

PROJET DE LOI

ENTITLED

The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 *

[CONSOLIDATED TEXT]

NOTE

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* Ordres en Conseil Vol. XXX, p. 145; as amended by the Conveyancing (Guernsey) Law, 1996 (No. VIII of 1996, Ordres en Conseil Vol. XXXVI, p. 629); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010). The Law is applied, in part, to injunctions under the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (No. XII of 2009); the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020 (No. XVII of 2021). See also the Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009).

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The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987

THE STATES, in pursuance of their Resolution of the 26th day of November, 1986, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

PART I

INTERIM INJUNCTIONS

Power to grant interim injunctions.

1. (1) If proceedings have been or are to be instituted before the Court, the Court may by order, at any time before it makes a final judgment in the proceedings or before the proceedings are otherwise concluded, on the application of any person who is, or as the case may be will be, a party to the proceedings (such person being referred to in this Part of this Law as "**the applicant**"), grant an injunction addressed to another person (such other person being referred to in this Part of this Law as "**the respondent**") requiring the respondent to do or not to do any thing.

(2) The injunction –

(a) may be granted ex parte,

(b) shall remain in force until –

- (i) it is discharged under section 2 of this Law,
 - (ii) the Court makes a final judgment in the proceedings or the proceedings are otherwise concluded, or
 - (iii) such other time or the happening of such other event as may be specified, and
- (c) may be granted subject to such conditions as may be specified.

(3) The Court may require the applicant to enter into such undertakings on such terms as may be specified including, where the injunction is to be granted before proceedings are instituted, an undertaking to institute proceedings within such period as may be specified.

- (4) A person who contravenes or fails to comply with –
- (a) an injunction,
 - (b) any condition subject to which an injunction is granted,
 - (c) any undertaking entered into by him under subsection (3) of this section,

is, in addition to any penalty to which he may be liable under subsection (5) of this section, guilty of a contempt of court and liable to be proceeded against and punished accordingly.

- (5) The Court may grant an injunction subject to such penalty as

may be specified, and if the respondent contravenes or fails to comply with –

- (a) the injunction,
- (b) any condition subject to which the injunction was granted,

the penalty shall be enforceable against him and, if it is a pecuniary penalty, payable to the applicant.

(6) Proceedings under subsection (4) of this section for a contempt of court or under subsection (5) of this section for the enforcement of a penalty shall be instituted by way of summons issued by the applicant, or by the respondent where the contempt is that of the applicant, and shall be dealt with by the Court.

(7) An injunction may in exceptional circumstances be granted notwithstanding that proceedings have not been and are not to be instituted before the Court.

NOTES

Part I of this Law, apart from section 1(1) and (7) thereof, is applied in relation to injunctions under:

- (i) *section 16 of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, with effect from 11th May, 2009, by section 16(6) of the 2008 Law;*
- (ii) *section 47 and section 99 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, with effect from 1st November, 2021, by, respectively, section 47(6) and section 99(4) of the 2020 Law.*

The following cases have referred to this Law:

In re Clameur de Haro No. 2 (1988) (Unreported, Court of Appeal, 13th April) (Court of Appeal Judgments, 1964-89, p. 390);

Craske v. Traisnel and Bougourd (1989) 7.GLJ.51;
Achates Trust Limited v. Culture Farms Inc. and Activator Supply Company Inc. (1989) 7.GLJ.60;
Brown v. De Carteret and Vivyan (1992) 14.GLJ.45;
Channel Islands Cream Liqueurs Ltd. v. Woods (Woods Intervening) (1992) 13.GLJ.56;
International Technology Operations Limited et al. v. Silver Falcon Enterprises Limited (1994) 17.GLJ.61;
Hubert v. Circuit Skips Limited, Murphy and McDonald (2000) 29.GLJ.32;
Reid, Bryson and Spickernell v. European Internet Capital Ltd. and Four Others (2002) (Unreported, Court of Appeal, 5th July) (Guernsey Judgment No. 6/2002);
Technocom Limited v. Roscomm Limited and Klabin 2003-04 GLR 403;
Seed International Ltd v Tracey et al (2003) (Unreported, Royal Court, 3rd November) (Guernsey Judgment No. 45/2003);
Seed International Ltd. v. Tracey and 12 others 2003-04 GLR 98;
Magloire (trading as First Call Recruitment) v. Wright, Goguelin and Leapfrog Limited (2006) (Unreported, Royal Court, 18th January) (Guernsey Judgment No 2/2006); 2005-06 GLR Note 19;
Albany Hotel Limited v. Wrench (2007) (Unreported, Royal Court, 23rd May) (Guernsey Judgment No 14/2007); 2007-08 GLR Note 6;
Wrench v. Albany Hotel Limited (2008) (Unreported, Royal Court, 17th March) (Guernsey Judgment No 10/2008); 2007-08 GLR Note 20;
Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Republic of Indonesia 2007-08 GLR 442;
Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic Of Indonesia 2009-10 GLR 1;
Winnetka Trading Corporation v. Bank Julius Baer and Company Limited 2009-10 GLR 2601;
Capita Symonds Ltd v Jubilee Scheme 3 Limited Partnership et al (2010) (Unreported, Royal Court, 16th September) (Guernsey Judgment No 34/2010);
Jubilee Scheme 3 Limited v. Capita Symonds Limited 2011-12 GLR 25;
Tinkler v Stobart Group Limited (2018) (Unreported, Royal Court, 5th July) (Guernsey Judgment No. 27/2018).

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 27 (shown, incorrectly, in the printed version of the 2008 Law as paragraph 26), with effect from 4th January, 2010, this Law is one of those specific enactments that the States may repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, by Ordinance made under the said section 123.

Variation and discharge of injunctions.

2. The Court may by order, on the application of either party vary or discharge –

- (a) an injunction,
- (b) any condition or penalty subject to which an injunction is granted,
- (c) any undertaking entered into by the applicant under section 1(3) of this Law.

Notice of applications.

3. (1) The Court may direct that an application for an injunction under section 1 of this Law or for an order under section 2 of this Law shall be heard notwithstanding that notice of the application has not been served upon the other party to the application.

(2) Where the Court does not make a direction under subsection (1) of this section, the Court may direct that the period of time which must elapse between service upon the other party of notice of the application and the hearing of the application shall be reduced to such period as may be specified.

Grounds for granting injunction.

4. The Court shall not exercise any power conferred by section 1, 2 or 3 of this Law unless satisfied that it is just and convenient to do so.

NOTE

The following cases have referred to section 4:

International Technology Operations Limited et al. v. Silver Falcon Enterprises Limited (1994) 17.GLJ.61;
Seed International Ltd v Tracey et al (2003) (Unreported, Royal

Court, 3rd November) (Guernsey Judgment No. 45/2003);
Seed International Ltd. v. Tracey and 12 others 2003–04 GLR 98;
*Technocom Limited v. Roscomm Limited, Klabin and Plaiderie
Corporate Secretaries Limited* 2003–04 GLR 403;
*Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and
Republic of Indonesia* 2007–08 GLR 442;
*Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and
Government of Republic Of Indonesia* 2009–10 GLR 1.

Saving for existing remedies.

5. Nothing in this Part of this Law derogates from any remedy, right or power arising otherwise than under this Law.

NOTE

The following case has referred to section 5:

In re Clameur de Haro No. 2 (1988) (Unreported, Court of Appeal, 13th April) (Court of Appeal Judgments, 1964–89, p. 390).

PART II

REGISTRATION OF INTERLOCUTORY MATTERS

Leave of Court required to register interlocutory matters.

6. An act or order of the Court made, in any proceedings, before the Court makes a final judgment in the proceedings or before the proceedings are otherwise concluded, including an order for an adjournment, shall not be registered in the *Livre des Hypothèques, Actes de Cour et Obligations* –

- (a) without the leave of the Court, and
- (b) unless the provisions of [the Conveyancing (Guernsey) Law, 1996 and of any rules of the Royal Court made under section 2 thereof] have (where appropriate) been

complied with.

NOTES

In section 6, the words in square brackets in paragraph (b) were substituted by the Conveyancing (Guernsey) Law, 1996, section 3(a), with effect from 1st March, 1997.

The following cases have referred to section 6:

Magloire (trading as First Call Recruitment) v. Wright, Goguelin and Leapfrog Limited (2006) (Unreported, Royal Court, 18th January) (Guernsey Judgment No 2/2006); 2005-06 GLR Note 19

Albany Hotel Limited v. Wrench (2007) (Unreported, Royal Court, 23rd May) (Guernsey Judgment No 14/2007); 2007-08 GLR Note 6;

Wrench v. Albany Hotel Limited (2008) (Unreported, Royal Court, 17th March) (Guernsey Judgment No 10/2008); 2007-08 GLR Note 20.

Orders for leave to register.

7. The order of the Court by which leave to register is given under section 6 of this Law –

- (a) may be made ex parte,
- (b) may limit the pecuniary amount which may be registered to such amount as may be specified,
- (c) may be varied or revoked on the application of either party to the proceedings,
- (d) may direct that the registration shall be removed –
 - (i) after such time,
 - (ii) upon such contingency or event,

- (iii) upon the deposit with the Court by the defendant to the proceedings of security of such amount,

as in each case may be specified.

NOTE

The following cases have referred to section 7:

Channel Islands Cream Liqueurs Ltd. v. Woods (Woods Intervening) (1992) 13.GLJ.56;

Magloire (trading as First Call Recruitment) v. Wright, Goguelin and Leapfrog Limited (2006) (Unreported, Royal Court, 18th January) (Guernsey Judgment No 2/2006); 2005-06 GLR Note 19;

Albany Hotel Limited v. Wrench (2007) (Unreported, Royal Court, 23rd May) (Guernsey Judgment No 14/2007); 2007-08 GLR Note 6;

Wrench v. Albany Hotel Limited (2008) (Unreported, Royal Court, 17th March) (Guernsey Judgment No 10/2008); 2007-08 GLR Note 20;

Capita Symonds Ltd v Jubilee Scheme 3 Limited Partnership et al (2010) (Unreported, Royal Court, 16th September) (Guernsey Judgment No 34/2010);

Jubilee Scheme 3 Limited v. Capita Symonds Limited 2011-12 GLR 25.

PART III

PROTECTION OF MINOR'S PROPERTY

Administration of minors' property.

8. (1) On the application of any person mentioned in section 9 of this Law the Court may, if in its opinion it would be just and for the benefit of a minor to do so –

- (a) appoint any person (such person being referred to in this Law as an "**appointed person**") to hold and administer any relevant property,

- (b) give such directions to any person as in its opinion are necessary –
 - (i) to achieve the holding by an appointed person of the relevant property in respect of which he has been appointed, including a direction to deliver or transfer the relevant property to him,
 - (ii) to enable the appointed person to administer the relevant property,
- (c) order that any person holding or administering any relevant property, including an appointed person, shall –
 - (i) deposit with the Court security in respect of the relevant property of such amount and in such form as the Court may determine,
 - (ii) deliver to the Court an inventory of any relevant property held by or administered by him,
 - (iii) deliver to the Court accounts in respect of the relevant property, at such times or at such intervals and in respect of such periods as the Court may determine,
 - (iv) deliver up to the Court all books, papers and other documents relating to any relevant property held by or administered by him,

- (d) in the event of any loss, dissipation or diminution in the value of any relevant property resulting from the act or default of any person holding or administering it, including an appointed person, order that any security deposited with the Court by that person in respect of the relevant property under paragraph (c)(i) of this subsection, or any part of that security, be sold (if appropriate) and paid over for the benefit of the minor to whom the relevant property belonged, or who was entitled to it, or for whose benefit it was held or administered, as the case may be,
- (e) order that any person shall not hold or administer any relevant property,
- (f) order the settlement by any person of any expenses and fees of an appointed person incurred by him in holding and administering relevant property.

(2) The provisions of subsection (1) of this section are in addition to, and not in derogation from, the law and custom relating to guardianship and tutelle.

Persons who may apply.

9. An application to the Court under section 8 of this Law may be made by the mother, father or guardian [or other person who has parental responsibility in respect] of the child in relation to whose property the application is to be made, Her Majesty's Procureur or Comptroller, or any other interested party.

NOTE

In section 9, the words in square brackets were inserted by the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 3, Schedule 1, Part I, paragraph 24, with effect from 4th January, 2010.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the reference in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section are satisfied.

PART IV
CONVEYANCING

Interpretation of this Part of this Law.

10. ...

NOTE

Part IV, and section 10 thereof, were repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Restrictions on registration of relevant orders.

11. ...

NOTE

Section 11 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Restrictions on arrest.

12. ...

NOTE

Section 12 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Procedure for registering cautions.

13. ...

NOTE

Section 13 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Cautions relating to more than one conveyancing day.

14. ...

NOTE

Section 14 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Fee.

15. ...

NOTE

Section 15 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

Cautions to be lodged by Advocates.

16. ...

NOTE

Section 16 was repealed by the Conveyancing (Guernsey) Law, 1996, section 3(b), with effect from 1st March, 1997.

PART V
GENERAL PROVISIONS

Applications under Parts 1 and 2.

17. An application under Part I or II of this Law shall for the purposes of section 6(2)(a) of the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950^b be deemed to be a matter of procedure.

NOTE

Part V of this Law is applied in relation to injunctions under:

- (i) section 16 of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, with effect from 11th May, 2009, by section 16(6) of the 2008 Law;*
 - (ii) section 47 and section 99 of the Financial Services Business (Enforcement Powers) (Bailiwick of Guernsey) Law, 2020, with effect from 1st November, 2021, by, respectively, section 47(6) and section 99(4) of the 2020 Law.*
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Rules of the Royal Court.

18. The Royal Court may by Order make rules –

- (a) dealing with all procedural and incidental matters arising under this Law,
- (b) generally for carrying this Law into effect,

^b Ordres en Conseil Vol. XIV, p. 398.

- (c) for the purposes of Part III of this Law, as to –
 - (i) the administration of relevant property by appointed persons,
 - (ii) the form in which inventories and accounts to be delivered to the Court under section 8([i])(c)(ii) and (iii) of this Law are to be.

NOTE

The figure in square brackets in sub-paragraph (ii) of paragraph (c) shown, incorrectly, in the printed version of this section, as "i" should read "1".

Interpretation.

19. In this Law –

"applicant" has the meaning given by section 1(1) of this Law,

"appointed person" means a person appointed by the Court under section 8(1)(a) of this Law to hold and administer relevant property,

"the Court" means the Royal Court sitting as an Ordinary Court and, in Parts I, II and IV of this Law, includes the Matrimonial Causes Division of the Royal Court,

"minor" means a person under the age of 18 years,

"relevant property" means any property, other than immovable property, which belongs to a minor, to which a minor is entitled or which is

held for the benefit of a minor, and includes the income of such property, and

"respondent" has the meaning given by section 1(1) of this Law.

Citation and Commencement.

20. This Law may be cited as the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 and shall come into force on such day as the States may by Ordinance appoint; and different days may be appointed for the coming into force of different provisions.

NOTE

Parts I, II, III and V of the Law were brought into force on 18th March, 1988 by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (Commencement) Ordinance, 1988, section 1.
