

# ORDER IN COUNCIL

**XXII**  
**2008**

ratifying a Projet de Loi

ENTITLED

## **The Royal Court (Reform) (Guernsey) Law, 2008**

(Registered on the Records of the Island of Guernsey  
on the 28th October, 2008.)



2008

## ORDER IN COUNCIL



### IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

28<sup>th</sup> day of October, 2008 before Richard John Collas, Esquire, Deputy Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, John Ferguson and Stephen Murray Jones Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 9<sup>th</sup> October 2008 approving and ratifying a Projet de Loi entitled “The Royal Court (Reform) (Guernsey) Law, 2008”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ORDERED that the said Order in Council be registered on the records of this Island.



*At the Court at Buckingham Palace*

THE 9th DAY OF OCTOBER 2008

PRESENT,

THE QUEEN'S MOST EXCELLENT MAJESTY  
IN COUNCIL

The following report from the Committee of Council for the Affairs of Jersey and Guernsey was today read at the Board:

"In accordance with Your Majesty's General Order of Reference of 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 27th June 2007, the States of Deliberation at a meeting on 12th March 2008 approved a *Projet de Loi* entitled *The Royal Court (Reform) (Guernsey) Law, 2008* and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction to it. That the *Projet de Loi* is as set forth in the attached Schedule. The Petition most humbly prays that Your Majesty might be graciously pleased to sanction *The Royal Court (Reform) (Guernsey) Law, 2008*, and to order that it shall have force of law in the Islands of Guernsey, Herm and Jethou.

"The Committee have considered the *Projet de Loi* and have agreed to report that it may be advisable for Your Majesty to approve and ratify it."

Her Majesty, having taken the report into consideration, was pleased, by and with the advice of Her Privy Council, to approve and ratify the *Projet de Loi* (a copy of which is annexed to this Order) and to order that it, together with this Order, shall have the force of law in the Islands of Guernsey, Herm and Jethou and shall be entered on the Register of the Island of Guernsey and observed accordingly.

Her Majesty's Officers in the Bailiwick of Guernsey, and all others whom it may concern, are therefore to take notice of Her Majesty's Order and to proceed accordingly.

*Judith Simpson*

# PROJET DE LOI

ENTITLED

## **The Royal Court (Reform) (Guernsey) Law, 2008**

### ARRANGEMENT OF SECTIONS

#### *Judges of the Royal Court*

1. Office and functions of Judge of the Royal Court.
2. Performance by Judges of the Royal Court of other functions.
3. Appointment of Judges of the Royal Court.
4. Tenure and remuneration of Judges of the Royal Court.
5. Oath of office of Judges of the Royal Court.

#### *Lieutenant Bailiffs*

6. Extension of office of Lieutenant Bailiffs.
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#### *Jurats of the Royal Court*

8. Number of Jurats.
9. Amendment of Reform Law and other legislation.
10. Retirement age of Jurats; and right to retain title.

#### *Jurés-Justiciers Suppléants of the Royal Court*

11. Office of Juré-Justicier Suppléant.
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#### *Role of Jurats in civil proceedings*

13. No requirement for Jurats to determine questions of fact in civil proceedings.
14. Procedure to be adopted in civil proceedings where Jurats are sitting.
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*Appointment of assessors*

17. Appointment of assessors to assist Royal Court.

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and their Deputies*

18. Extension of office of Deputy Greffier, Sheriff and Sergeant.
19. Employment status of Sheriff and Sergeant.
20. Appointment to and termination of office of Sheriff and Sergeant.
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*Contempt of court*

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# PROJET DE LOI

ENTITLED

## **The Royal Court (Reform) (Guernsey) Law, 2008**

**THE STATES**, in pursuance of their Resolution of the 27<sup>th</sup> June, 2007<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### *Judges of the Royal Court*

#### **Office and functions of Judges of the Royal Court.**

1. (1) This Law establishes the office of Judge of the Royal Court.
- (2) A Judge of the Royal Court may, on being authorised by the Bailiff -
  - (a) preside over the Royal Court, and
  - (b) discharge any judicial function of the office of Bailiff,
 but may not sit as a judge of the Court of Appeal or appoint a Lieutenant Bailiff.
- (3) Any number of Judges of the Royal Court may be appointed.

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<sup>a</sup> Article V of Billet d'État No. XVI of 2007.

**Performance by Judges of the Royal Court of other functions.**

2. (1) A Judge of the Royal Court may also -
  - (a) hold office as a Lieutenant Bailiff, and
  - (b) constitute the Magistrate's Court (and has all the functions of the Judge of the Magistrate's Court),

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) The office of Jurat of the Royal Court is incompatible with that of Judge of the Royal Court.

(3) A person appointed as Judge of the Royal 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.

**Appointment of Judges of the Royal Court.**

3. (1) A Judge of the Royal Court shall be appointed by the Royal Court and shall have been in practice as -

- (a) an Advocate of the Royal Court of Guernsey,
- (b) a member of -
  - (i) the Bar of England and Wales,

- (ii) the Bar of Northern Ireland, or
- (iii) the Faculty of Advocates in Scotland, or
- (c) a Solicitor -
  - (i) of the Supreme Court of England and Wales,
  - (ii) of the Supreme Court of Judicature of Northern Ireland, or
  - (iii) in Scotland.

for not less than 10 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).

(3) Sections 23(3) and 23(4) apply to an Ordinance under this section as it applies to an Ordinance under section 23.

#### **Tenure and remuneration of Judges of the Royal Court.**

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

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

#### **Oath of office of Judges of the Royal Court.**

5. A person appointed as Judge of the Royal Court shall, before entering office, take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

#### *Lieutenant Bailiffs*

#### **Extension of office of Lieutenant Bailiffs.**

6. The term of office of a Lieutenant Bailiff shall not expire on the termination of office of the Bailiff who appointed him, but shall expire instead -

(a) in the case of a Lieutenant Bailiff appointed from among the Jurats, immediately prior to the swearing-in of the successor in office to the Bailiff who appointed him, and

- (b) in the case of any other Lieutenant Bailiff, on the expiration of a period of 6 months immediately after the date of termination of office of the Bailiff who appointed him.

**Termination of office of Lieutenant Bailiffs.**

7. (1) A Lieutenant Bailiff 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.

- (2) The term of office of a Lieutenant Bailiff appointed from among the Jurats terminates on his appointment as Juré-Justicier Suppléant.

*Jurats of the Royal Court*

**Number of Jurats.**

8. (1) The number of Jurats shall after the commencement of this Law be 16 (and not 12 as hitherto).

- (2) For the avoidance of doubt the increase in the number of Jurats to 16 does not affect the number required for a quorum in the Royal Court or any division thereof, whether exercising civil or criminal jurisdiction or original or appellate jurisdiction.

**Amendment of Reform Law and other legislation.**

9. (1) In sections 4(1)(b) and 4(2)(b) of the Reform (Guernsey) Law, 1948<sup>b</sup>, for "twelve" substitute "16".

(2) Section 21 of the Reform (Guernsey) Law, 1948 is repealed.

(3) For any reference in any enactment, however expressed, to the number of 12 Jurats there is substituted a reference to the number of 16 Jurats.

**Retirement age of Jurats; and right to retain title.**

10. (1) A Jurat appointed after the commencement of this Law shall hold office until he attains -

(a) the age of 70, or

(b) with the approval of the other Jurats, the age of 72 (and not, as in the case of a Jurat appointed before the commencement of this Law, 75).

(2) A person whose office as Jurat has terminated, including a person appointed as Juré-Justicier Suppléant under section 12, retains the title of Jurat until his death.

*Jurés-Justiciers Suppléants of the Royal Court*

**Office of Juré-Justicier Suppléant.**

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<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288; there are amendments not material to this Law.

11. (1) This Law establishes the office of Juré-Justicier Suppléant.

(2) A Juré-Justicier Suppléant has all the functions of Jurat, but may not by virtue of his office sit in the States of Election.

(3) Persons appointed to the office of Juré-Justicier Suppléant shall form a panel from which they shall be drawn from time to time by the Bailiff to perform the functions of Jurat.

**Appointment of Juré-Justicier Suppléant.**

12. (1) A person may be appointed as Juré-Justicier Suppléant if -

(a) he is a Jurat of not less than 5 years' standing, and

(b) he has attained the age of 65 but not the age of 72 (or, in the case of a Jurat appointed before the commencement of this Law, 75).

(2) A Jurat may be appointed as Juré-Justicier Suppléant by the other Jurats.

(3) A person's office as Jurat terminates on his appointment as Juré-Justicier Suppléant.

(4) For the avoidance of doubt the sanction of Her Majesty is not required for the termination of a person's office as Jurat prior to his attaining the age of 70 on his appointment as Juré-Justicier Suppléant.

(5) A Juré-Justicier Suppléant shall, subject to subsection (6), hold office until he attains the age of 75.

- (6) A Juré-Justicier Suppléant is removable from office -
  - (a) by the Jurats, or
  - (b) if he informs the Bailiff that he wishes to retire, by the Bailiff.

*Role of Jurats in civil proceedings*

**No requirement for Jurats to determine questions of fact in civil proceedings.**

13. (1) In any civil proceedings before the Royal Court in which there are in issue questions of fact or mixed fact and law -

- (a) the parties may elect that the Bailiff shall sit unaccompanied by the Jurats, or
- (b) the Bailiff may direct that he will sit unaccompanied by the Jurats.

(2) An election of the parties under subsection (1)(a) does not have effect if the Bailiff directs that the Jurats should continue to sit.

- (3) A direction of the Bailiff under subsection (1)(b) -
  - (a) does not have effect if every party elects that the Jurats should continue to sit, and
  - (b) may be revoked or modified by the Bailiff at any stage of the proceedings.

(4) Where an election of the parties under subsection (1)(a) or a direction of the Bailiff under subsection (1)(b) has effect -

(a) the Royal Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats, and

(b) the Bailiff is the sole judge of fact.

(5) An election of the parties under subsection (1)(a) or (3)(a) or direction of the Bailiff under subsection (1)(b) or (2) shall be made at such stage of the proceedings prior to the stage at which the Jurats would otherwise ordinarily sit as the Bailiff may order.

(6) An election of the parties under subsection (1)(a) or (3)(a) or direction of the Bailiff under subsection (1)(b) or (2) continues to have effect notwithstanding the joining or removal of any person as party to the proceedings.

(7) An election of the parties under subsection (1)(a) or (3)(a) is irrevocable except with leave of the Bailiff.

(8) The following acts of the Bailiff are not subject to appeal -

(a) a direction under subsection (1)(b) or (2),

(b) a revocation or modification of a direction under subsection (3)(b),

(c) an order under subsection (5), and

(d) a refusal of leave under subsection (7).

(9) This section is without prejudice to any other enactment which provides (in whatever words) that, in any civil proceedings -

(a) the Royal Court (whether sitting as a Full Court, Ordinary Court or Court for Matrimonial Causes) is to hear and determine any matter, except where the enactment provides that the Royal Court is properly constituted by the Bailiff sitting unaccompanied by the Jurats, or

(b) the Jurats are to sit.

(10) In this section "**the Bailiff**" includes the person presiding over the proceedings.

**Procedure to be adopted in civil proceedings where Jurats are sitting.**

**14.** (1) This section applies when in any civil proceedings before the Royal Court the Jurats (and not the Bailiff alone) are sitting.

(2) The Bailiff need not sum up but may retire with the Jurats.

(3) In this section "**the Bailiff**" means the person presiding over the proceedings.

**Amendment of Miscellaneous Reform Provisions Law.**

**15.** In the Royal Court of Guernsey (Miscellaneous Reform Provisions) Law, 1950<sup>c</sup>, section 6(4) is repealed.

*Reasoned judgments in civil proceedings*

**Requirement to give reasoned judgments in civil proceedings.**

**16.** (1) Any judgment given by the Royal Court in civil proceedings shall be reasoned.

(2) For the avoidance of doubt, nothing in this section or in section 14(2) (Bailiff may retire with Jurats) -

- (a) prejudices the power of the Bailiff -
  - (i) to determine questions of law and procedure, and
  - (ii) to award costs,
- (b) prejudices the power of the Jurats -
  - (i) to determine questions of fact, and

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<sup>c</sup> Ordres en Conseil Vol. XIV, p. 388; there are amendments not material to this Law.



- (ii) in administrative proceedings, to determine questions of reasonableness (otherwise than reasonableness as a matter of law), or
- (c) prevents a Jurat from delivering a dissenting finding or decision.

(3) Subject to any direction to the contrary by the Bailiff, subsection (1) does not apply if and to the extent that the parties agree that the judgment need not be reasoned or fully reasoned.

(4) The Bailiff may, for the purposes of preparing a reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting -

- (a) assist and advise the Jurats, and
- (b) draft or participate in the drafting of their findings and decisions.

(5) A reasoned judgment in civil proceedings in which the Jurats (and not the Bailiff alone) are sitting shall contain -

- (a) the Jurats' findings and decisions,
- (b) any dissenting findings or decisions made by different Jurats,
- (c) the identity of the Jurats making dissenting findings or decisions,

(d) the Bailiff's findings, decisions and directions of law and procedure, and

(e) the application of his findings, decisions and directions of law and procedure to the facts.

(6) In this section "**the Bailiff**" means the person presiding over the proceedings.

*Appointment of assessors*

**Appointment of assessors to assist Royal Court.**

17. (1) Where pursuant to the provisions of any enactment the Royal Court has power to appoint an assessor to assist it in the determination of any matter, the appointment of the assessor shall be made by the Bailiff or other person presiding.

(2) A decision of the Bailiff or other person presiding to appoint, or not to appoint, an assessor is not subject to appeal.

(3) Subsections (1) and (2) are without prejudice to any other enactment relating to the appointment and functions of assessors.

(4) The Royal Court may by Order make such provision as it thinks fit in relation to the functions of assessors and as to the conduct of proceedings involving assessors.

(5) An Order under this section -

- (a) may be amended or repealed by a subsequent Order hereunder, and
  - (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient.
- (6) Any power conferred by this section to make an Order 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.

*Provisions relating to Greffier, Sheriff and Sergeant  
and their Deputies*

**Extension of office of Deputy Greffier, Sheriff and Sergeant.**

18. The term of office of a Deputy Greffier, Deputy Sheriff or Deputy Sergeant shall not expire on the termination of office of the Greffier, Sheriff or Sergeant (as the case may be) who appointed him, but shall expire instead immediately prior to the swearing-in of the successor in office to the Greffier, Sheriff or Sergeant who appointed him.

**Employment status of Sheriff and Sergeant.**

19. (1) The offices of Sheriff and Sergeant are to be regarded for the purposes of remuneration, conditions of service, retirement and pension as posts on the Established Staff of the States of Guernsey.

(2) However, the Sheriff and Sergeant -

- (a) are officers of the Royal Court, and
- (b) are accountable to the Royal Court for the due and diligent performance of their functions, whether personally or by officers responsible to them.

(3) For the purposes of the Employment Protection (Guernsey) Law, 1998<sup>d</sup>, the offices of Sheriff and Sergeant are not employments to which Part

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<sup>d</sup> Order in Council No. IX of 1998; amended by No. XVIII of 2001; No. VIII of 2002; No. I of 2006; and the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005 (No. XXXI of 2005). Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003).

I of that Law ("minimum periods of notice and statement of reasons for dismissal") or Part II thereof ("right not to be unfairly dismissed") applies.

**Appointment to and termination of office of Sheriff and Sergeant.**

20. (1) Appointments to the offices of Sheriff and Sergeant shall, after the date of commencement of this Law, be made by the Royal Court after consultation with the Policy Council (and not by way of warrant of His Excellency).

(2) A person appointed as Sheriff or Sergeant must take such oath or make such solemn affirmation before the Royal Court as may be prescribed by that Court.

(3) A person appointed as Sheriff or Sergeant after the date of commencement of this Law is removable from office only by the Royal Court after consultation with the Policy Council.

(4) The Appointment of Her Majesty's Sheriff (Guernsey) Law, 1955<sup>e</sup> is repealed.

**Reciprocal performance of functions of Sheriff and Sergeant.**

21. (1) Without prejudice to the separation of the offices of Sheriff and Sergeant, and for the avoidance of doubt-

(a) the Sheriff (and his Deputies) may perform all the functions of the office of Sergeant, and

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<sup>e</sup> Ordres en Conseil Vol. XVI, p. 178.

- (b) the Sergeant (and his Deputies) may, at the request of the Sheriff, perform all the functions of the office of Sheriff.

(2) A function performed by, and every decision taken or other thing done by, the Sheriff or Sergeant (or their respective Deputies) pursuant to subsection (1) is for all purposes performed by, and has the same effect as if taken or done by, the Sergeant or (as the case may be) the Sheriff.

(3) The performance of a function by the Sheriff or Sergeant (or their respective Deputies) pursuant to subsection (1) does not prevent the performance of the function by the Sergeant or (as the case may be) the Sheriff.

(4) This section is without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>f</sup>.

**Royal Court may sit without Greffier, Sheriff or Sergeant.**

22. For the avoidance of doubt, the Royal Court may sit, and is properly constituted, whether or not the Greffier, Sheriff or Sergeant or any of their respective Deputies is present.

*Contempt of court*

**Ordinances as to contempt of court.**

23. (1) The States may by Ordinance make such provision as they think fit in relation to contempt of -

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<sup>f</sup> Order in Council No. XXI of 1991.

- (a) the Magistrate's Court,
- (b) the Royal Court and any division thereof,
- (c) the Court of Appeal,
- (d) the respective officers of those courts, and
- (e) any witness before, or other person having business in, those courts,

and whether those courts are exercising civil or criminal jurisdiction or original or appellate jurisdiction.

- (2) An Ordinance under subsection (1) may (without limitation) -
  - (a) specify acts and omissions which constitute a contempt,
  - (b) specify the circumstances in which persons may be found to be in contempt,
  - (c) specify sanctions, penalties and remedies (criminal and civil) to which such persons may be subject,
  - (d) make such other provision as may be necessary or expedient for ensuring compliance with orders, directions and summonses issued by or under the authority of the Magistrate's Court, Royal Court, Court of Appeal and their respective officers.

(3) An Ordinance under this section -

- (a) may, for the avoidance of doubt, repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,
- (b) may be amended or repealed by a subsequent Ordinance hereunder, and
- (c) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, including provision amending any enactment.

(4) Any power conferred by this section to make an Ordinance 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.

*Juge Délégué*

**Saving for office of Juge Délégué.**

**24.** Nothing in this Law affects the office, appointment or functions of the Juge Délégué.

*General provisions*

**Interpretation.**

**25.** (1) In this Law, unless the context otherwise requires -

"**civil jurisdiction**" includes jurisdiction in public law and administrative law proceedings,

"**civil proceedings**" and "**civil matters**" include public law and administrative law proceedings and matters,

"**enactment**" includes any subordinate legislation,

"**functions**" includes powers, rights, duties, obligations, privileges and prerogatives,

"**Greffier**" means Her Majesty's Greffier,

"**Jurat**" means a Juré-Justicier de la Cour Royale, but not a Juré-Justicier Suppléant,

"**Magistrate's Court**" includes, for the avoidance of doubt, the Magistrate's Court when sitting as the Juvenile Court pursuant to the Juvenile Court (Guernsey) Law, 1989<sup>g</sup>,

"**Sergeant**" means Her Majesty's Sergeant,

"**Sheriff**" means Her Majesty's Sheriff,

"**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.

(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.

**Citation.**

**26.** This Law may be cited as the Royal Court (Reform) (Guernsey) Law, 2008.

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<sup>g</sup> Orders en Conseil Vol. XXXI, p. 326; prospectively repealed and replaced by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008.

**Commencement.**

27. 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.

S.M. Simmonds,  
Her Majesty's Deputy Greffier.





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