

PROJET DE LOI

ENTITLED

Loi relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

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Ordres en Conseil Vol. III, p. 235; as amended by the Fatal Accidents (Guernsey) Law, 1960 (Ordres en Conseil Vol. XVIII, p. 281); the Law Reform (Tort) (Guernsey) Law, 1979 (Ordres en Conseil Vol. XXVII, p. 50). This Law is applied to the Island of Herm by the Herm Laws Ordinance, 1948 (Recueil d'Ordonnances Tome IX, p. 247); and to the Island of Alderney and the Island of Sark, with modifications, by the Fatal Accidents and Law Reform (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 1965 (Ordres en Conseil Vol. XX, p. 95). See also the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1936 (Ordres en Conseil Vol. X, p. 410); the Fatal Accidents (Guernsey) Law, 1960 (*supra*); the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the States Water Supply (Amendment) (Guernsey) Law, 1991 (No. VII of 1991); the Electricity (Guernsey) Law, 2001 (No. XIII of 2001, Ordres en Conseil Vol. XLI, p. 343); the Telecommunications (Bailiwick of Guernsey) Law, 2001 (No. XIV of 2001, Ordres en Conseil Vol. XLI, p. 452); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 (No. VIII of 2004); the Aviation (Bailiwick of Guernsey) Law, 2008 (No. XXVIII of 2008); the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009 (No. X of 2011); the Carriage by Air (Guernsey) Order, 1935 (Ordres en Conseil Vol. X, p. 175).

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ARRANGEMENT OF SECTIONS

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VU QUE l'on ne peut maintenir jusqu'à présent aucune procédure contre une personne qui, soit par sa faute, soit par sa négligence ou par son impéritie, pourra avoir causé la mort d'une personne quelconque, et qu'il arrive souvent que ce n'est que juste et à propos que celui, qui a été la cause du tort, doit être responsable en dommages et intérêts pour le tort ainsi occasionné par lui.

Section 1.

1. Dans le cas où la mort d'une personne aura été causée par un acte blâmable, par négligence ou impéritie, et que l'acte blâmable, la négligence ou l'impéritie, se trouve tel que (si la mort n'était pas survenue) la partie lésée se serait trouvée à même de maintenir une action en dommages et intérêts; alors, et dans tout et tel cas, la personne qui aurait été responsable (si la mort n'était pas survenue) sera sujette à une action en dommages et intérêts, même lorsque le décès aura été causé sous des circonstances qui donneraient lieu à une poursuite criminelle pour Félonie.

NOTES

The following case has referred to this Law:

Hancock v. Kavanagh (1985) (Unreported, Court of Appeal, 4th and 5th March) (Court of Appeal Judgments, 1964-89, p. 285).

The Law is applied to the Island of Herm by the Herm Laws Ordinance, 1948, Article 1, Schedule, Part IF, with effect from 13th March, 1948.

The Law is applied to the Island of Alderney and to the Island of Sark, and shall have effect there as it has effect in the Island of Guernsey, by the Fatal Accidents and Law Reform (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 1965, section 1, with effect from 9th November, 1965, subject to the proviso to section 1 of the 1965 Law.

In accordance with the provisions of the Fatal Accidents (Guernsey) Law, 1960, section 8, with effect from 16th January, 1961, this Law and the 1960 Law may be cited together as the Fatal Accidents (Guernsey) Laws, 1900 and 1960.

In accordance with the provisions of the Carriage by Air Act 1932, section 1(4), First Schedule and Second Schedule, as extended to the Bailiwick of Guernsey by the Carriage by Air (Guernsey) Order, 1935, Article 1, with effect from 6th June, 1935, any liability imposed by Article 17 of the said First Schedule on a carrier in respect of the death of a passenger shall be substituted for any such liability under this Law; and the provisions of the said Second Schedule shall have effect with respect to the persons by and for whose benefit the liability so imposed is enforceable and with respect to the manner in which it may be enforced.

In accordance with the provisions of the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1936, section 1(5), with effect from 14th November, 1936, the rights conferred by the 1936 Law for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by this Law (as amended by the 1936 Law or by the Carriage by Air (Guernsey) Order, 1935), and so much of the 1936 Law as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under this Law as so amended and under the said 1935 Order as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of the said section 1.

In accordance with the provisions of the Fatal Accidents (Guernsey) Law, 1960, section 2(1), with effect from 16th January, 1961, the persons for whose benefit or by whom an action may be brought under this Law shall include any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased person; and subsection (2) of the said section 2 shall have effect for deducing any relationship for the purposes of this Law.

In accordance with the provisions of the Fatal Accidents (Guernsey) Law, 1960, section 3, with effect from 16th January, 1961, in assessing damages in respect of a person's death in any action under this Law there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death.

In accordance with the provisions of the Fatal Accidents (Guernsey) Law, 1960, section 4, with effect from 16th January, 1961, in any action brought under this Law damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

In accordance with the provisions of the Law Reform (Tort) (Guernsey) Law, 1979, section 1(4), with effect from 1st July, 1979, where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1936, the damages recoverable would be reduced under subsection (1) of the said section 1, any damages recoverable in an action brought for the benefit of the dependants of that person under the provisions of this Law shall be reduced to a proportionate extent.

In accordance with the provisions of the Law Reform (Tort) (Guernsey) Law, 1979, section 6, with effect from 1st July, 1979 and subject to section

8 of the 1979 Law, the time limits for actions under this Law are as set out therein.

In accordance with the provisions of the Law Reform (Tort) (Guernsey) Law, 1979, section 6(5), with effect from 1st July, 1979, an action under this Law shall be one to which section 9 of the 1979 Law applies.

In accordance with the provisions of the Law Reform (Tort) (Guernsey) Law, 1979, section 7, with effect from 1st July, 1979, that section applies where there is more than one person for whose benefit an action under this Law is brought.

In accordance with the provisions of the Law Reform (Tort) (Guernsey) Law, 1979, section 15(4), with effect from 1st July, 1979, any reference in this Law to injury includes any disease and any impairment of a person's physical or mental condition and section 6 of the 1979 Law shall be construed accordingly.

In accordance with the provisions of the States Water Supply (Amendment) (Guernsey) Law, 1991, section 1(4), with effect from 1st July, 2004, for the purposes of the provisions of this Law, any liability of the Public Services Department for water damage under section 1(1) of the 1991 Law shall be deemed to have arisen by reason of the Department's negligence; and the provisions of this Law shall apply accordingly.

In accordance with the provisions of the Electricity (Guernsey) Law, 2001, section 9, Schedule 1, paragraph 4(4), with effect from 1st February, 2002, for the purposes of the provisions of this Law, any liability of a licensee to pay compensation under the said paragraph 4 shall be deemed to have arisen by reason of its negligence; and the provisions of this Law shall apply accordingly.

In accordance with the provisions of the Telecommunications (Bailiwick of Guernsey) Law, 2001, section 9, Schedule 1, paragraph 4(4), with effect from 1st October, 2001, for the purposes of the provisions of this Law, any liability of a licensee to pay compensation under the said paragraph 4 shall be deemed to have arisen by reason of its negligence; and the provisions of this Law shall apply accordingly.

In accordance with the provisions of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002, section 194, Schedule 7, Part II, paragraph 6(2), with effect from 1st July, 2013, the reference in Article 7(2) of the Convention on Limitation of Liability for Maritime Claims 1976, as set out in Part I of the said Schedule 7, to claims brought on behalf of a person includes a reference to any claim in respect of the death of a person under this Law.

In accordance with the provisions of the Evidence in Civil Proceedings (Guernsey and Alderney) Law, 2009, section 16, with effect from 28th April, 2011, in an action for personal injury brought by virtue of this Law, the actuarial tables (together with explanatory notes) for use in personal injury and fatal accident cases issued from time to time by the UK Government Actuary's Department are admissible in evidence for the purpose of assessing, in such an action, the sum to be awarded as general damages for future pecuniary loss.

In accordance with the provisions of the Aviation (Bailiwick of Guernsey) Law, 2008, section 151, as and when that section enters into force,

references herein to "un acte blâmable, négligence ou impéritie" shall include references to any occurrence which gives rise to a liability under Article 17 of the Warsaw Conventions (as defined in section 149(3) of the 2008 Law), or Article 17.1 of the Montreal Convention (as similarly so defined).

Section 2.

2. Toutes et telles procédures seront pour bénéficier le Mari la Femme le Parent et l'Enfant de la personne dont la mort aura été ainsi occasionnée, et seront intentées par et au nom de l'Exécuteur testamentaire ou l'Administrateur de la succession de la personne décédée, et dans toutes et telles actions la Cour pourra accorder tels dommages et intérêts qu'à la discrétion de la Cour seront jugés proportionnés au tort qui résulte de tel décès aux parties respectives pour lesquelles et au profit desquelles telles actions auront été intentées, et le montant ainsi obtenu, déduction faite des frais qui n'auront pas été recouvrés de Défendeur, sera partagé parmi les avant dites parties en telles portions que la Cour décidera.

NOTES

In its application to the Island of Alderney and the Island of Sark, section 2 is modified in accordance with the provisions of the Fatal Accidents and Law Reform (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 1965, section 1, Proviso, paragraph (b), with effect from 9th November, 1965, whereby this section shall have effect as if for the references herein to the Court ("Cour") there were substituted as respects, respectively, the Island of Alderney and the Island of Sark references to the Court of Alderney and to the Court of the Seneschal of Sark.

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "enfant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.

Section 3.

3. Pourvu toutefois et il est ordonné qu'il n'y aura qu'une seule action par rapport à la même plainte, [...].

NOTE

In section 3, the words omitted in square brackets were repealed by the Law Reform (Tort) (Guernsey) Law, 1979, section 12, with effect from 1st July, 1979.

Section 4.

4. Dans toutes et telles procédures l'acteur sera tenu de narrer dans sa cause les qualités de la personne ou des personnes pour laquelle ou pour lesquelles, et au profit desquelles cette cause aura été intentée, ainsi que la nature de la réclamation pour laquelle les dommages et intérêts sont demandés.

Section 5.

5. Dans le cas où il n'y a ni Exécuteur ni Administrateur de la personne décédée, ou que l'Exécuteur ou l'Administrateur de la personne décédée n'aura pas dans les six mois après la mort intenté une action en dommages et intérêts en conformité avec la présente loi, telle action pourra être intentée par ou pour et au nom de telle personne ou telles personnes, pour le bénéfice de laquelle ou pour le bénéfice desquelles telle action aurait pu être intentée par un Exécuteur ou Administrateur.

Section 6.

6. Les mots et les termes ou expressions qui suivent auront les significations qui leur sont assignées respectivement, d'autant que ces significations n'auront pas été annulées par le contexte ou par la nature de la matière en question; c'est à dire que les mots qui dénotent le singulier incluent aussi le pluriel pour les personnes comme pour les choses, et les mots qui indiquent le sexe masculin comprendront aussi le sexe féminin, et le mot "**Personne**" s'appliquera également aux corporations et aux sociétés, et le mot "**Parent**" comprendra le Père et la Mère, le Grand père et la Grand mère, [...], et le mot "**Enfant**" comprendra le Fils et la Fille, le Petit fils et la Petite-fille, [...].

NOTES

In section 6, the words omitted in square brackets were repealed by the

Fatal Accidents (Guernsey) Law, 1960, section 5, Schedule, with effect from 16th January, 1961.

The Law received Royal Sanction on 13th December, 1900 and was registered on the Records of the Island of Guernsey and came into force in the Island of Guernsey on 28th December, 1900.

In accordance with the provisions of, first, the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to an "enfant" shall be construed as a reference to a "minor", that is to say a person under the age of 18 years.
