exempted supply.

(8) The supply of a video recording for the purpose of submitting a video work contained in the recording for the issue of a classification certificate or otherwise only for the purposes of arrangements made by the designated authority is an exempted supply.

(9) The supply of a video recording with a view only to its use in training for or carrying on any medical occupation is an exempted supply.

(10) The supply of a video recording otherwise than for reward, being a supply made for the purpose only of supplying it to a person who previously made an exempted supply of the recording, is also an exempted supply.

Supplying video recording of unclassified work.

4. (1) A person who supplies or offers to supply a video recording containing a video work in respect of which no classification certificate has been issued is guilty of an offence unless -

(a) the supply is, or would if it took place be, an exempted supply; or

(b) the video work is an exempted work.

(2) It is a defence to a charge of committing an offence under this section to prove that the accused believed on reasonable grounds-

(a) that the video work concerned or, if the video recording

^c An Act of Parliament (1990 c.42).

contained more than one work to which the charge relates, each of those works, was either an exempted work or a work in respect of which a classification certificate had been issued; or

- (b) that the accused believed on reasonable grounds that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4) or (5).

(3) For the purposes of this section, a video recording containing a video work in respect of which a classification certificate has been issued that the work is to be shown only in a licensed sex shop, shall be deemed to be a video work in respect of which no classification certificate has been issued.

Possession of video recording of unclassified work for the purposes of supply.

5. (1) Where a video recording contains a video work in respect of which no classification certificate has been issued, a person who has the recording in his possession for the purpose of supplying it is guilty of an offence unless -

- (a) he has it in his possession for the purpose only of a supply which, if it took place, would be an exempted supply; or
- (b) the video work is an exempted work.

(2) It is a defence to a charge of committing an offence under this section to prove -

- (a) that the accused believed on reasonable grounds that the video work concerned or, if the video recording

contained more than one work to which the charge relates, each of those works, was an exempted work or a work in respect of which a classification certificate had been issued;

- (b) that the accused had the video recording in his possession for the purpose only of a supply which he believed on reasonable grounds would, if it took place, be an exempted supply by virtue of section 3(4) or (5); or
- (c) that the accused did not intend to supply the video recording until a classification certificate had been issued in respect of the video work concerned.

(3) For the purposes of the section, a video recording containing a video work in respect of which a classification certificate has been issued that the work is to be shown only in a licensed sex shop, shall be deemed to be a video work in respect of which no classification certificate has been issued.

Supplying video recording of classified work in breach of classification.

6. (1) Where a classification certificate issued in respect of a video work states that no video recording containing that work is to be supplied to any person who has not attained the age specified in the certificate, a person who supplies or offers to supply a video recording containing that work to a person who has not attained the age so specified is guilty of an offence unless the supply is, or would if it took place be, an exempted supply.

(2) It is a defence to a charge of committing an offence under this section to prove -

- (a) that the accused neither knew nor had reasonable grounds to believe that the classification certificate contained the statement concerned;
- (b) that the accused neither knew nor had reasonable grounds to believe that the person concerned had not attained that age; or
- (c) that the accused believed on reasonable grounds that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4) or (5).

Supply of video recording not complying with requirements as to labels, etc.

7. (1) A person who supplies or offers to supply a video recording or any spool, case or other thing on or in which the recording is kept which does not satisfy any requirement imposed by regulations made by the Secretary of State under section 8 of the Video Recordings Act 1984 and for the time being in force (requirements as to labelling, etc.) is guilty of an offence unless the supply is, or would if it took place be, an exempted supply.

(2) It is a defence to a charge of committing an offence under this section to prove that the accused -

- (a) believed on reasonable grounds that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4) or (5); or
- (b) neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing (as the case

may be) did not satisfy the requirement concerned.

Supply of video recording containing false indication as to classification.

8. (1) A person who supplies or offers to supply a video recording containing a video work in respect of which no classification certificate has been issued is guilty of an offence if the video recording or any spool, case or other thing on or in which the recording is kept contains any indication that a classification certificate has been issued in respect of that work unless the supply is, or would if it took place be, an exempted supply.

(2) It is a defence to a charge of committing an offence under subsection (1) to prove -

(a) that the accused believed on reasonable grounds -

(i) that a classification certificate had been issued in respect of the video work concerned; or

(ii) that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4) or (5); or

(b) that the accused neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing (as the case may be) contained the indication concerned.

(3) A person who supplies or offers to supply a video recording containing a video work in respect of which a classification certificate has been issued is guilty of an offence if the video recording or any spool, case or other thing on or

in which the recording is kept contains any indication that is false in a material particular of any statement contained in the certificate, unless the supply is, or would if it took place be, an exempted supply.

(4) It is a defence to a charge of committing an offence under subsection (3) to prove -

(a) that the accused believed on reasonable grounds -

(i) that the supply was, or would if it took place be, an exempted supply by virtue of section 3(4) or (5); or

(ii) that the certificate concerned contained the statement indicated; or

(b) that the accused neither knew nor had reasonable grounds to believe that the recording, spool, case or other thing (as the case may be) contained the indication concerned.

Supply of pirated video work.

9. A person who supplies or offers to supply a counterfeit or pirated video work is guilty of an offence.

General defence to offences under this Law.

10. Without prejudice to any defence specified in the preceding provisions of this Law in relation to a particular offence, it is a defence to a charge of committing any offence under this Law to prove -

- (a) that the commission of the offence was due to the act or default of a person other than the accused; and
- (b) that the accused took all reasonable precautions and exercised all due diligence to avoid the commission of the offence by any person under his control.

Penalties.

11. (1) A person guilty of an offence under section 5 or 6 shall be liable on conviction to a fine not exceeding £20,000.

(2) A person guilty of an offence under any other provision of this Law shall be liable on conviction to a fine not exceeding level 5 on the uniform scale.

Offences by bodies corporate.

12. (1) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part 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 the 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, subsection (1) 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.

Entry, search and seizure.

13. (1) If the Bailiff is satisfied by information on oath laid by a police officer that there are reasonable grounds for suspecting -

- (a) that an offence under this Law has been or is being committed on any premises; and
- (b) that evidence that the offence has been or is being committed is on those premises;

the Bailiff may issue a warrant authorising any police officer to enter and search the premises within one month from the date of issue of the warrant.

(2) Any police officer entering or searching any premises in pursuance of a warrant under subsection (1) may use reasonable force if necessary and may seize anything found there which he has reasonable grounds to believe may be required to be used in evidence in any proceedings for an offence under this Law.

Evidence by certificate.

14. (1) In any proceedings for an offence under this Law a certificate purporting to be signed by a person authorised in that behalf by the Committee and stating -

- (a) that he has examined -
 - (i) the record maintained in pursuance of arrangements made by the designated authority, and
 - (ii) a video work (or part of a video work) contained in a video recording identified by the certificate, and

- (b) that the record shows that, on the date specified in the certificate, no classification certificate had been issued in respect of the video work concerned;

shall be admissible as evidence of the fact that, on that date, no classification certificate had been issued in respect of the video work concerned.

(2) A certificate under subsection (1) may also state -

- (a) that the video work concerned differs in such respects as may be specified from another video work examined by the person so authorised and identified by the certificate; and
- (b) that the record shows that on a date specified in the certificate under subsection (1), a classification certificate was issued in respect of that other video work;

and if it does so, it shall be admissible as evidence of the fact that the video work concerned differs in those respects from the other video work.

(3) In any proceedings for an offence under this Law, a certificate purporting to be signed by a person authorised in that behalf by the Committee and stating -

- (a) that he has examined -
 - (i) the record maintained in pursuance of arrangements made by the designated authority,

and

- (ii) a video work (or part of a video work) contained in a video recording identified by the certificate, and

- (b) that the record shows that, on the date specified in the certificate under this subsection, a classification certificate was issued in respect of the video work concerned and that a document identified by the certificate under this subsection is a copy of the classification certificate so issued;

shall be admissible as evidence of the fact that, on that date, a classification certificate in terms of the document so identified was issued in respect of the video work concerned.

(4) In any proceedings for an offence under this Law, a certificate purporting to be signed by a person authorised in that behalf by the Committee and stating-

- (a) that he has examined the record maintained in pursuance of arrangements made by the designated authority, and
- (b) that the record shows that, on the date specified in the certificate, no classification certificate had been issued in respect of a video work having a particular title,

shall be admissible as evidence of the fact that, on that date, no classification certificate had been issued in respect of a work of that title.

(5) In any proceedings for an offence under this Law, a certificate purporting to be signed by a person authorised in that behalf by the Committee and stating-

- (a) that he has examined the record maintained in pursuance of arrangements made by the designated authority, and
- (b) that the record shows that, on the date specified in the certificate under this subsection, a classification certificate was issued in respect of a video work having a particular title and that a document identified by the certificate under this subsection is a copy of the classification certificate so issued,

shall be admissible as evidence of the fact that, on that date, a classification certificate in terms of the document so identified was issued in respect of a work of that title.

(6) Any document or video recording identified in a certificate tendered in evidence under this section shall be treated as if it had been produced as an exhibit and identified in court by the person signing the certificate.

(7) This section does not make a certificate admissible as evidence in proceedings for an offence unless a copy of the certificate has, not less than seven days before the hearing, been served on the person charged with the offence in one of the following ways -

- (a) by delivering it to him or to his Advocate;
- (b) by addressing it to him and leaving it at his usual or last

known place of abode or place of business or by addressing it to his Advocate and leaving it at his office;

- (c) by sending it in a registered letter or by the recorded delivery service addressed to him at his usual or last known place of abode or place of business or addressed to his Advocate at his office; or
- (d) in the case of a body corporate, by delivering it to the secretary of the body at its registered or principal office or sending it in a registered letter or by the recorded delivery service addressed to the secretary of that body at that office.

Forfeiture.

15. (1) Where a person is convicted of any offence under this Law, the court may order any video recording -

- (a) produced to the court; and
- (b) shown to the satisfaction of the court to relate to the offence;

to be forfeited.

(2) The court shall not order any video recording to be forfeited under subsection (1) if a person claiming to be the owner of it or otherwise interested in it applies to be heard by the court, unless an opportunity has been given to him to show cause why the order should not be made.

(3) References in this section to a video recording include a reference to any spool, case or other thing on or in which the recording is kept.

(4) An order made under subsection (1) shall not take effect until the expiration of the ordinary time within which an appeal may be instituted or, where such an appeal is duly instituted, until the appeal is finally decided or abandoned; and for this purpose -

- (a) an application for leave to appeal shall be treated as the institution of an appeal; and
- (b) where a decision on appeal is subject to a further appeal, the appeal is not finally decided until the expiration of the ordinary time within which a further appeal may be instituted or, where a further appeal is duly instituted, until the further appeal is finally decided or abandoned.

Repeals.

16. The Video Licensing (Guernsey) Law, 1985^d, the Video Licensing (Guernsey) Ordinance, 1987^e and the Video Licensing (Amendment) Ordinance, 1991^f are hereby repealed.

Citation.

17. This Law may be cited as the Video Recordings (Guernsey) Law, 2000.

^d Ordres en Conseil Vol. XXIX, p. 113.

^e Recueil d'Ordonnances Tome XXIV, p. 66.

^f Recueil d'Ordonnances Tome XXV, p. 412.