

PROJET DE LOI

ENTITLED

The Magistrate's Court (Guernsey) Law, 2008 *

[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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* No. XVIII of 2009; as amended by the Magistrate's Court (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009 (No. XXII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 536); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 (No. XXI of 2016). See also the Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); the European Communities (Food and Feed Controls) (Brexit) (Guernsey) Regulations, 2019 (G.S.I. No. 36 of 2019).

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The Magistrate's Court (Guernsey) Law, 2008

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The Magistrate's Court (Guernsey) Law, 2008

THE STATES, in pursuance of their Resolution of the 27th June, 2007^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law throughout the Bailiwick (as regards Part V) and in the Islands of Guernsey, Herm and Jethou (as regards the remainder).

PART I

CONSTITUTION OF THE MAGISTRATE'S COURT

Constitution and functions of the Magistrate's Court.

1. (1) The Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law, 1954^b ("**the Magistrate's Court**") shall, from the date of commencement of this Law –

- (a) be constituted by a Judge of the Magistrate's Court sitting alone, and
- (b) have the summary jurisdiction in criminal matters, the jurisdiction in civil matters and the functions conferred by this Law and any other enactment.

(2) Nothing in subsection (1) shall be taken to abolish or restrict the functions or jurisdiction of the Ordinary Court in civil actions.

NOTES

^a Article VI of Billet d'État No. XVI of 2007.

^b Ordres en Conseil Vol. XVI, p. 103.

The following case has referred to this Law:

Smith v. Carey Olsen [2019]GRC004 (Unreported, Royal Court, 6th February).

The following cases referred to the *Magistrate's Court (Guernsey) Law, 1954*:

Head v. Arculon Builders Ltd. (1985) 2.GLJ.54;

R. Hugo v. Skillett (1992) 13.GLJ.12;

Law Officers of the Crown v. Henderson (1994) 18.GLJ.9;

T.M. Kirk and J. Kirk v. Law Officers of the Crown (2002) (Unreported, Royal Court, 15th November) (Guernsey Judgment No. 5/2003);

Law Officers of the Crown v. De Jersey (2007) (Unreported, Magistrate's Court, 8th February) (Guernsey Judgment No. 4/2007); 2007-08 GLR Note 2.

Appointment of Judges of the Magistrate's Court.

2. (1) Judges of the Magistrate's Court shall be appointed by the Royal Court and –

(a) shall have been in practice as –

(i) an Advocate of the Royal Court of Guernsey,

(ii) a member of –

(A) the Bar of England and Wales,

(B) the Bar of Northern Ireland, or

(C) the Faculty of Advocates in Scotland, or

(iii) a Solicitor –

(A) of the Supreme Court of England and Wales,

(B) of the Supreme Court of Judicature of Northern Ireland, or

(C) in Scotland, or

(b) shall have held judicial office in the United Kingdom, Jersey or the Isle of Man,

for not less than 5 years (or such shorter period as the Royal Court may agree to in any particular case).

(2) The States may by Ordinance, after consultation with the Royal Court, amend the qualifications and the period set out in subsection (1).

Tenure and remuneration of Judges of the Magistrate's Court.

3. (1) A Judge of the Magistrate's Court shall, subject to subsections (2), (3) and (4), hold office until he attains the age of 65.

(2) A Judge of the Magistrate's Court may be originally appointed for a term of office that expires after he attains the age of 65 (but not after he attains the age of 70).

(3) The Royal Court may extend the term of office of a Judge of the Magistrate's Court so as to expire after he attains the age of 65 (but not after he attains the age of 70).

(4) A Judge of the Magistrate's Court is removable from office –

- (a) by Order of Her Majesty in Council, or
- (b) if he informs the Bailiff that he wishes to retire, by the Royal Court.

(5) A Judge of the Magistrate's Court shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

NOTE

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

Performance by Judges of the Magistrate's Court of other functions.

4. (1) A Judge of the Magistrate's Court may also hold office as a Lieutenant Bailiff but may not hold any other public office except one to which he is appointed by the Crown, the States, the Royal Court or the Bailiff.

(2) Subject to the provisions of section 5, the office of Jurat of the Royal Court is incompatible with that of Judge of the Magistrate's Court.

(3) A person appointed as a Judge of the Magistrate's Court shall not, during his term of office as Judge, practise as a lawyer in the Bailiwick or elsewhere or be in partnership or professional association with another lawyer in practice in the Bailiwick or elsewhere.

NOTE

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

Deputy Judges of the Magistrate's Court.

5. (1) The Royal Court may –

- (a) appoint one or more persons as Deputy Judge of the Magistrate's Court,
- (b) make any such appointment for such period as it thinks fit, and
- (c) determine any such appointment.

(2) A Deputy Judge of the Magistrate's Court has all the functions of a Judge of the Magistrate's Court.

(3) A person shall not be appointed as a Deputy Judge of the Magistrate's Court unless he is –

- (a) a Jurat of the Royal Court, or
- (b) qualified under section 2 for appointment as Judge of the Magistrate's Court.

(4) A Deputy Judge of the Magistrate's Court shall be paid such remuneration as may be determined by or on behalf of the States with the approval of the Bailiff.

NOTE

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

Oath of office.

6. A person appointed as a Judge or Deputy Judge of the Magistrate's Court shall, before entering office, take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

Officers of the Magistrate's Court.

7. Her Majesty's Greffier, Sheriff and Sergeant shall, in relation to –

- (a) the hearing of proceedings before the Magistrate's Court, and
- (b) the execution and enforcement of judgments and orders of the Magistrate's Court,

discharge duties corresponding to those they discharge in relation to proceedings, judgments and orders of the Royal Court.

PART II

CRIMINAL JURISDICTION OF THE MAGISTRATE'S COURT

General criminal jurisdiction of Magistrate's Court.

8. Subject to the provisions of this Part of this Law, the Magistrate's Court has jurisdiction to hear and determine any criminal matter other than –

- (a) an offence of treason, homicide, rape, robbery, piracy or perjury,
- (b) an attempt, conspiracy or incitement to commit such an offence, and
- (c) aiding, abetting, counselling or procuring the commission of such an offence.

Sentencing powers of Magistrate's Court.

9. (1) The Magistrate's Court's powers of punishment for an offence do not exceed –

- (a) imprisonment for a term not exceeding 2 years, or a fine not exceeding twice level 5 on the uniform scale, or both, or
- (b) where an enactment specifies a greater or lesser summary penalty for the offence, that greater or lesser penalty.

(2) The aggregate of sentences of imprisonment which may be imposed by the Magistrate's Court on the same occasion on an individual found guilty of more than one offence shall not exceed a total of 3 years, excluding –

- (a) any sentence of imprisonment imposed on him under section 14 by way of a conditional penalty to take effect in the event of default in payment of a fine,
- (b) any suspended sentence activated under section 2 of the Criminal Justice (Power to Suspend Sentences) (Bailiwick of Guernsey) Law, 1972^c,
- (c) any sentence of imprisonment imposed on him under section 6 of the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006 in consequence of a failure to comply with any requirement of section 3(1) of that Law ("requirements of community service order"), and
- (d) any sentence of imprisonment imposed on him under article 6 of the Loi relative à la Probation de Délinquants, 1929^d in consequence of a failure to observe any condition of a probation order.

NOTE

The Loi relative à la Probation de Délinquants, 1929 has since been repealed by the Probation (Bailiwick of Guernsey) Law, 2018, section 21(1), with effect from 17th October, 2019.

Election of trial before Royal Court.

10. (1) A person ("**the accused**") appearing before the Magistrate's Court for an offence triable by the Magistrate's Court, other than an offence of

^c Ordres en Conseil, Vol. XXIII, p. 344.

^d Ordres en Conseil, Vol. VIII, p. 363.

assault, which renders him liable to imprisonment for a term exceeding 6 months may, before he pleads to the charge but not otherwise, elect trial by the Royal Court.

(2) The Magistrate's Court shall, before the accused pleads to a charge referred to in subsection (1), address him with words to the following effect –

"In respect of this charge, you have the right to be tried by the Royal Court on indictment instead of by this Court. Do you wish to be tried by the Royal Court?"

Committal proceedings.

11. Where –

- (a) the accused, under section 10(1), elects trial by the Royal Court,
- (b) the offence with which the accused is charged is triable only by the Royal Court,
- (c) the Magistrate's Court decides that –
 - (i) its powers of punishment are insufficient to deal with the offence, or
 - (ii) by reason of the gravity of the offence, it would be more appropriate for the Royal Court to deal with it, or
- (d) Her Majesty's Procureur elects trial by the Royal Court,

the Magistrate's Court shall take the evidence of the witnesses in writing and shall, if

satisfied there is a prima facie case to answer, commit the accused for trial before the Royal Court.

Power of Magistrate's Court to quash convictions, rectify mistakes, etc.

12. (1) The Magistrate's Court may –

- (a) quash a conviction by the Magistrate's Court, or
- (b) vary or rescind a sentence or other order imposed or made by the Magistrate's Court when dealing with an offender,

if it appears to the Magistrate's Court to be in the interests of justice so to do.

(2) Where the Magistrate's Court quashes a conviction under subsection (1)(a), the conviction and any sentence or order imposed or made in consequence thereof shall be of no effect

(3) The power conferred by subsection (1)(b) extends to replacing a sentence or order which for any reason appears to be invalid by another sentence or order which the Magistrate's Court has power to impose or make.

(4) The power conferred by subsection (1)(a) or (b) is not exercisable in relation to any conviction by the Magistrate's Court or any sentence or order imposed or made by the Magistrate's Court when dealing with an offender if the Royal Court has determined an appeal against –

- (a) that conviction, sentence or order,
- (b) the conviction in respect of which that sentence or order was imposed or made, or

- (c) any other sentence or order imposed or made by the Magistrate's Court when dealing with the offender in respect of the conviction referred to in paragraph (b), including a sentence or order replaced by that sentence or order.

(5) Where a sentence or other order is varied under subsection (1)(b), the sentence or order as so varied shall take effect from the beginning of the day on which it was originally imposed or made, unless the Magistrate's Court directs otherwise.

(6) Where a person is convicted by the Magistrate's Court and it subsequently appears to the Magistrate's Court that it would be in the interests of justice that the case should be heard again by a different Judge of the Magistrate's Court, the Magistrate's Court may so direct.

(7) The power conferred on the Magistrate's Court by subsection (6) is without prejudice to the power conferred by subsection (1)(a) to quash a conviction and is not exercisable in relation to a conviction if the Royal Court has determined an appeal against –

- (a) that conviction, or
 - (b) any sentence or order imposed or made by the Magistrate's Court when dealing with the offender in respect of that conviction.
- (8) Where the Magistrate's Court gives a direction under subsection (6), the conviction and any sentence or order imposed or made in consequence thereof shall be of no

effect.

Power of Royal Court to quash void convictions.

13. (1) Where it is shown in respect of a conviction for an offence in the Magistrate's Court that the person convicted ought not, at the time of the conviction, as a matter of law, to have been convicted of the offence, Her Majesty's Procureur may apply to the Royal Court for the conviction to be quashed.

(2) This section is without prejudice to any rights of appeal or any rights arising in respect of a Royal Pardon.

Powers of Magistrate's Court on imposition of fine.

14. (1) When a person is convicted of an offence by the Magistrate's Court and sentenced to pay a fine, the Magistrate's Court may, at the time of passing sentence, and subject to such terms and conditions as it think fit –

- (a) order the fine to be paid –
 - (i) at once,
 - (ii) within such period as may be specified, or
 - (iii) by instalments of such amounts and at such times or intervals as may be specified, and / or
- (b) impose such conditional penalty as it thinks fit to take effect in the event of a default in payment of the fine or any part thereof.

(2) The conditional penalty which may be imposed under subsection (1)(b) is enforceable and subject to appeal in the same manner as a

corresponding penalty imposed on conviction of an offence.

(3) Where under subsection (1)(a) a fine is ordered to be paid within a specified period or by instalments, the convicted person may at any time apply to the Magistrate's Court to have the period for payment, or the amounts, times or intervals of the instalments, as the case may be, reviewed.

(4) Where under subsection (1)(b) a conditional penalty is imposed, the convicted person may, at any time before the penalty is activated, apply to the Magistrate's Court to have the penalty reviewed.

(5) A decision of the Magistrate's Court on a review under subsection (3) or (4) is subject to appeal in the same manner as a sentence imposed on conviction of an offence.

(6) In this section a "**penalty**" means any sentence or other order that can be imposed on or made against an accused person by the Magistrate's Court when convicting him of an offence triable summarily (whether or not that sentence or other order could have been imposed on or made against him on conviction of the offence with which he was accused).

(7) When a person is convicted of an offence by the Magistrate's Court and sentenced to pay a fine, the Magistrate's Court may, in the event of a default in payment of the fine or any part thereof, issue a summons to be served on that person ordering him to appear before the Magistrate's Court at the time and date specified.

PART III

CIVIL JURISDICTION OF THE MAGISTRATE'S COURT

General civil jurisdiction of Magistrate's Court.

15. (1) The Magistrate's Court has jurisdiction to hear and determine any civil action –

- (a) for the recovery of debt, or
- (b) for the recovery of damages, whether arising in contract or in tort,

where the amount claimed does not exceed £10,000 or such other sum as the States may prescribe by Ordinance.

(2) In the hearing and determination of a civil action the Magistrate's Court may grant any remedy or relief that the Royal Court sitting as an Ordinary Court may grant in a civil action including (where the amount claimed or to be claimed, or the value of the subject matter of the remedy or relief sought, does not exceed the amount for the time being prescribed in subsection (1), or where there is specific statutory authority) –

- (a) an injunction, including an interim injunction, and
- (b) any order ancillary to an injunction.

(3) The States may by Ordinance provide that the Magistrate's Court has jurisdiction to hear and determine any other class or description of civil action.

NOTE

The following Ordinance has been made under section 15:

European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016.

Judgments of Magistrate's Court.

16. (1) Where the Magistrate's Court gives judgment in a civil action, it may order the amount payable under the judgment to be paid –

- (a) in one sum, and either at once or within such period as it may direct, or
- (b) by instalments of such amounts payable at such times or intervals as it may direct.

(2) The Magistrate's Court may vary any order made by it under subsection (1).

(3) Where under subsection (1) the Magistrate's Court makes an order requiring a sum of money to be paid –

- (a) it may empower the judgment creditor to levy execution against the personalty of the judgment debtor, or
- (b) it may, on the application of the judgment creditor, empower him to levy execution against the realty of the judgement debtor, which order has effect as a Preliminary Vesting Order.

Referral of actions between Magistrate's Court and Ordinary Court.

17. (1) The Magistrate's Court may, at any time prior to or during the hearing of a civil action in which it has jurisdiction, refer the action or any issue in dispute in the action (including, without limitation, any issue of fact, law or procedure) to the Ordinary Court for hearing and determination if it is of the opinion

that it is desirable to do so –

- (a) because a question of law of general importance has arisen, or
- (b) for any other reason, in all the circumstances of the case and in the interests of justice.

(2) Where a civil action falling within the jurisdiction of the Magistrate's Court –

- (a) is instituted before the Ordinary Court, or
- (b) is referred by the Magistrate's Court to the Ordinary Court under subsection (1),

the Ordinary Court may, at any time prior to or during the hearing of the action, refer the action or any issue in dispute in the action (including, without limitation, any issue of fact, law or procedure) to the Magistrate's Court for hearing and determination if it is of the opinion that it is desirable to do so in the interests of justice.

(3) A referral under subsection (1) or (2) may be made on such terms and conditions, and may contain such ancillary and consequential directions, whether as to costs or otherwise, as the Magistrate's Court or (as the case may be) the Ordinary Court thinks fit.

(4) For the avoidance of doubt the power of referral conferred by subsections (1) and (2) –

- (a) in the case of a referral by the Ordinary Court, is a

matter of procedure within the meaning of section 6 of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950^e, and

- (b) applies to a civil action instituted before the date of commencement of this Law.

Appeals from Magistrate's Court in civil actions.

18. (1) After the hearing and determination by the Magistrate's Court of a civil action there is a right of appeal to the Ordinary Court –

- (a) if the amount of the debt or damages claimed exceeds £200, [...]

[(aa) in the case of a primary application or secondary application made under section 55 of the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016, if the value of the property in relation to which the order is sought exceeds £200,

- (ab) in the case of an application made under [section 51(D)(3)] of the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016, if the Magistrate's Court makes an emergency prohibition order under that provision, or]

- (b) on a point of law,

in such manner and subject to such conditions as may be provided by rules made by

^e Ordres en Conseil Vol. XIV, p. 388.

Order of the Royal Court.

(2) Notwithstanding subsection (1)(a), section 14(a) of the Magistrate's Court (Guernsey) Law, 1954^f ("appeals in civil actions") shall continue to apply to a civil action instituted before the date of commencement of this Law.

NOTES

In section 18,

the word omitted in square brackets at the end of paragraph (a) of subsection (1) were repealed and paragraph (aa) and paragraph (ab) thereof were inserted by the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016, section 93, Schedule 12, with effect from 3rd October, 2019;

the words in square brackets in paragraph (ab) were substituted (in the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016, section 93, Schedule 12) by the European Communities (Food and Feed Controls) (Brexit) (Guernsey) Regulations, 2019, regulation 32, with effect from 29th March, 2019.

The following Rules have effect as if made by Order of the Royal Court under section 18:

*Magistrate's Court (Civil Appeals) Rules, 1955;
Magistrate's Court (Civil Appeals) Rules, 1956.*

Scale of costs where action commenced in the Ordinary Court.

19. (1) Where a civil action falling within the jurisdiction of the Magistrate's Court is instituted in the Ordinary Court, then, if the plaintiff succeeds in the action, he is not entitled to any more costs of the action than those to which he would have been entitled if the action had been brought in the Magistrate's Court.

(2) However, the Ordinary Court, if satisfied that there is sufficient reason for bringing the action in the Ordinary Court, may make an order allowing the

^f Ordres en Conseil Vol. XVI, p. 103.

costs on the basis applicable in relation to the Ordinary Court.

Power to make Orders as to wage arrests.

20. (1) For the avoidance of doubt, the Royal Court may by Order make such rules as it thinks fit in relation to the making, variation and administration by the Magistrate's Court and its officers of wage arrest orders and the enforcement of such orders by judgment debtors.

(2) An Order under this section may amend, repeal or replace any enactment or rule of customary law relating to wage arrests ("arrêts de gages").

NOTE

The following Rules have been made by Order of the Royal Court under section 20:

Magistrate's Court (Arrest of Wages) Rules, 2010.

PART IV

JURISDICTION OF MAGISTRATE'S COURT TO HOLD INQUESTS

Inquests.

21. The Magistrate's Court has jurisdiction to hold inquests into the cause of death, wherever occurring.

Ordinances in respect of jurisdiction to hold inquests.

22. (1) The States may by Ordinance amend section 21.

(2) An Ordinance under subsection (1) may, without limitation –

(a) make such provision in relation to the holding of inquests as the States think fit,

- (b) transfer jurisdiction to hold inquests from the Magistrate's Court to the Royal Court or any division thereof or to such other court or office as may be specified, and
- (c) empower the Royal Court by Order to make any provision which may be made by Ordinance under this section.

(3) The provisions of this section are without prejudice to any power (statutory, customary or inherent) vested in the Royal Court to enact Orders of the Royal Court.

PART V

CRIMINAL MATTERS ARISING IN ALDERNEY AND SARK

Jurisdiction of Ordinary Court as respects Alderney and Sark.

23. (1) Nothing in this Law derogates from the original summary jurisdiction vested in the Ordinary Court in criminal matters arising in Alderney and Sark.

(2) That jurisdiction is exercisable in accordance with the provisions of this Part of this Law.

(3) The Ordinary Court also has jurisdiction to deal with a case, in accordance with the provisions of this Part of this Law, transferred to it –

- (a) from the Court of the Seneschal under section 24, or
- (b) from the Court of Alderney under section 12(4) of the

Government of Alderney Law, 2004^g.

Transfer of cases beyond competence of Court of Seneschal.

24. Notwithstanding the provisions of section 23 of the Reform (Sark) Law, 1951, if the Court of the Seneschal is of the opinion that an offence with which a person is charged or the punishment appropriate to it is beyond its competence, it shall transfer the case to the Ordinary Court with a view to its being dealt with in accordance with the provisions of section 25.

NOTE

The Reform (Sark) Law, 1951 has since been repealed by the Reform (Sark) Law, 2008, section 66(2), Schedule 2, with effect from 1st September, 2008, subject to, first, the general savings and, second, the specific savings and transitional provisions in, respectively, section 66(3) and section 67 of the 2008 Law.

Procedure to be followed by Ordinary Court.

25. (1) This section applies when –
- (a) a case is transferred to the Ordinary Court –
 - (i) from the Court of the Seneschal under section 24, or
 - (ii) from the Court of Alderney under section 12(4) of the Government of Alderney Law, 2004^h, or
 - (b) the Ordinary Court is seized of a case by virtue of its

^g No. III of 2005.

^h No. III of 2005.

original summary jurisdiction referred to in section 23(1).

(2) The Ordinary Court shall, if the offence with which the accused is charged is one which it has power to deal with pursuant to section 26, hear and determine the case.

(3) However –

- (a) if the accused, under section 10(1), elects trial by the Royal Court,
- (b) if the offence with which the accused is charged is triable only by the Royal Court,
- (c) if the Ordinary Court decides that –
 - (i) its powers of punishment are insufficient to deal with the offence, or
 - (ii) by reason of the gravity of the offence, it would be more appropriate for the Royal Court to deal with it, or
- (d) if Her Majesty's Procureur elects trial by the Royal Court,

the Ordinary Court shall transfer the case to the Magistrate's Court with a view to the accused being committed for trial on indictment before the Royal Court.

(4) When a case is transferred from the Ordinary Court to the

Magistrate's Court under subsection (3), the Magistrate's Court shall take the evidence of the witnesses in writing and, if satisfied there is a prima facie case to answer, commit the accused for trial before the Royal Court.

Summary powers of Ordinary Court.

26. The provisions of sections 8, 9, 10, 12 and 13 apply in relation to the Ordinary Court in the exercise of its summary jurisdiction under this Part of this Law as they apply in relation to the Magistrate's Court.

Composition of Ordinary Court.

27. For the purposes of this Part of this Law the Ordinary Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats.

NOTE

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

PART VI

CONTEMPT OF COURT

Contempt of Magistrate's Court.

28. (1) The Magistrate's Court has jurisdiction to deal with any person who –

(a) wilfully insults or threatens –

- (i) the Judge of the Magistrate's Court,
- (ii) any witness before, or officer of, the Magistrate's Court, or
- (iii) any other person having business in the Magistrate's Court,

during his sitting or attendance in court or in going to or returning from court, or

- (b) wilfully interrupts the proceedings of the Magistrate's Court or otherwise misbehaves in court.

(2) In any such case the Magistrate's Court may –

- (a) order any officer of the court or officer of police to take the offender into custody and detain him until the rising of the court, and
- (b) if it thinks fit –
 - (i) commit the offender to custody for a specified period not exceeding one month,
 - (ii) impose on him a penalty (which for the purposes of enforcement shall be treated as if it were a fine imposed upon conviction) not exceeding level 5 on the uniform scale, or
 - (iii) both so commit the offender to custody and

impose on him such a penalty.

(3) The Magistrate's Court may at any time revoke an order of committal made under subsection (2) and, if the offender is in custody, order his discharge.

(4) In this section "**the Judge of the Magistrate's Court**" includes

—

- (a) the Deputy Judge of the Magistrate's Court,
- (b) any other person presiding over or chairing the Magistrate's Court, and
- (c) a Member of the Juvenile Court.

PART VII

IMMUNITY AND INDEMNIFICATION OF JUDGES AND OFFICERS, ETC

Immunity from action of judicial officers.

29. (1) No action lies against a judicial officer in respect of what he does or omits to do —

- (a) in the discharge of his functions as a judicial officer, and
- (b) in relation to a matter within his jurisdiction.

(2) An action lies against a judicial officer in respect of what he does or omits to do —

- (a) in the purported discharge of his functions as a judicial officer, but
- (b) in relation to a matter not within his jurisdiction,

if, but only if, it is proved that he acted in bad faith.

Immunity from action of court officers.

30. (1) No action lies against a court officer in respect of what he does or omits to do in the discharge of his functions as a court officer in relation to –

- (a) the Magistrate's Court, or
- (b) proceedings before the Magistrate's Court.

(2) An action lies against a court officer in respect of what he does or omits to do in the purported discharge of his functions as a court officer in relation to –

- (a) the Magistrate's Court, or
- (b) proceedings before the Magistrate's Court,

if, but only if, it is proved that he acted in bad faith.

Striking out proceedings where action prohibited.

31. (1) If an action is brought in circumstances in which section 29 or 30 provides that no action lies, the court in which the action is brought may, on the application of the defendant, strike out the proceedings in the action.

(2) If the court strikes out proceedings under subsection (1), it may

if it thinks fit order the person bringing the action to pay costs.

Costs in legal proceedings.

32. (1) A court may not order a judicial officer to pay costs in any proceedings in respect of what he does or omits to do in the discharge or purported discharge of his functions as a judicial officer.

(2) A court may not order a court officer to pay costs in any proceedings in respect of what he does or omits to do in the discharge or purported discharge of his functions as a court officer in relation to –

- (a) the Magistrate's Court, or
- (b) proceedings before the Magistrate's Court.

(3) However, subsections (1) and (2) do not apply in relation to any proceedings in which a judicial officer or court officer –

- (a) is being tried for an offence or is appealing against a conviction, or
- (b) is proved to have acted in bad faith in respect of the matters giving rise to the proceedings.

PART VIII
RULES OF PROCEDURE, ETC

Rules of procedure: general.

33. (1) The Royal Court may by Order make such rules as it thinks fit

—

- (a) dealing with all procedural and incidental matters arising under this Law and generally for carrying this Law into effect,
 - (b) in relation to proceedings before the Magistrate's Court including, without limitation, rules in respect of –
 - (i) the practice and procedure to be followed in the conduct of proceedings,
 - (ii) any other matters ancillary, incidental or relating to proceedings and the practice and procedure to be followed in respect thereof,
 - (c) in relation to the costs of proceedings and the award, payment and recovery thereof including, without limitation, rules in respect of –
 - (i) the payment of indemnity costs and security for costs,
 - (ii) the taxation of costs,
 - (iii) the costs of legal representation,
 - (iv) the costs of the prosecution, defence, witnesses and court, and
 - (v) the costs of service and execution.
- (2) In this section "**proceedings**" means all proceedings in respect

of which the Magistrate's Court has jurisdiction.

NOTES

The following Rules have been made by Order of the Royal Court under section 33:

*Family Proceedings (Guernsey and Alderney) Rules, 2009;
Magistrates Court (Fees) (Amendment) Rules, 2010;
Magistrate's Court (Fees) (Amendment) Rules, 2012;
Magistrates Court (Fees) (Amendment) Rules, 2014;
Magistrate's Court (Fees) (Amendment) Rules, 2016;
Magistrate's Court (Fees) (Amendment) Rules, 2018.*

The following Rules have effect as if made by Order of the Royal Court under section 33:

*Magistrate's Court (Fees) Rules, 1981;
Committal Proceedings (Written Statements) Rules, 1983;
Magistrate's Court (Defence Witnesses) Rules, 1983;
Committal Proceedings (Written Statements) (Amendment) Rules,
1986;
Magistrate's Court (Fees) (Amendment) Rules, 1987;
Magistrate's Court (Fees) (Amendment) Rules, 1991;
Magistrate's Court (Fees) (Amendment) Rules, 2007.*

Rules as to committal proceedings.

34. Rules of the Royal Court under section 33 may, in relation to committal proceedings before the Magistrate's Court, and without limitation –

- (a) make provision in respect of the means by which particular facts may be proved, the method of pleading and the method by which evidence may be given in or in connection with committal proceedings, and
- (b) prescribe cases or circumstances, or classes or descriptions of cases or circumstances, in which committal proceedings may, notwithstanding the provisions of section 11 and 25(4), be dispensed with.

Rules as to civil actions.

35. Rules of the Royal Court under section 33 may, in relation to civil actions before the Magistrate's Court, and without limitation –

- (a) make provision in respect of –
 - (i) the institution, presentation and notification of, and representation before the Magistrate's Court in, civil actions, and
 - (ii) the means by which particular facts may be proved, the method of pleading and the method by which evidence may be given in or in connection with civil actions,
- (b) without prejudice to section 33(1)(c), prescribe maximum scales of costs in relation to civil actions; and, where a scale is so prescribed in relation to any proceeding or matter, an award of the Magistrate's Court in relation to the costs of such a proceeding or matter shall not exceed the amount prescribed, and
- (c) make provision as to the setting aside of judgments given in default of appearance.

PART IX

GENERAL AND MISCELLANEOUS PROVISIONS

Power of Magistrate's Court to sit in camera.

- 36.** (1) For the avoidance of doubt, the Magistrate's Court may, in any

criminal proceedings or civil actions –

- (a) sit otherwise than in open court, or
- (b) exclude any person from a hearing or any part thereof,

if it considers it necessary or desirable to do so in the interests of justice.

(2) The power conferred by subsection (1) is without prejudice to any enactment empowering the Magistrate's Court to sit otherwise than in open court or to exclude any person.

Law Officers in Magistrate's Court.

37. (1) For the avoidance of doubt, the Magistrate's Court may sit, and is properly constituted, whether or not Her Majesty's Procureur is present.

(2) In any civil action before the Magistrate's Court Her Majesty's Procureur may advise the court on any question of law or mixed law and fact arising in the action.

(3) Nothing in this Law derogates from the right of Her Majesty's Procureur –

- (a) to require the holding of or to appear at inquests into the cause of death, or
- (b) to prosecute any criminal matter before the Magistrate's Court.

Time and place of sitting of Magistrate's Court.

38. (1) For the purposes of this Law the Magistrate's Court shall sit at

such times and in such places as the Royal Court may direct.

(2) For the avoidance of doubt those times may include any Christmas Day, Good Friday, Saturday, Sunday or public holiday.

Administration of oath; and affidavits.

39. (1) The Judge of the Magistrate's Court may administer the oath or affirmation to any person before the Magistrate's Court in any criminal proceedings or civil actions.

(2) Affidavits may be sworn before the Judge of the Magistrate's Court.

Magistrate's Court may sit without Greffier, Sheriff or Sergeant.

40. For the avoidance of doubt, the Magistrate's Court may sit, and is properly constituted, whether or not Her Majesty's Greffier, Sheriff or Sergeant or any of their respective Deputies is present.

Position of Juvenile Court.

41. (1) For the avoidance of doubt, and without prejudice to section 47 (savings and transitional provisions) –

- (a) the Magistrate's Court, when sitting as the Juvenile Court pursuant to the Juvenile Court Law, shall be constituted by –
 - (i) a Judge of the Magistrate's Court, and
 - (ii) such other persons (if any) as may be specified in the Juvenile Court Law or any other enactment from time to time in force, and

- (b) the provisions of this Law are subject to the provisions of the Juvenile Court Law and any other enactment from time to time in force relating to the functions of the Magistrate's Court when sitting as the Juvenile Court.

(2) In this section the "**Juvenile Court Law**" means the Juvenile Court (Guernsey) Law, 1989ⁱ.

NOTE

The Juvenile Court (Guernsey) Law, 1989 has since been repealed by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008, section 23(2), Schedule 2, Part II, paragraph 2, with effect from 4th January, 2010, subject to the transitional provisions in section 23(3) of, and Part III of Schedule 2 to, the 2008 Law.

Confirmation of right of representation for States and Children's Convenor.

42. (1) For the avoidance of doubt, and without prejudice to the provisions of any rules under section 35 –

- (a) an officer of a States department authorised in that behalf by the Chief Officer of the department may represent the States in proceedings in the Magistrate's Court, and
- (b) a person appointed to the Office of the Children's Convenor established by section 30 of the Children

ⁱ Ordres en Conseil Vol. XXXI, p. 326; prospectively repealed and replaced by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

(Guernsey and Alderney) Law, 2008^j or Deputy Children's Convenor may represent the Office in proceedings in the Magistrate's Court.

(2) A States "**department**" includes a States committee and the [Policy & Resources Committee].

NOTES

In section 42, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.

The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.

The following case has referred to section 42:

Smith v. Carey Olsen [2019]GRC004 (Unreported, Royal Court, 6th February).

Power to enact Ordinances.

43. [(1) The States may by Ordinance –

- (a) amend Parts II and VII, sections 41 and 42 and (so as to amend the meaning of any expression defined therein or to define any other expression) section 45, where it appears to the States to be necessary or expedient to do so for the purpose of –

^j The Children (Guernsey and Alderney) Law, 2008 was approved by the States on the 30th January, 2008.

- (i) facilitating or enhancing the administration of justice in the Bailiwick,
 - (ii) enabling the Magistrate's Court and the judicial officers and the court officers (within the meaning of Part VII) more effectively to carry out their respective functions,
 - (iii) facilitating or enhancing the instigation, hearing and determination of, or otherwise for the purposes of, any proceedings,
 - (iv) facilitating or enhancing the implementation and enforcement of judgments, sentences and other orders of the Magistrate's Court and extending or modifying the classes and descriptions of judgments, sentences and other orders that may be given, imposed or made,
- (b) make such additional provision as they think fit for the purposes of carrying this Law into effect.]

(2) The power conferred by subsection (1) is without prejudice to any other power conferred by this Law to enact Ordinances (and vice versa).

NOTE

In section 43, subsection (1) was substituted by the Magistrate's Court (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009, section 3, with effect from 1st September, 2009.

General provisions as to subordinate legislation.

44. (1) An Ordinance, Order or rule under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, Order or rule (as the case may be) hereunder,
 - (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient [(including, without limitation, in the case of an Ordinance, provision making consequential amendments to this Law and any other enactment)], and
 - (c) may, in the case of an Ordinance, and for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any [...] rule of customary or common law.
- (2) Any power conferred by this Law to make an Ordinance, Order or rule may be exercised –
- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
 - (b) so as to make, as respects the cases in relation to which it is exercised –
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of

exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

NOTE

In section 44, the words in the first pair of square brackets were inserted, and the words omitted in the second pair of square brackets were repealed, by the Magistrate's Court (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009, respectively section 4 and section 5, with effect from 1st September, 2009.

Interpretation.

45. (1) In this Law –

"civil action" includes any description of civil proceedings and any stage thereof,

"costs" includes fees, expenses and allowances,

"court officer" in Part VII means Her Majesty's Greffier, Sheriff or Sergeant or any of their respective Deputies,

"enactment" includes any subordinate legislation,

"functions" includes powers, rights, duties, obligations, privileges

and prerogatives,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"judicial officer" in Part VII means –

- (a) a Judge or Deputy Judge of the Magistrate's Court,
- (b) any other person presiding over or chairing the Magistrate's Court, or
- (c) a Member of the Juvenile Court,

"Magistrate's Court" means the Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law, 1954^k,

"Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"proceedings" means any description of proceedings before the Magistrate's Court, whether in open court or in chambers, and includes ex parte proceedings and other matters,

"Seneschal" means the Seneschal of Sark,

"subordinate legislation" means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect,

^k Ordres en Conseil Vol. XVI, p. 103.

"**uniform scale**" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^{**l**}.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Repeals.

46. The following enactments are repealed –

- (a) Articles 6, 7 and 8 of the Loi par rapport aux procedures en Crime, 1877^{**m**},
- (b) the Magistrate's Court (Guernsey) Law, 1954^{**n**},
- (c) the Magistrate's Court (Amendment) (Guernsey) Law, 1957^{**o**},
- (d) section 4(1) of the Government of Alderney (Miscellaneous and Consequential Provisions) (Guernsey and Alderney) Law, 1987^{**p**},
- (e) section 5 of the Uniform Scale of Fines (Bailiwick of

l	Ordres en Conseil Vol. XXXI, p. 278.
m	Ordres en Conseil Vol. II, p. 169.
n	Ordres en Conseil Vol. XVI, p. 103.
o	Ordres en Conseil Vol. XVII, p. 218.
p	Ordres en Conseil Vol. XXX, p. 224.

Guernsey) Law, 1989^q,

- (f) section 7 of the Administration of Justice (Bailiwick of Guernsey) Law, 1991^r,
- (g) section 1 of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996^s, and
- (h) section 18 of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002^t.

Savings and transitional provisions.

47. (1) Any person who, immediately before the date of commencement of this Law –

- (a) held the office of Assistant Magistrate by virtue of section 7 of the Magistrate's Court (Guernsey) Law, 1954^u shall, on and from that date, be deemed to have been appointed, under and subject to the provisions of this Law, to the office of Judge of the Magistrate's Court, or
- (b) held the office of Acting Magistrate shall, on and from

^q Ordres en Conseil Vol. XXXI, p. 278.

^r Ordres en Conseil No. I of 1991.

^s Ordres en Conseil No. IX of 1996.

^t Ordres en Conseil No. I of 2003.

^u Ordres en Conseil Vol. XVI, p. 103; section 7 was substituted by No. IX of 1996.

that date, be deemed to have been appointed, under and subject to the provisions of this Law, to the office of Deputy Judge of the Magistrate's Court.

(2) Any subordinate legislation made or other thing done under an enactment repealed by this Law which could have been made or done under this Law has effect, after the date of commencement of this Law, as if made or done under this Law.

(3) Any reference in any enactment (however expressed) to –

- (a) the Magistrate,
- (b) an Assistant Magistrate or Acting Magistrate, or
- (c) the Petty Debts Court,

shall be construed after the date of commencement of this Law as a reference to, respectively –

- (i) a Judge of the Magistrate's Court,
- (ii) a Deputy Judge of the Magistrate's Court, or
- (iii) the Magistrate's Court,

in each case within the meaning of this Law.

(4) Any reference in any enactment or subordinate legislation (however expressed) to an enactment repealed and re-enacted (with or without modification) by this Law shall, unless the contrary intention appears, be construed as

a reference to the provision re-enacted.

(5) The repeal by this Law of the Magistrate's Court (Guernsey) Law, 1954 does not affect the continued operation of section 27 of that Law (savings for Ordinances made under enactments repealed by the 1954 Law).

Criminal proceedings pending at commencement of this Law.

48. A person who, before the date of commencement of this Law, is charged with a criminal offence shall be proceeded against, tried and punished in respect of that offence as if this Law had not been enacted.

Citation.

49. This Law may be cited as the Magistrate's Court (Guernsey) Law, 2008.

Commencement.

50. This Law shall come into force on the day appointed by Ordinance of the States, and different dates may be appointed for different provisions and for different purposes.

NOTE

The Law was brought into force on 1st September, 2009 by the Magistrate's Court (Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009, section 1.
