

PROJET DE LOI

ENTITLED

The Court of Appeal (Guernsey) Law, 1961 *

[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. XVIII, p. 315; as amended by the: States Supervisor and Treasurer of the States (Transfer of Functions) Law, 1971 (Ordres en Conseil Vol. XXIII, p. 188); Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (No. III of 2012); Court of Appeal (Guernsey) (Amendment) Law, 2021 (No. ** of 2022); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (Sark Ordinance No. II of 2020). See also the: Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Fees, Charges and Penalties (Guernsey) Law, 2007 (No. VII of 2008); Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964 (Recueil d'Ordonnances Tome XIV, p. 32).

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The Court of Appeal (Guernsey) Law, 1961

THE STATES, in pursuance of their Resolution of the sixteenth day of November, nineteen hundred and sixty, 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.

PART I

Constitution of the Court of Appeal

The Court of Appeal.

1. (1) There shall be a Court of Appeal in the Bailiwick of Guernsey with civil and criminal jurisdiction in accordance with the provisions of this Law and that Court of Appeal shall be entitled and is hereinafter referred to as "**the Court of Appeal**".

(2) The Court of Appeal may be distinguished by the addition of the words "(Civil Division)" or "(Criminal Division)" as shall be appropriate to the jurisdiction being exercised by it.

NOTES

The following cases have referred to this Law:

Guille v. MacKay (1967) (Unreported, Court of Appeal, 14th June)
(Court of Appeal Judgments, 1964-89, p. 25);

In re Kirk (1985) (Unreported, Court of Appeal, 11th July) (Court of

Appeal Judgments, 1964-89, p. 306);
 Fewtrell v. Fewtrell (1985) 1.GLJ.44;
 Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);
 Law Officers of the Crown v. Kirk (1986) 4.GLJ.25 (see also Court of Appeal Judgments, 1964-89, p. 331);
 Law Officers of the Crown v. Ogier and Le Noury (1989) 7.GLJ.17 (see also Court of Appeal Judgments, 1964-89, p. 446);
 Law Officers of the Crown v. Collins (1989) 8.GLJ.16;
 Taylor v. States Board of Health and Parsons (1990) 9.GLJ.54;
 Havilland Estates Limited v. Channel Island Ceramics Limited (1990) 10.GLJ.67;
 Barnes v. Cobo Building Services Ltd. and others (1993) 16.GLJ.46;
 Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;
 Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;
 Havilland Estates Limited v. Channel Islands Ceramics Limited (No. 2) (1993) 15.GLJ.51;
 Havilland Estates Limited et al. v. Channel Island Ceramics Limited et al. (No. 3) (1993) 15.GLJ.81;
 Law Officers of the Crown v. Benford (1993) 15.GLJ.82;
 Law Officers of the Crown v. Diment (1993) 16.GLJ.86;
 Loyalty Brokers Ltd. v. Cockram (1993) 16.GLJ.89;
 Law Officers of the Crown v. Blondel and Butcher (1994) 17.GLJ.60;
 Law Officers of the Crown v. Renouf (1994) 18.GLJ.80;
 Hugo v. Skillett (1994) 18.GLJ.82;
 Main v Loughton (1995) 20.GLJ.92;
 Vekaplast Windows v. Jehan & Jeehan (1997) 23.GLJ.86.
 Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;
 Smith v Helmot and Helmot (1998) 26.GLJ.80;
 Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;
 Law Officers of the Crown v. Blondel (1999) 27.GLJ.4;
 Smith v Helmot and Helmot (1999) 27.GLJ.146;
 De Carteret v. Surcouf (2000) 28.GLJ.27;
 Churchill v. Law Officers of the Crown [2001] GLR 4;
 Marsh v. Law Officers of the Crown (2002) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No. 10/2002);
 Island Development Committee v. Portholme Properties Limited (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);
 Stuart-Hutcheson v. Spread Trustee Co. Ltd. [2002] GLR N-9;
 Guest v. Law Officers of the Crown (2003) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 8/2003); 2003-04 GLR Note 1;
 Guernsey International Trustees Limited & Bennett v. Virani (2003) (Unreported, Court of Appeal, 18th March) (Guernsey Judgment No. 24/2003); 2003-04 GLR Note 4;
 R. Durnnell and Sons Limited v. Kaduna Limited (2003) (Unreported,

Court of Appeal, 9th June) (Guernsey Judgment No. 41/2003); 2003-04 GLR Note 9;

Barnes v. Law Officers of the Crown 2003-04 GLR 521;

Smith v. Slawther (2003) (Unreported, Court of Appeal, 25th September) (Guernsey Judgment No. 50/2003); 2003-04 GLR Note 11;

Pirito v. Curth 2005–2006 GLR 34;

Gilbert v. Law Officers of the Crown (2006) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No 44/2006); 2005–06 GLR Note 30;

E v. E 2007–2008 GLR 133;

Minister of the Environment Department v. Johns 2007–2008 GLR 174;

Taylor v. Law Officers of the Crown 2007–2008 GLR 207;

Law Officers of the Crown v. Rouget 2007–08 GLR 306;

Presland v. Law Officers of the Crown (2007) (Unreported, Court of Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007–2008 GLR Note 11;

Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2009–10 GLR 1;

E v. E (2009) (Unreported, Court of Appeal, 15th January & 8th June) (Guernsey Judgment No. 26/2009);

E v. E 2009-10 GLR Note 7;

E v. E 2009–10 GLR 236;

McNamara v. Gauson 2009-10 GLR 387;

Spread Trustee Company Limited v. Hutcheson and Others 2009-10 GLR 403;

Ferbrache v. C & R Homes (Guernsey) Limited 2009-10 GLR 455;

Cotterill v Ozanne 2011-12 GLR 1;

Kevin John Holland v Law Officers of the Crown (2013) (Unreported, Royal Court, 15th January) (Guernsey Judgment No. 2/2013);

Pinto, Loreto & Almeida v. Law Officers of the Crown 2013-14 GLR 83;

X v. Law Officers of the Crown (2013) (Unreported, Royal Court, 9th August) (Guernsey Judgment No. 25/2013);

Stephen Dale Risbridger v. Law Officers of the Crown (2013) (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 28/2013);

Emerald Bay Worldwide Limited v. Barclays Wealth Directors (Guernsey) Limited et al. (2014) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 2/2014);

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 39/2014);

Brouard v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 52/2014);

Fernandes v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 53/2014);

Broadhead v Spread Trustee Company Limited (2015) (Unreported, Court of Appeal, 4th February) (Guernsey Judgment No. 13/2015);

Shelton v. Barby (2015) (Unreported, Court of Appeal, 1st June)

(Guernsey Judgment No. 26/2015);

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2015) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 55/2015);

Neil Hastie v. Law Officers of the Crown (2015) (Unreported, Court of Appeal, 29th September) (Guernsey Judgment No 59/2015);

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2016) (Unreported, Court of Appeal, 19th July) (Guernsey Judgment No. 31/2016);

Smith v. Atlantique Holdings Limited (2016) (Unreported, Court of Appeal, 26th September) (Guernsey Judgment No. 38/2016);

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016);

Nordbø v. Baker (2017) (Unreported, Court of Appeal, 18th May) (Guernsey Judgment No. 26/2017);

Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017);

Tchenguiz and Rawlinson Hunter Trustees SA v. Ackers (Unreported, Court of Appeal, 5th October) (Guernsey Judgment No. 37/2018);

Lovering v. Atkinson Ferbrache and Richardson (Unreported, Court of Appeal, 10th October) (Guernsey Judgment No. 38/2018);

Hindle v. Kitching [2020]GCA002 (Unreported, Court of Appeal, 24th January);

ITG Ltd and Bayeux Ltd v. Glenalla Properties Ltd et al [2020]GCA043 (Unreported, Court of Appeal, 21st August);

JJW Limited (in liquidation) v Aareal Bank AG [2021]GCA022 (Unreported, Court of Appeal, 26th May).

In accordance with the provisions of the Fees, Charges and Penalties (Guernsey) Law, 2007, section 1, Schedule, with effect from 19th May, 2008, the power to prescribe by Ordinance the fees therein referred to and payable under this Law may be exercised by Regulation.

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.

Judges of the Court of Appeal.

2. (1) [The Bailiff and the Deputy Bailiff shall be *ex officio* judges] of the Court of Appeal.

(2) The other judges of the Court of Appeal (hereinafter called "**the ordinary judges**") shall be such persons as may be appointed to that office by Her Majesty.

NOTES

In section 2, the words in square brackets in subsection (1) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 2, with effect from 7th February, 2022.

The following case has referred to section 2:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Qualification for appointment as ordinary judge.

3. Any person –

- (a) who holds or has held judicial office in the [...] Commonwealth, or
- (b) who has been at least ten years in practice at the Bar in [the Bailiwick of Guernsey], whether as a Law Officer of the Crown or otherwise, or
- (c) who has been at least ten years in practice at the Bar in [England and Wales, Scotland, Northern Ireland, Jersey or the Isle of Man],

shall be qualified for appointment as an ordinary judge of the Court of Appeal.

NOTES

In section 3, first, the word omitted in square brackets in paragraph (a) was repealed and the words in square brackets in, second, paragraph (b) and third, paragraph (c) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 3, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 7th February, 2022.

The following case has referred to section 3:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Tenure of office of ordinary judge.

4. (1) An ordinary judge of the Court of Appeal shall hold office during good behaviour.

[(2) A judge of the Court of Appeal shall not during the judge's continuance in office practise at the Bar in the Bailiwick of Guernsey or be concerned directly or indirectly, whether within or without the Bailiwick, as counsel, solicitor, arbitrator or referee in any matter arising within the Bailiwick.]

NOTES

In section 4, subsection (2) was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 4, with effect from 7th February, 2022.

The following case has referred to section 4:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Oath of office of judge.

5. Every judge of the Court of Appeal shall, upon taking office in that Court, [take the oath, or make the affirmation,] set out in the First Schedule to this Law.

NOTE

In section 5, the words in square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 5, with effect from 7th February, 2022.

[Remuneration] and expenses of judges.

6. (1) There shall be paid to the ordinary judges of the Court of Appeal [such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff].

(2) There shall be paid to the judges of the Court of Appeal travelling and other expenses incurred in connection with their functions under this Law.

(3) The [remuneration] and expenses payable to the judges of the Court of Appeal under this section shall be paid out of moneys provided by the States.

NOTE

In section 6, the words in square brackets in, first, the heading, second, subsection (1) and, third, subsection (3) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 6, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 7th February, 2022.

[Venue.]

7. (1) The Court of Appeal may sit for the hearing of appeals in or outside the Bailiwick of Guernsey.

(2) For the avoidance of doubt, the Bailiff or presiding judge may

give directions as to how the proceedings of the Court of Appeal shall be conducted, including (but not limited to) a direction that the proceedings, or part thereof, shall be conducted by way of telephone, live video link or any other means of telecommunications or electronic communications.]

NOTE

Section 7 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 7, with effect from 7th February, 2022.¹

Convening and quorum.

8. The Court of Appeal shall be convened by the Bailiff [or, in the absence of the Bailiff, by the Deputy Bailiff,] and shall be duly constituted if it consists of an uneven number of judges, but not less than three:

[PROVIDED that a judge of the Court of Appeal shall not sit as a judge on –

- (a) the hearing of an appeal or reference from or relating to a judgment, order, conviction or sentence pronounced, made or passed by any court of which the judge was a member, or
- (b) the hearing of any proceedings preliminary or incidental to any such appeal or reference.]

NOTES

In section 8, first, the words in the first pair of square brackets were inserted and, second, the words in the second pair of square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 8, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

The following case has referred to section 8:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey
Judgment No. 11/2002).

Majority decision.

9. The determination of any question before the Court of Appeal shall be according to the opinion of the majority of the judges hearing the case.

[Presidency.

10. (1) Subject to subsection (2) and to section 8, the Bailiff shall be the President of the Court of Appeal.

(2) At any sitting of the Court of Appeal –

- (a) if the Bailiff is unable to act, the Deputy Bailiff shall preside, and
- (b) if the Bailiff and the Deputy Bailiff are unable to act, the ordinary member of the Court who has the longest service as such a member shall preside, unless the members of the Court at the sitting decide otherwise.

(3) The Bailiff or the Deputy Bailiff may decline to preside in any case in which, in the opinion of the Bailiff or Deputy Bailiff (as the case may be), it is undesirable or inconvenient to do so, and in any such case the provisions of this section shall have effect as if the Bailiff or Deputy Bailiff were unable to act.]

NOTE

Section 10 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 9, with effect from 7th February, 2022.

Officers of the Court.

11. (1) Her Majesty's Greffier in the Island of Guernsey shall be the Registrar of the Court of Appeal [("**the Registrar**")].

(2) Her Majesty's Sheriff and Her Majesty's Sergeant in the Island of Guernsey shall, for all purposes of and incidental to the hearing of appeals in the Bailiwick of Guernsey and the execution and enforcement of any judgment or order made thereon, discharge duties analogous to those discharged by them respectively in relation to proceedings in the Royal Court.

(3) Her Majesty's Greffier, Her Majesty's Sheriff and Her Majesty's Sergeant in the Island of Guernsey shall be assisted in the discharge of their duties under this section by the members of their respective departments and, if need be, by the [Greffier] of the Island of Alderney or by the Prévôt of the Island of Sark.

[(4) For the avoidance of doubt, the Court of Appeal may sit, and is properly constituted, whether or not the Registrar, Her Majesty's Sheriff or Her Majesty's Sergeant, or any of their respective deputies, is present.]

NOTE

In section 11, first, the words in square brackets in subsection (1) were inserted, second, the word in square brackets in subsection (3) was substituted and, third, subsection (4) was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 10, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 7th February, 2022.

Right of practise.

12. (1) The members of the Guernsey Bar shall alone have the right to practise in the Court of Appeal.

(2) In the preceding subsection, the expression "**practise**" shall include the doing in any office which is connected with the Court of Appeal or in which any business connected with that Court is conducted and the transacting with any officer who is attached to that Court or with any judge of that Court of any act or thing required or necessary to be done [in connection with any appeal or reference] arising in the Bailiwick of Guernsey and any proceedings preliminary or incidental thereto.

[(3) Subject as provided by rules of court, it shall be lawful for a party to an appeal under Part II or for an appellant under Part III, notwithstanding the foregoing provisions of this section, to address the Court of Appeal or any single judge thereof both on the hearing of the appeal and in any proceedings preliminary or incidental to the appeal and to do in any such office or to transact with any such officer as is mentioned in subsection (2) any act or thing required or necessary to be done in connection with any such appeal or proceedings.]

NOTES

In section 12, first, the words in square brackets in subsection (2) were substituted and, second, subsection (3) was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 11, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

The following case has referred to section 12:

Law Officers of the Crown v. Kirk (1986) 4.GLJ.25 (see also Court of Appeal Judgments, 1964-89, p. 331).

PART II

Appeals in Civil Matters

Transfer of appellate jurisdiction.

13. (1) On such day as shall be appointed in that behalf by Ordinance

of the States there shall be vested in the Court of Appeal the appellate jurisdiction in civil matters which immediately before that day was vested in the Royal Court, sitting as a "Cour des Jugements et Records".

(2) Any civil matter pending in the Royal Court, sitting as a "Cour des Jugements et Records", immediately before the day appointed under subsection (1) of this section shall on such day be transferred to the Court of Appeal and, subject to such directions as the Court of Appeal may think fit to give in relation thereto, proceedings thereon shall be continued as if the matter had originated in and the previous proceedings had been taken in the Court of Appeal.

NOTES

The following cases have referred to section 13:

Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;
Havilland Estates Limited v. Channel Islands Ceramics Limited (No. 2) (1993) 15.GLJ.51;
Hugo v. Skillett (1994) 18.GLJ.82;
Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;
Island Development Committee v. Portholme Properties Limited (2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);
E v. E 2007-08 GLR 133;
Minister of the Environment Department v. Johns 2007–2008 GLR 174.

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of subsection (1) of this section is 4th June, 1964.

[Jurisdiction.]

14. (1) Subject as otherwise provided in this Law or in any other enactment, the Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of the Royal Court when exercising its jurisdiction in any civil cause or matter including its appellate jurisdiction in any such cause or matter

originating in the Court of Alderney or the Court of the Seneschal of Sark.

(2) For all the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction of the Royal Court, and shall have power, if it appears to the Court of Appeal that a new trial or hearing ought to be had, to order that the verdict and judgment be set aside and that a new trial or hearing be had.

(3) The Court of Appeal shall exercise such additional jurisdiction as may be conferred on the Court by any enactment.]

NOTES

Section 14 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 12, with effect from 7th February, 2022.

The following cases have referred to section 14:

Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;

Smith v Helmut and Helmut (1998) 26.GLJ.80;

Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;

Island Development Committee v. Portholme Properties Limited (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);

Minister of the Environment Department v. Johns 2007–2008 GLR 174;

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 39/2014);

ITG Ltd and Bayeux Ltd v. Glenalla Properties Ltd et al [2020]GCA043 (Unreported, Court of Appeal, 21st August).

Limitation on appeals.

15. [(1)] An appeal shall not lie to the Court of Appeal under this Part of this Law –

- (a) from any decision which it is provided, under any enactment, is to be final,
- (b) from a final order for the dissolution or nullity of marriage, by any party who, having had time and opportunity to appeal from the decree on which the final order was founded, has not appealed from that decree,
- (c) without the leave of the presiding judge of the court making the order, from any order made with the consent of the parties or as to costs,
- (d) [from any judgment or order of the Royal Court sitting as a Full Court, whether exercising its original or its appellate jurisdiction, where no point of law is involved,]
- (e) without the leave of the presiding judge of the court whose decision is sought to be appealed from or of the Court of Appeal, from any interlocutory order or interlocutory judgment, except in the following cases –
 - (i) where the liberty of the subject or the custody of [a child] is concerned,
 - (ii) in the case of a decree in a matrimonial cause or a judgment or order in an admiralty action determining liability,
 - (iii) in such other cases, to be prescribed by rules of

court, as are of the nature of final decisions.

[(2) An application to the Court of Appeal for leave under subsection (1)(e) shall be made to a single judge of that Court and upon such application –

- (a) the single judge's decision on the application shall be final, but
- (b) the single judge may at any stage refer the application to the full Court of Appeal for decision.]

NOTES

In section 15, first, the existing text was renumbered as "subsection (1)", second, the words in paragraph (d) and, third, the word in sub-paragraph (e)(i) were substituted and, fourth, subsection (2) was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 13, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 7th February, 2022.

The following cases have referred to section 15:

Fewtrell v. Fewtrell (1985) 1.GLJ.44;
Barnes v. Cobo Building Services Ltd. and others (1993) 16.GLJ.46;
Smith v Helmot and Helmot (1999) 27.GLJ.146;
R. Durnell and Sons Limited v. Kaduna Limited (2003) (Unreported, Court of Appeal, 9th June) (Guernsey Judgment No. 41/2003); 2003-04 GLR Note 9;
McNamara v. Gauson 2009-10 GLR 387;
Ferbrache v. C & R Homes (Guernsey) Limited 2009-10 GLR 455;
Cotterill v Ozanne 2011-12 GLR 1;
Broadhead v Spread Trustee Company Limited (2015) (Unreported, Court of Appeal, 4th February) (Guernsey Judgment No. 13/2015);
Hindle v. Kitching [2020]GCA002 (Unreported, Court of Appeal, 24th January).

Appeals from the Court.

16. No appeal shall lie from a decision of the Court of Appeal under this

Part of this Law without the special leave of Her Majesty in Council or the leave of the Court of Appeal [...].

NOTES

In section 16, the words omitted in square brackets were repealed by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 14, with effect from 7th February, 2022.

The following cases have referred to section 16:

Taylor v. States Board of Health and Parsons (1990) 9.GLJ.54;
Havilland Estates Limited et al. v. Channel Island Ceramics Limited et al. (No. 3) (1993) 15.GLJ.81;
Vekaplast Windows v. Jehan & Jeehan (1997) 23.GLJ.86;
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.88;
Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;
Guernsey International Trustees Limited & Bennett v. Virani (2003) (Unreported, Court of Appeal, 18th March) (Guernsey Judgment No. 24/2003); 2003-04 GLR Note 4;
Smith v. Slawther (2003) (Unreported, Court of Appeal, 25th September) (Guernsey Judgment No. 50/2003); 2003-04 GLR Note 11;
Pirito v. Curth 2005–2006 GLR 34;
Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2009–10 GLR 1;
E v. E (2009) (Unreported, Court of Appeal, 15th January & 8th June) (Guernsey Judgment No. 26/2009);
E v. E 2009-10 GLR Note 7;
E v. E 2009–10 GLR 236;
Spread Trustee Company Limited v. Hutcheson and Others 2009-10 GLR 403;
Emerald Bay Worldwide Limited v. Barclays Wealth Directors (Guernsey) Limited et al. (2014) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 2/2014);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2015) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 55/2015);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2016) (Unreported, Court of Appeal, 19th July) (Guernsey Judgment No. 31/2016);
Smith v Atlantique Holdings Limited (2016) (Unreported, Court of Appeal, 26th September) (Guernsey Judgment No. 38/2016);
Nordbø v. Baker (2017) (Unreported, Court of Appeal, 18th May) (Guernsey Judgment No. 26/2017);
Tchengui and Rawlinson Hunter Trustees SA v. Ackers (Unreported,

Court of Appeal, 5th October, 2018) (Guernsey Judgment No. 37/2018);
Lovering v. Atkinson Ferbrache and Richardson (Unreported, Court
of Appeal, 10th October) (Guernsey Judgment No. 38/2018).

Procedure and practice.

17. The jurisdiction vested in the Court of Appeal under this Part of this Law shall, so far as regards procedure and practice, be exercised in the manner provided by this Law or by rules of court, and, where no special provision is contained in this Law or in rules of court with reference thereto, any such jurisdiction shall be exercised [(without prejudice to the discretion of the presiding judge to make such ruling in any particular case as is necessary to do justice) in such manner as may be directed, whether by Practice Direction or otherwise, by the Bailiff as President of the Court of Appeal or, in the absence of the Bailiff, by the Deputy Bailiff.]

NOTES

In section 17, the words in square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 15, with effect from 7th February, 2022.

The following cases have referred to section 17:

Guille v. MacKay (1967) (Unreported, Court of Appeal, 14th June)
(Court of Appeal Judgments, 1964-89, p. 25);
Hulme v. Matheson Securities (Channel Islands) Limited (No. 2)
(1997) 24.GLJ.80.

Costs.

18. (1) The costs of and incidental to all proceedings in the Court of Appeal under this Part of this Law shall be in the discretion of the Court, and the Court shall have power to determine by whom and to what extent the costs are to be paid.

(2) The Bailiff may, from time to time, by rules made under this subsection, prescribe the fees payable to that Court and to the officers of that Court in

respect of proceedings in and in relation to that Court and the fees and expenses recoverable by a party in any case where costs are awarded to that party under subsection (1) of this section.

(3) All fees payable to the Court of Appeal and to the officers of that Court shall accrue to the States.

NOTES

The following Rules have been made under section 18:

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2012;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2015;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2016;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2018.

The following cases have referred to section 18:

Main v Loughton (1995) 20.GLJ.92;

Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;

De Carteret v. Surcouf (2000) 28.GLJ.27;

Stuart-Hutcheson v. Spread Trustee Co. Ltd. [2002] GLR N-9;

E v. E 2007–2008 GLR 133;

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016);

JJW Limited (in liquidation) v Aareal Bank AG [2021]GCA022 (Unreported, Court of Appeal, 26th May).

Trial with assessors.

19. (1) In any proceedings in the Court of Appeal under this Part of this Law the Court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified and try and hear the proceedings wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the Court.

Reference to experts.

20. (1) Subject to rules of court, the Court of Appeal may refer to any person selected by the Court for inquiry and report any question arising in any appeal under this Part of this Law.

(2) In all cases of reference under subsection (1) of this section, the person selected by the Court as aforesaid shall be deemed to be an officer of the Court, and, subject to rules of court, shall have such authority and conduct the reference in such manner as the Court may direct.

(3) The remuneration to be paid to any person to whom any matter is referred under an order of the Court shall be determined by the Court and be recoverable costs of the proceedings.

[Powers of a single judge.]

21. (1) The powers of the Court of Appeal under this Part –

- (a) to give leave to appeal,
- (b) to extend the time within which notice of an appeal or of an application for leave to appeal may be given,
- (c) in any appeal pending before the Court of Appeal, to decide any matter incidental thereto not involving the decision of the appeal,
- (d) to make any order as to costs,

may be exercised by a single judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions, and a single judge may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal as the judge may think fit.

(2) Every order made by a single judge of the Court of Appeal under this section may be discharged or varied by any judges of the Court having power to hear and determine the appeal.

(3) For the purposes of subsection (1), an appeal is pending if –

- (a) an application has been made to the Court of Appeal for leave to appeal, but has not been determined,
- (b) an application has been made to the Court for an order authorising (by whatever means) service of a notice of appeal, but has not been determined, or
- (c) an appeal has been brought, but has not yet been determined.]

NOTES

Section 21 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 16, with effect from 7th February, 2022.

The following cases have referred to section 21:

Havilland Estates Limited v. Channel Island Ceramics Limited (1990) 10.GLJ.67;

Shelton v. Barby (2015) (Unreported, Court of Appeal, 1st June) (Guernsey Judgment No. 26/2015);

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016).

Rules of court.

22. (1) Rules of court may be made by the Court of Appeal –
- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all appeals under this Part of this Law (including the procedure and practice to be followed in the office of the Registrar of the Court) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provisions) the manner in which, and the time within which, any applications which under this Part of this Law or any enactment are to be made to the Court shall be made,
 - (b) for regulating the sittings of the Court and of the judges thereof, whether sitting in court or elsewhere,
 - (c) for repealing any enactments which relate to matters with respect to which rules are made under this section,
 - (d) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connexion with or at any stage of any proceedings,
 - (e) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Part of this Law.

(2) The power to make rules of court under this section shall include power to make rules as to proceedings by and against the Crown.

NOTES

The following Rules have been made under section 22:

*Court of Appeal (Civil Division) (Guernsey) Rules, 1964;
Court of Appeal (Civil Division) (Guernsey) (Amendment) Rules,
2022.*

The following case has referred to section 22:

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd
December) (Guernsey Judgment No. 52/2016).

[Record and transcript of proceedings in court of first instance.]

23. (1) In any proceedings in which an appeal lies to the Court of Appeal under this Part, a record of the proceedings, by electronic means or otherwise, shall be made, and on any appeal or application to the Court of Appeal a transcript of the record or of so much thereof as the presiding judge of the court whose decision is appealed from or sought to be appealed from or the Court of Appeal shall direct shall be made for the use of the Court of Appeal.

(2) A transcript of the record made under this section must be furnished to any party to the proceedings upon payment of the cost thereof for the time being prescribed by rules made under section 18(2).]

NOTE

Section 23 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 17, with effect from 7th February, 2022.

PART III

Appeals in Criminal Matters

Right of appeal.

24. (1) A person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court on or after such day as shall be appointed in that behalf by Ordinance of the States may appeal under this Part of this Law to the Court of Appeal –

- (a) against his conviction, on any ground of appeal which involves a question of law alone,
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who presided at his trial that it is a fit case for appeal against his conviction, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal, and
- (c) with the leave of the Court of Appeal –
 - (i) against the sentence passed on [the person for the offence (whether passed on the person's conviction or in subsequent proceedings)], unless the sentence is one fixed by law, and
 - (ii) against the minimum term of imprisonment, where he has been sentenced to life imprisonment.

(2) For the purposes of subsection (1)(c)(ii), "life imprisonment" shall include any sentence of youth detention for life and detention at Her Majesty's pleasure.]

NOTES

Section 24 was substituted by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011, section 20, Schedule, paragraph 4, with effect from 27th June, 2012.

In section 24, the words in square brackets in subsection (1)(c)(i) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 18, with effect from 7th February, 2022.

The following case has referred to Part III:

Law Officers of the Crown v. Diment (1993) 16.GLJ.86.

The following cases have referred to section 24:

In re Kirk (1985) (Unreported, Court of Appeal, 11th July) (Court of Appeal Judgments, 1964-89, p. 306);

Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;

Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;

Barnes v. Law Officers of the Crown 2003-04 GLR 521;

Law Officers of the Crown v. Diment (1993) 16.GLJ.86;

Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);

Gilbert v. Law Officers of the Crown (2006) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No 44/2006); 2005-06 GLR Note 30;

Taylor v. Law Officers of the Crown 2007-08 GLR 207;

Stephen Dale Risbridger v. Law Officers of the Crown (2013) (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 28/2013);

Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017).

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of this section is 4th June, 1964.

[Right of appeal in cases where there has not been a conviction.]

24A. (1) Where, under –

- (a) section 7 or 10 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006, or
- (b) section 10 or 13 of the Probation (Bailiwick of Guernsey) Law, 2018,

a person has been dealt with by the Royal Court, the person may appeal under this Part to the Court of Appeal notwithstanding that the person is not a person convicted by the Royal Court.

(2) Where, under any of the provisions mentioned in subsection (1), a person has been sentenced by the Royal Court, the person may appeal against the sentence under this Part to the Court of Appeal notwithstanding that the person is not a person convicted.]

NOTE

Section 24A was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 19, with effect from 7th February, 2022.

Powers of the Court.

25. (1) The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

PROVIDED that the Court of Appeal may, notwithstanding that it is of opinion that

the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part of this Law, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence, the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed [as a result of the trial], and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

[(4) On an appeal against a minimum term of imprisonment, the Court of Appeal shall if it thinks that a different minimum term should have been set, quash the minimum term set [as a result of the trial], and set such other minimum term warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.]

NOTES

In section 25,

the words "as a result of the trial" in square brackets, wherever occurring, were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 20(a), with effect from 7th February, 2022;

subsection (4) was inserted by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011, section 20, Schedule, paragraph 5, with effect from 27th June, 2012.

The following cases have referred to section 25:

Law Officers of the Crown v. Ogier and Le Noury (1989) 7.GLJ.17
(see also Court of Appeal Judgments, 1964-89, p. 446);
Law Officers of the Crown v. Benford (1993) 15.GLJ.82;

Law Officers of the Crown v. Diment (1993) 16.GLJ.86;
Law Officers of the Crown v. Blondel and Butcher (1994) 17.GLJ.60;
Law Officers of the Crown v. Renouf (1994) 18.GLJ.80;
Law Officers of the Crown v. Blondel (1999) 27.GLJ.4;
Churchill v. Law Officers of the Crown [2001] GLR 4;
Marsh v. Law Officers of the Crown (2002) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No. 10/2002);
Guest v. Law Officers of the Crown (2003) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 8/2003); 2003-04 GLR Note 1;
Barnes v. Law Officers of the Crown 2003-04 GLR 521;
Taylor v. Law Officers of the Crown 2007–2008 GLR 207;
Law Officers of the Crown v. Rouget 2007–08 GLR 306;
Presland v. Law Officers of the Crown (2007) (Unreported, Court of Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007–2008 GLR Note 11;
William Anthony Collins v. Law Officers of the Crown (2011) (Unreported, Court of Appeal, 14th December) (Guernsey Judgment No. 37/2011);
Kevin John Holland v Law Officers of the Crown (2013) (Unreported, Royal Court, 15th January) (Guernsey Judgment No. 2/2013);
Pinto, Loreto & Almeida v. Law Officers of the Crown 2013-14 GLR 83;
X v. Law Officers of the Crown (2013) (Unreported, Royal Court, 9th August) (Guernsey Judgment No. 25/2013);
Brouard v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 52/2014);
Neil Hastie v. Law Officers of the Crown (2015) (Unreported, Court of Appeal, 29th September) (Guernsey Judgment No 59/2015).

Powers of the Court in special cases.

26. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some part of the indictment or of the summons, has been properly convicted on some other part thereof, the Court may either affirm the sentence passed on the appellant [as a result of the trial], or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the part of the indictment or summons on which the Court considers that the appellant has been properly convicted.

(2) Where an appellant has been convicted of an offence and the court could on the indictment or summons have found him guilty of some other

offence, and on the finding of the court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the court a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed [as a result of the trial] as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If on any appeal it appears to the Court of Appeal that the appellant was not guilty by reason of insanity of the offence charged against him, the Court may quash the sentence passed [as a result of the trial] and order the appellant to be detained during Her Majesty's pleasure.

NOTES

In section 26, the words "as a result of the trial" in square brackets, wherever occurring, were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 20(b), with effect from 7th February, 2022.

The following case has referred to section 26:

Law Officers of the Crown v. Rouget 2007–08 GLR 306.

[Power to order retrial.]

26A. (1) Where the Court of Appeal allows an appeal against conviction and it appears to the Court that the interests of justice so require, it may order the appellant to be retried on a fresh indictment or summons to be brought in the Royal Court within the period of two months after the making of the order or such further period for which it may give leave for the indictment or summons to be brought.

(2) A person shall not under this section be ordered to be retried for any offence other than –

(a) the offence of which the person was convicted at the

original trial and in respect of which the person's appeal is allowed as mentioned in subsection (1),

- (b) an offence of which the person could have been convicted at the original trial on an indictment or summons for the first-mentioned offence, or
- (c) an offence charged in an alternative count of the indictment or summons in respect of which the Jurats were discharged from giving a verdict in consequence of convicting the person of the first-mentioned offence.

(3) The Court of Appeal may, on ordering a retrial, make such orders as appear to it to be necessary or expedient –

- (a) for the custody or release on bail of the person ordered to be retried pending the person's retrial, or
- (b) for the retention, pending the trial, of any property or money forfeited, restored or paid by virtue of the original conviction or any order made on that conviction.

(4) If the person ordered to be retried was, immediately before the determination of the person's appeal, liable to be detained in pursuance of an order or direction under the Mental Health (Bailiwick of Guernsey) Law, 2010, that order or direction shall continue in force pending the retrial as if the appeal had not been allowed and any order made by the Court of Appeal under this section for the person's custody or release on bail shall have effect subject to the said order or direction.

(5) Schedule 1A shall have effect with respect to the procedure in

the case of a person ordered to be retried, the sentence which may be passed if the retrial results in the person's conviction and the order for costs which may be made if the person is acquitted.]

NOTE

Section 26A was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 21, with effect from 7th February, 2022.

Judgments of the Court.

27. Unless the Court of Appeal directs to the contrary in cases where, in the opinion of the Court, the question before the Court is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court under this Part of this Law shall be pronounced by the presiding judge or such other judge of the Court hearing the case as the presiding judge directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

General powers of the Court.

28. The Court of Appeal shall, for the purposes of and subject to the provisions of this Part of this Law, have full power to determine, in accordance with this Part of this Law, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

[Effect of order.

28A. Subject to the other provisions of this Part, an order made by the Court of Appeal on any appeal under this Part shall have the like effect and be enforced in the like manner as if it had been made by the Royal Court.]

NOTE

Section 28A was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 22, with effect from 7th February, 2022.

Re-vesting and restitution of property on conviction.

29. (1) The operation of any order as to the disposal of any property on a conviction on indictment or on summary conviction before the Royal Court sitting as a Full Court shall (unless that Court directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended –

(a) in any case, until the expiration of [28] days after the date of the conviction, and

[(b) in cases where notice of appeal or notice of application for leave to appeal is given within 28 days after the date of the conviction, until the determination of the appeal or, in any case where an application for leave to appeal is finally refused, of the application,]

and, in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order.

(3) The Court of Appeal may by order annul or vary any order made on a trial for the disposal of any property although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

NOTE

In section 29, first, the figures in square brackets in paragraph (a) of subsection (1) were substituted and, second, paragraph (b) of that subsection was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 23, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

The following case has referred to section 8:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Time for appealing.

30. [(1) Where a convicted person wishes to appeal under this Part to the Court of Appeal, or to obtain the leave of the Court of Appeal to appeal under this Part, the person must –

- (a) in the case of an appeal against conviction, within 28 days of the date of conviction, and
- (b) in the case of an appeal against sentence, within 28 days of the date on which the sentence is passed,

give notice of appeal or notice of application for leave to appeal in such manner as may be prescribed by rules of court.]

(2) Such rules shall enable any convicted person to present his case and his arguments in writing instead of by oral argument if he so desires and any case or argument so presented shall be considered by the Court.

(3) [The] time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.

(4) ...

NOTES

In section 30, first, subsection (1) and, second, the word in square brackets in subsection (3) were substituted and, third, subsection (4) was repealed by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 24, respectively paragraph (a), paragraph (b) and paragraph (c), with effect from 7th February, 2022.

The following case has referred to section 30:

Fernandes v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 53/2014).

Judge's report on appeal.

31. (1) This section applies in the case of –

- (a) an appeal by a person against conviction,
- (b) an appeal by a person against sentence,
- (c) an application by a person for leave to appeal against conviction or sentence.

(2) The presiding judge of the court before which the person is convicted or sentenced, as the case may be, may furnish to the Court of Appeal a report giving the presiding judge's opinion upon the case or upon any point arising in the case.

(3) The presiding judge of the court before which the person is convicted or sentenced, as the case may be, shall furnish such a report to the Court of Appeal if required by the Court of Appeal so to do.

- (4) Rules of court may prescribe –
 - (a) the parties to whom copies of a report furnished under this section shall be given, and
 - (b) the manner in which the copies shall be so given.]

NOTES

Section 31 was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 25, with effect from 7th February, 2022.

The following case has referred to section 31:

Richards and Five Others v. Law Officers of the Crown (2002)
(Unreported, Court of Appeal, 18th April) (Guernsey Judgment No. 1/2002).

Supplemental powers of the Court.

- 32.** (1) For the purposes of this Part of this Law, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice –
- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case, and
 - (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the Court or before any officer of

the Court or any other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court, and

- (c) receive any evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application, and
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court, for inquiry and report to a special commissioner appointed by the Court, and act upon the report of any such commissioner so far as it thinks fit to adopt it, and
- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the Court any other powers which [may for the time being be exercised] by the Court on appeals in civil matters under this Law, and issue any warrants necessary for enforcing the orders or sentences of the Court:

PROVIDED that in no case shall any sentence be increased by reason of or in consequence of any evidence which was not given at the trial.

(2) The remuneration, if any, to be paid to an assessor appointed under paragraph (e) of subsection (1) of this section shall be determined by the Court.

NOTES

In section 32, the words in square brackets in subsection (1) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 26, with effect from 7th February, 2022.

The following cases have referred to section 32:

Law Officers of the Crown v. Collins (1989) 8.GLJ.16;
Presland v. Law Officers of the Crown (2007) (Unreported, Court of Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007–2008 GLR Note 11.

Legal aid.

33. Subject to the provisions of subsection (1) of section twelve of this Law (which relates to the right to practise), the Court of Appeal may at any time assign to an appellant an advocate in any appeal under this Part of this Law or in proceedings preliminary or incidental to an appeal in which, in the opinion of the Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

[Presence of appellant at hearing.]

34. (1) Subject to subsections (2) and (3), an appellant, notwithstanding that the appellant is in custody, shall be entitled to be present (if the appellant desires it) at the hearing of any oral argument –

(a) on the hearing of the appeal, and

- (b) on the hearing of any application for leave to appeal under this Part,

but shall not be entitled to be present where the arguments are presented in writing only.

(2) An appellant shall not be entitled to be present at proceedings preliminary or incidental to the appeal except where –

- (a) rules of court provide that the appellant shall have the right to be present,
- (b) the Court of Appeal gives the appellant leave to be present, or
- (c) the appellant is not legally represented.

(3) The Court of Appeal may direct, having first given the parties the opportunity to make representations to the Court, that the appellant's entitlement to be present at any hearing or proceedings is satisfied by the presence of the appellant at a remote location connected to the courtroom by video or other live-link, enabling the appellant to see, and be seen by, the Court, the Registrar and counsel.

(4) The power of the Court of Appeal to pass any sentence under this Part may be exercised notwithstanding that the appellant is for any reason not present.]

NOTE

Section 34 was substituted by the Court of Appeal (Guernsey) (Amendment)

Law, 2021, section 27, with effect from 7th February, 2022.

Duty of Law Officers.

35. (1) It shall be the duty of Her Majesty's [Procureur] to appear for the Crown on the hearing of every appeal under this Part of this Law and on the hearing of any application for leave to appeal and on the hearing of any proceedings preliminary or incidental to an appeal made or brought under this Part of this Law and Her Majesty's [Procureur] shall be entitled to have access to and to have transmitted to him all such documents, exhibits and other things connected with the proceedings as he may require for the purpose of his duties under this subsection.

(2) It shall be the duty of the Registrar of the Court of Appeal to give to Her Majesty's [Procureur] notice of the day and hour upon which the Court will sit for the purpose of hearing and determining any such appeal, application or proceedings.

(3) ...

NOTE

In section 35, first, the word "Procureur" in square brackets, wherever occurring, was substituted and, second, subsection (3) was repealed by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 28, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

Costs and expenses.

36. (1) The Court of Appeal may, where it dismisses an appeal or application for leave to appeal under this Part of this Law, order the appellant to pay the whole or any part of the costs of any transcript of the [record] of the proceedings at the trial made in accordance with a direction given by the Registrar under section forty-one of this Law (which relates to [record] and transcript of proceedings at trial).

(2) The Court of Appeal may, where it allows an appeal against conviction, order the payment out of moneys provided by the States of such an amount as appears to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the prosecution of his appeal, including any proceedings preliminary or incidental thereto.

(3) The amount of costs that the Court of Appeal has ordered to be paid under the last preceding subsection shall as soon as practicable be ascertained by the Registrar of the Court in consultation with one of Her Majesty's Law Officers.

(4) Whether or not the Court of Appeal makes an order under the preceding provisions of this section, there shall be defrayed out of moneys provided by the States, up to an amount allowed by the Court but subject to any regulations as to rates and scales of payment made by Ordinance of the States –

- (a) the fees and expenses of any advocate assigned to the appellant under section thirty-three of this Law (which relates to legal aid);
- (b) the expenses of any witness attending on the order of the Court, or examined in any proceedings incidental to an appeal to the Court, under this Part of this Law,
- (c) the expenses of and incidental to any examination of witnesses conducted by a person appointed by the Court for the purpose, or of any reference of a question to a special commissioner appointed by the Court, and
- (d) the expenses of any person appointed as assessor to the Court.

(5) Except as provided in this section, no costs shall be allowed on the hearing or determination of an appeal, or of any proceedings preliminary or incidental to an appeal, under this Part of this Law.

(6) As soon as the amount due under this section to any person as costs payable out of moneys provided by the States has been ascertained, the Registrar of the Court shall make out and deliver to that person, or to any person appearing to the Registrar to be acting on behalf of that person, an order on the [States Treasurer], who shall, upon sight of the order, pay, out of the general revenues of the States, to the person named in the order, or his duly authorised agent, the sum specified in the order.

(7) Where the Court of Appeal orders the payment of costs by the appellant under this Part of this Law, the payment shall be recoverable by the States as a civil debt.

NOTES

In section 36, first, the word "record" in square brackets, wherever occurring and, second, the words in square brackets in subsection (6) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 29, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.²

The following Ordinances have been made under section 36:

*Criminal Appeal (Fees and Expenses) (Guernsey) Ordinance, 1964;
Criminal Appeal (Fees and Expenses) (Amendment) (Guernsey)
Ordinance, 1981.*

Admission to bail and computation of sentence.

37. (1) The Court of Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

[(1A) The Court of Appeal may, if it thinks fit, revoke bail granted to the appellant by any court.

(1B) Subsections (1) and (1A) are without prejudice to section 26A(3).]

(2) Where an appellant under this Part of this Law is admitted to bail pending the determination of his appeal, the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(3) ...

(4) Subject to the foregoing provisions of this section, the term of any sentence passed by the Court of Appeal under this Part of this Law in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

(5) ...

NOTE

In section 37, first, subsection (1A) and subsection (1B) were inserted and, second, subsection (3) and subsection (5) were repealed by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 30, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

[Time spent in custody pending appeal.]

37A. (1) The time during which an appellant is in custody pending the

determination of the appeal shall, subject to any direction which the Court of Appeal may give to the contrary, be reckoned as part of the term of any sentence to which the appellant is for the time being subject.

(2) Where the Court of Appeal gives a contrary direction under subsection (1), it shall state its reasons for so doing.

(3) The Court of Appeal shall not give such a direction where –

- (a) leave to appeal is granted under this Part, or
- (b) any such certificate as is mentioned in section 24(1)(b) has been given for the purposes of the appeal.]

NOTE

Section 37A was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 31, with effect from 7th February, 2022.

[Suspension of licences and custody of goods pending appeal.]

37B. Where notice of appeal or of an application for leave to appeal has been given in respect of a decision which includes –

- (a) an order for the suspension or withdrawal of a licence or other permit, the Bailiff may, unless it be otherwise provided by the enactment under which the licence or permit was granted, direct that the order be suspended pending the disposal of the appeal or application,
- (b) an order for the confiscation or forfeiture of goods, the goods shall be delivered into the custody of the

Registrar pending the disposal of the appeal or application.]

NOTE

Section 37B was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 31, with effect from 7th February, 2022.

[Duties of Registrar under Part III].

38. (1) The Registrar of the Court of Appeal shall take all necessary steps for obtaining a hearing under this Part of this Law of any appeals or applications notice of which is given to him under this Part of this Law, and shall obtain and lay before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) Any documents, exhibits or other things connected with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Law shall be kept in the custody of the Royal Court, for such time as may be directed by that Court, and subject to such authority as may be given by that Court for the conditional release of any such documents, exhibits or things from that custody.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Law to any persons who demand the same, to the Governor of the Prison in the Island of Guernsey and such other officers and persons as he thinks fit, and the Governor of the Prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Law and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(4) The Registrar shall report to the Court of Appeal, or a judge thereof, any case in which it appears to him that, although no application has been made for the purpose, legal aid should be assigned to an appellant under the powers given to the Court of Appeal under this Part of this Law.

NOTE

In section 38, the heading thereto was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 32, with effect from 7th February, 2022.

[Rules of court under Part III].

39. (1) Rules of court for the purposes of this Part of this Law shall be made by the Court of Appeal.

(2) Rules so made may make provision for regulating the sittings of the Court of Appeal and of a judge of that Court, whether sitting in court or elsewhere, and with respect to any matter for which provision is to be made under this Part of this Law by rules of court, and may regulate generally the procedure and practice under this Part of this Law, and the officers of any court before which an appellant has been convicted, and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with such rules may be enforced by order of the Court of Appeal.

NOTES

In section 39, the heading thereto was substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 33, with effect from 7th February, 2022.

The following Rules have been made under section 39:

Court of Appeal (Criminal Division) (Guernsey) Rules, 1964;

Court of Appeal (Criminal Division) (Amendment) (Guernsey) Rules, 1989;
Court of Appeal (Criminal Division) (Guernsey) (Amendment) Rules, 2022.

[Powers under Part III which may be exercised by a single judge].

40. The powers of the Court of Appeal under this Part of this Law to give leave to appeal, to extend the time within which notice of an appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and [to grant, refuse and revoke bail, and the power of the Court to give directions under section 37A of this Law (which relates to time in custody pending appeal)] or to make orders for the payment of costs under subsection (1) or subsection (2) of section thirty-six of this Law (which relates to costs and expenses), may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power under this Part of this Law in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Part of this Law.

NOTE

In section 40, first, the heading thereto and, second, the words in square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 34, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

[Record and transcript of proceedings at trial].

41. [(1) A record of the proceedings, by electronic means or otherwise, shall be made at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part and, on any appeal or application for leave to appeal, a transcript of the record or any part thereof shall be made if the Registrar so

directs and such transcript shall be furnished to the Registrar for the use of the Court of Appeal or any judge thereof, of Her Majesty's Procureur and of the appellant:

PROVIDED that a transcript shall be furnished to any party interested, upon the payment of such amount as may be prescribed by rules of court made under subsection (2).]

(2) The Royal Court may make rules of court prescribing scales of payment in relation to the cost of any transcript for the purposes of this Part of this Law and such rules of court may make such provision as is necessary for securing the accuracy of any [record] to be taken and for the verification of the transcript.

(3) Any money received from an interested party under the proviso to subsection (1) of this section shall be paid to the States.

NOTE

In section 41, first, the heading thereto and subsection (1) and, second, the word in square brackets in subsection (2) were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 35, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

The following Rules have been made by Order of the Royal Court under section 41:

Court of Appeal (Criminal Division) (Transcripts) (Guernsey) Rules, 2022.

Prerogative of mercy.

42. Nothing in this Part of this Law shall affect the prerogative of mercy, but, as respects the conviction of a person on indictment or summarily in the Royal Court, sitting as a Full Court, or the sentence[, passed on a person so convicted, being a conviction or sentence against which an appeal lies under this Part to the Court of Appeal, His Excellency the Lieutenant-Governor and Commander-in-Chief of

Guernsey] may, if he thinks fit, at any time either –

- (a) refer the whole case to the Court of Appeal, and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted, or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish [His Excellency] with its opinion thereon accordingly.

NOTE

In section 42, the words in the first and second pairs of square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 36, respectively paragraph (a) and paragraph (b), with effect from 7th February, 2022.

Interpretation.

43. In this Part of this Law, unless the context otherwise requires –

the expression "**appellant**" includes a person who has been convicted and desires to appeal under this Part of this Law,

the expression "**sentence**" includes any order of the court [(including a confiscation order or forfeiture order as defined in section 43M(1))] with reference to the person convicted or his [spouse] or children and any recommendation of the court as to the making of a deportation order in the case of a person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order or recommendation.

NOTES

In section 43,

the words in the first pair of square brackets were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 37, with effect from 7th February, 2022;

the word in the second pair of square brackets was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 7, with effect from 2nd May, 2017, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part I, paragraph 6, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020, section 1, Schedule 1, paragraph 4, with effect from 23rd April, 2020.

[PART IIIA

References and Appeals by Her Majesty's Procureur

Reference to Court of Appeal of point of law following acquittal.

43A. (1) Where a person tried in the Royal Court on indictment or summarily has been acquitted (whether in respect of the whole or part of the indictment or summons) Her Majesty's Procureur may, if Her Majesty's Procureur desires the opinion of the Court of Appeal on a point of law which has arisen in the case, refer that point to that Court, and that Court shall, in accordance with this section, consider the point and give its opinion on it.

(2) For the purpose of its consideration of a point referred to it under this section the Court of Appeal shall hear argument –

(a) by Her Majesty's Procureur, and

- (b) if the acquitted person desires to present any argument to the Court, by counsel on the person's behalf or, with the leave of the Court, by the acquitted person in person.

(3) Where, on a point being referred to the Court of Appeal under this section, the acquitted person appears by counsel for the purpose of presenting any argument to the Court, the person shall be entitled to costs, that is to say to the payment out of moneys provided by the States of such sums as are reasonably sufficient to compensate the person for expenses properly incurred by the person for the purpose of being represented on the reference.

(4) A reference under this section shall not affect the trial in relation to which the reference is made or any acquittal in that trial.]

NOTE

Part IIIA and section 43A thereof were inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Reference to Court of Appeal for review of sentence.]

43B. (1) This section applies to any case in which a sentence is passed on a person for –

- (a) an offence for which the maximum penalty is imprisonment for a term of five years or longer (whether or not it is one for which any other penalty may be imposed), or
- (b) an offence to which this section applies by virtue of an Ordinance made under subsection (4),

but shall not apply in respect of a confiscation order or forfeiture order.

- (2) If it appears to Her Majesty's Procureur –
 - (a) that the sentencing of a person in any proceedings in the Royal Court has been unduly lenient, and
 - (b) that the case is one to which this section applies,

Her Majesty's Procureur may, with the leave of the Court of Appeal, refer the case to the Court of Appeal for it to review the sentencing of that person.

(3) Without prejudice to the generality of subsection (2), the condition specified in paragraph (a) of that subsection may be satisfied if it appears to Her Majesty's Procureur that the Royal Court –

- (a) erred in law as to its powers of sentencing, or
- (b) failed to impose a sentence which it was required by law to impose.

(4) The States may by Ordinance provide that this section shall apply to any offence.]

NOTE

Section 43B was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Court's powers on reference under section 43B.]

43C. (1) On a reference under section 43B, the Court of Appeal may –

- (a) quash any sentence passed on the person for an offence (whether passed on the person's conviction or in subsequent proceedings), and
- (b) in place of it pass such sentence as the Court thinks appropriate for the case and as the Royal Court had the power to pass when dealing with the person.

(2) In deciding under subsection (1) the appropriate sentence to pass on a person for an offence, the Court of Appeal shall not make any allowance for the fact that the person is being sentenced for a second time in relation to the offence.]

NOTE

Section 43C was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Calculation of sentence passed on review.]

43D. (1) The term of any sentence passed by the Court of Appeal under section 43C shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in the proceedings in respect of which the reference was made.

(2) Subsection (1) shall not apply to a custodial sentence which is passed in place of a non-custodial sentence.

(3) The time during which a person whose case has been referred for review under section 43B is in custody pending its review shall be reckoned as

part of the term of any sentence to which the person is for the time being subject.]

NOTE

Section 43D was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Appeal by Her Majesty's Procureur in respect of confiscation order or forfeiture order.]

43E. (1) This section applies to any case in which –

- (a) sentence is passed by the Royal Court on a person for an offence,
- (b) in passing the sentence, the Royal Court has jurisdiction to make a confiscation order or forfeiture order.

(2) If, in a case to which this section applies, the Royal Court makes a confiscation order or forfeiture order, Her Majesty's Procureur may appeal to the Court of Appeal in respect of the order.

(3) If, in a case to which this section applies, the Royal Court decides not to make a confiscation order or forfeiture order, as the case may be, Her Majesty's Procureur may appeal to the Court of Appeal against the decision.

(4) Subsections (2) and (3) shall not apply to an order or decision made by virtue of any of sections 13, 14 and 19 of the 1999 Law or of any of sections 13, 14 and 19 of the 2000 Law.

(5) An appeal to the Court of Appeal under this section lies only with the leave of the Court of Appeal.]

NOTE

Section 43E was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Court's powers on appeal by Her Majesty's Procureur.]

43F. (1) On an appeal under section 43E(2), the Court of Appeal may confirm, quash or vary the confiscation order or forfeiture order, as the case may be.

(2) On an appeal under section 43E(3), the Court of Appeal may confirm the decision or, if it believes that the decision is wrong –

(a) may itself proceed under subsections (2) to (10) of section 2 of the 1999 Law, subsections (2) to (8) of section 2 of the 2000 Law, or section 18 of the 2002 Law, as the case may be, or

(b) may direct the Royal Court to proceed afresh under section 2 of the 1999 Law, section 2 of the 2000 Law, or section 18 of the 2002 Law, as the case may be.

(3) In directing the Royal Court under subsection (2)(b) to proceed afresh, the Court of Appeal may also give other directions, and if it does so the Royal Court shall comply with those directions in proceeding afresh in pursuance of this section.]

NOTE

Section 43F was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Matters to be taken into account on appeal in respect of confiscation order or forfeiture order.]

43G. (1) This section applies if –

- (a) the Court of Appeal makes or varies a confiscation order or forfeiture order pursuant to section 43F, or
- (b) the Royal Court makes or varies a confiscation order or forfeiture order in pursuance of a direction under subsection (2)(b) of that section.

(2) The court, in so doing, shall have regard –

- (a) to any fine imposed on the respondent in respect of the offence (or any of the offences) concerned,
- (b) in the case of an order under the 1999 Law, to any order which is specified in either of paragraphs (ii) and (iii) of section 20(1)(a) of that Law and has been made against the respondent in respect of the offence concerned (or any of the offences concerned), and
- (c) in the case of an order under the 2000 Law, to any order which is specified in either of paragraphs (ii) and (iii) of section 20(1)(a) of that Law and has been made against the respondent in respect of the offence concerned (or any of the offences concerned).

(3) The court is not required to have regard to an order to which subsection (2) refers where the order has already been taken into account by the

Royal Court in deciding for the purposes of –

- (a) section 5 of the 1999 Law, or
- (b) section 5 of the 2000 Law,

as the case may be, the amount which might be realised.

(4) If, in a case in which the court is proceeding under the 1999 Law, an order has been made against the respondent in respect of the offence concerned (or any of the offences concerned) under section 1 of the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 –

- (a) the court shall have regard to the order, and
- (b) section 2(9) of the 1999 Law shall not apply.

(5) In a case in which the court is proceeding under the 1999 Law, in section 4(3) of that Law –

- (a) the assumptions in paragraph (a) of that subsection do not apply with regard to property first held by the respondent on or after the relevant date,
- (b) the assumption in paragraph (b) of that subsection does not apply with regard to expenditure incurred by the respondent on or after that date, and
- (c) the assumption in paragraph (c) of that subsection does not apply with regard to property received (or assumed to have been received) by the respondent on or after

that date.

(6) In a case in which the court is proceeding under the 2000 Law, in section 4(3) of that Law –

- (a) the assumption in paragraph (a) of that subsection does not apply with regard to property first held by the respondent on or after the relevant date,
- (b) the assumption in paragraph (b) of that subsection does not apply with regard to expenditure incurred by the respondent on or after that date,
- (c) the assumption in paragraph (c) of that subsection does not apply with regard to property received (or assumed to have been received) by the respondent on or after that date.

(7) In this section –

"court" means –

- (a) the Court of Appeal, if that court is itself proceeding under subsections (2) to (10) of section 2 of the 1999 Law, subsections (2) to (8) of section 2 of the 2000 Law, or section 18 of the 2002 Law pursuant to section 43F(2)(a), or
- (b) the Royal Court, if that court is proceeding afresh under any of those sections on the direction of the Court of Appeal pursuant to section 43F(2)(b), and

"relevant date" means the date on which the Royal Court decided not to make a confiscation order or a forfeiture order, as the case may be.]

NOTE

Section 43G was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Right of person to be present.]

43H. (1) Subject to subsection (3), a person –

(a) whose sentencing is the subject of a reference to the Court of Appeal under section 43B, or

(a) who is a respondent in an appeal under section 43E,

shall be entitled to be present, notwithstanding that the person is in custody, on the hearing of the matter, except where the arguments are presented in writing only.

(2) Subject to subsection (3), a person in custody shall not be entitled to be present on any proceedings preliminary or incidental to a reference under section 43B or to an appeal under section 43E, unless the Court of Appeal gives the person leave to be present.

(3) The Court of Appeal may direct, having first given the parties the opportunity to make representations to the Court, that a person's entitlement to be present at any hearing, reference or appeal is satisfied by the presence of the person at a remote location connected to the courtroom by video or other live-link, enabling the person to see, and be seen by, the Court, the Registrar and counsel.

(4) The power of the Court of Appeal to pass sentence on a person under section 43C or to make any order under section 43F may be exercised even though the person is not present.]

NOTE

Section 43H was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Time for proceeding under Part IIIA.]

43I. (1) Notice of –

- (a) a reference to the Court of Appeal under section 43A,
- (b) an application for leave to refer a case to the Court of Appeal under section 43B,
- (c) an application for leave to appeal to the Court of Appeal under section 43E,

shall be given within 28 days from the day on which the sentence or the last of the sentences in the case was passed.

(2) The time during which notice of –

- (a) a reference, or
- (b) an application for leave to refer a case or for leave to appeal,

may be given may be extended at any time by the Court of Appeal.]

NOTE

Section 43I was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Duties of Registrar under Part IIIA.]

43J. If the Registrar is given notice of a reference under section 43A, an application or reference under section 43B or an application or appeal under section 43E, the Registrar shall –

- (a) take all necessary steps for obtaining a hearing of the matter, and
- (b) obtain and lay before the Court of Appeal in proper form all documents, exhibits and other things which appear necessary for the proper determination of the matter.]

NOTE

Section 43J was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Powers under Part IIIA which may be exercised by a single judge.]

43K. (1) In respect of any application, reference or appeal under this Part –

- (a) the power of the Court of Appeal to give leave to refer a case to it or to appeal to it,

- (b) the power of the Court under section 43H to give leave to a person to be present at any proceedings in any case where the person is not entitled to be present without leave, or to give a direction under section 43H(3),
- (c) the power of the Court under section 43I(2) to extend the time for giving notice,
- (d) the powers of the Court to make any orders as to costs, and
- (e) such other powers to determine matters preliminary or incidental to the reference as may be prescribed,

may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions.

(2) If the single judge refuses an application to exercise any power to which subsection (1) refers, the applicant shall be entitled to have the application determined by the Court of Appeal as duly constituted for the hearing and determining of references under either of sections 43A and 43B or appeals under section 43E.]

NOTE

Section 43K was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

[Supplementary provisions as to Part IIIA.]

43L. In respect of any application, reference or appeal under this Part –

- (a) section 27 shall apply to any judgment of the Court of Appeal as that section applies to a judgment of the Court under Part III,
- (b) the Court of Appeal shall, for the purposes of and subject to the provisions of this Part, have the same powers as are conferred on it by section 28 for the purposes of Part III,
- (c) subject to the provisions of this Part, section 28A shall apply to any order made by the Court of Appeal as it applies under Part III to an order made by it on any appeal,
- (d) section 31 shall apply as it applies under Part III to an appeal and an application for leave to appeal,
- (e) the Court of Appeal shall for the purposes of this Part have the same powers as are conferred on it by section 32 for the purposes of Part III,
- (f) section 33 shall apply to an acquitted person to whom section 43A refers and to a person to whom section 43B(1) refers as it applies to an appellant under Part III, and
- (g) section 39 shall apply as it applies in relation to appeals under Part III.]

NOTE

Section 43L was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 38, with effect from 7th February, 2022.

Interpretation of Part IIIA.

43M. (1) In this Part –

"1999 Law" means the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999,

"2000 Law" means the Drug Trafficking (Bailiwick of Guernsey) Law, 2000,

"2002 Law" means the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002,

"confiscation order" means a confiscation order as defined in section 2(10) of the 1999 Law or in section 2(8) of the 2000 Law,

"forfeiture order" means an order made in accordance with section 18 of the 2002 Law,

"respondent" means a person in whose case the making, or not making, of a confiscation order or forfeiture order is the subject of an appeal under section 43E.

(2) Expressions which are used in this Part and which are also used in Part III shall have the same respective meanings as they have in Part III.]

NOTE

Section 43M was inserted by the Court of Appeal (Guernsey) (Amendment)

Law, 2021, section 38, with effect from 7th February, 2022.

PART IV

General

Amendment and revocation of rules of court.

44. Rules of court made under this Law may be amended or revoked by subsequent rules.

NOTE

The following Rules have been made under section 44:

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2012;
Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2015;
Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2016;
Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2018;
Court of Appeal (Civil Division) (Guernsey) (Amendment) Rules, 2022;
Court of Appeal (Criminal Division) (Guernsey) (Amendment) Rules, 2022;
Court of Appeal (Criminal Division) (Transcripts) (Guernsey) Rules, 2022.

Saving.

45. Save as provided by subsection (2) of section forty-seven of this Law (which relates to repeals) nothing in this Law shall affect the prerogative of Her Majesty or the jurisdiction of Her Majesty in Council.

Interpretation.

46. In this Law, unless the context otherwise requires, the following

expressions have the meanings hereby assigned to them respectively, that is to say –

"judgment" includes decree,

"matter" includes "ex parte" proceedings,

"party" includes every person served with notice of or attending any proceedings,

"prescribed" means prescribed by rules of court,

[**"Registrar"**: see section 11(1),]

[**"remote location"** means a location other than the courtroom, which may, however, be within the same building as the courtroom, elsewhere within the Bailiwick of Guernsey, or anywhere else in the world,]

"rules of court" includes forms,

"the States" means the States of Guernsey.

NOTE

In section 46, the definitions of the expressions "Registrar" and "remote location" were inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 39, with effect from 7th February, 2022.

Repeals.

47. (1) The Law entitled "An Act to prescribe the emoluments of the Ordinary Judges of the Court of Appeal" registered on the twenty-seventh day of October, nineteen hundred and fifty-one, is hereby repealed.

(2) The enactments set out in the Second Schedule to this Law shall be repealed on such day as shall be appointed in that behalf by Ordinance of the States.

NOTE

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of this section is 4th June, 1964.

Citation.

48. This Law may be cited as the Court of Appeal (Guernsey) Law, 1961.

NOTE

The Law received Royal Sanction on 26th May, 1961 and was registered on the Records of the Island of Guernsey and came into force on 13th June, 1961.

FIRST SCHEDULE

Section five

Form of Oath

Vous jurez et promettez sur la foi et le serment que vous devez à Dieu [*Vous affirmez et promettez solennellement et sincèrement*] que vous exercerez bien et fidèlement l'office et la charge de Juge dans la Cour d'Appel du Bailliage de Guernesey; que vous maintiendrez [*l'avancement de la gloire de Dieu et*] l'honneur de Sa Majesté notre Souveraine Dame Elizabeth II par la Grâce de Dieu Reine du Royaume Uni de la Grande Bretagne et de l'Irlande du Nord et de Ses autres Royaumes et Territoires, Chef du Commonwealth, Défenseur de la Foi; et qu'à Sa dite Majesté vous serez vrai et loyal sujet; que vous garderez et maintiendrez bien et loyalement et de tout votre pouvoir tous les lois, libertés, usages et anciennes coutumes du dit Bailliage, vous opposant à quiconque les voudrait enfreindre; et que vous administrerez bonne et brève justice à chacun, sans acception de personne. Vous promettez ainsi. [*Ainsi Dieu vous aide.*]

[{DIEU SAUVE LA REINE}]

OR

You swear and promise on the faith and oath which you owe to God {solemnly, sincerely and truly declare and affirm} that well and faithfully you will exercise the office and charge of Judge in the Court of Appeal of the Bailiwick of Guernsey; that you will uphold {the Glory of God and} the honour of Our Sovereign Lady Elizabeth II, by the Grace of God Queen of the United Kingdom of Great Britain and Northern Ireland and of her other realms and territories, Head of the Commonwealth, Defender of the Faith; and that you will be a true and loyal subject of Her Majesty; that well and loyally you will preserve and maintain with all your power all the laws, liberties, usages and ancient customs of the said Bailiwick, opposing any person who might seek to violate them; and that you will administer good and concise justice to all

without respect of persons.

You promise accordingly.

{So help you God}

GOD SAVE THE QUEEN]

NOTE

In the First Schedule, the words in the first pair of square brackets were inserted and those in, second, the second, third, the third and, fourth, the fourth pairs of square brackets therein were substituted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 40, respectively paragraph (a), paragraph (b), paragraph (c) and paragraph (d), with effect from 7th February, 2022.

POWERS, PROCEDURE ETC. UPON RETRIAL

1. On a retrial, a transcript of the record of the evidence given by any witness at the original trial may, with the leave of the Royal Court, be read as evidence –

- (a) by agreement between the parties, or
- (b) if the Royal Court is satisfied that the witness is dead or unfit to give evidence or to attend for that purpose, or that all reasonable efforts to find the witness or to secure the witness's attendance have been made without success,

and in either case may be so read without further proof if the Royal Court is satisfied that the transcript is a true and accurate record of the witness's evidence at the trial.

2. Where a person ordered to be retried is again convicted on retrial, the Royal Court may pass in respect of the offence any sentence authorised by law, not being a sentence of greater severity than that passed on the original conviction.

3. Without prejudice to its power to impose any other sentence, the Royal Court may pass in respect of the offence any sentence passed in respect of that offence on the original conviction notwithstanding that, on the date of the conviction on retrial, the offender has ceased to be of an age at which such a sentence could otherwise be passed.

4. Where the person convicted on retrial is sentenced to imprisonment or other detention, the sentence shall begin to run from the time when a like sentence passed at the original trial would have begun to run; but in computing the term of the

person's sentence or the period for which he may be detained thereunder, as the case may be, there shall be disregarded –

- (a) any time before the person's conviction on retrial which would have been disregarded in computing that term or period if the sentence had been passed at the original trial and the original conviction had not been quashed, and
- (b) any time during which the person was released on bail under section 26A(3).

5. Where a person is acquitted on retrial the Royal Court may, in addition to any costs which it could have ordered to be paid at the original trial or prosecution if the person had been acquitted, make an order under section 36(2) in respect of that person's expenses on appeal if the Court of Appeal has not already done so.]

NOTE

Schedule 1A was inserted by the Court of Appeal (Guernsey) (Amendment) Law, 2021, section 41, with effect from 7th February, 2022.

SECOND SCHEDULE

Section forty-seven

Enactments Repealed

<i>Enactment</i>	<i>Date of Registration</i>
Law entitled "Loi relative aux Appels".	30 th August, 1913
Law entitled "Loi Supplémentaire à la Loi relative aux Appels, 1924".	23 rd August, 1924

¹ Prior to its substitution, section 7 of this Law was disapplied by the: Emergency Powers (Coronavirus) (Parochial Matters and Miscellaneous Provisions) (Guernsey) Regulations, 2020, regulation 11, with effect from 2nd April, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2020, regulation 33, with effect from 16th April, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2020, regulation 33, with effect from 15th May, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020, regulation 31, with effect from 13th June, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2020, regulation 16, with effect from 10th July, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020, regulation 16, with effect from 7th August, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2020, regulation 20, with effect from 4th September, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2020, regulation 19, with effect from 3rd October, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020, regulation 19, with effect from 30th October, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2020, regulation 20, with effect from 27th November, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2020, regulation 20, with effect from 15th December, 2020; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations,

2021, regulation 21, with effect from 13th January, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021, regulation 33, with effect from 5th February, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2021, regulation 40, with effect from 5th March, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2021, regulation 20, with effect from 2nd April, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2021, regulation 20, with effect from 30th April, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2021, regulation 20, with effect from 21st May, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2021, regulation 20, with effect from 18th June, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2021, regulation 23, with effect from 16th July, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2021, regulation 25, with effect from 13th August, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2021, regulation 24, with effect from 8th September, 2021; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 11) Regulations, 2021, regulation 23, with effect from 4th October; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 12) Regulations, 2021, regulation 21, with effect from 27th October, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 13) Regulations, 2021, regulation 21, with effect from 24th November, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 14) Regulations, 2021, regulation 23, with effect from 22nd December, 2021; Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2022, regulation 22, with effect from 19th January, 2022.

² The words in square brackets in subsection (6) were previously substituted, first, in accordance with the provisions of the States Supervisor and Treasurer of the States (Transfer of Functions) Law, 1971, section 4, with effect from 1st April, 1972 and, second, by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.