

ORDER IN COUNCIL

ratifying a Projet de Loi

ENTITLED

The Protection of Children (Bailiwick of Guernsey) Law, 1985

(Registered on the Records of the Island of Guernsey
on the 3rd day of December, 1985.)



1985

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ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 3rd day of December, 1985 before Sir Charles Frossard, Kt., Bailiff, present:—Albert Richard McCartney Straw, Donald Pescott Plummer, Brian Ernest Herbert Joy, Esquires, Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires and Mrs. Dorothy Winifred Le Pelley, Jurats.

The Bailiff having this day placed before the Court an Order of Counsellors of State dated the 30th October, 1985 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled “The Protection of Children (Bailiwick of Guernsey) Law, 1985”, the Court, after having heard Her Majesty’s Procureur thereon, ordered that the said Order of Counsellors of State be registered on the records of this Island and that an extract of this present Act, together with a copy of the said Law be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively, of which Order in Council the tenor followeth:—

At the Court of Saint James

The 30th day of October 1985

PRESENT,

The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Recency Acts 1937 to 1953, was pleased, by Letters Patent dated the 27th day of September 1985, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 16th day of October 1985 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolutions of the 25th day of April 1984 and the 25th day of July 1984, the States of Deliberation at a meeting held on the 24th day of April 1985 approved a Bill or “Projet de Loi” entitled “The Protection of Children (Bailiwick of Guernsey) Law, 1985”, and requested the Bailiff to present a most humble Petition to Your Majesty in

Council praying for Your Royal Sanction thereto. 2. That the said Bill or "Projet de Loi" is set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or "Projet de Loi" of the States of Guernsey entitled "The Protection of Children (Bailiwick of Guernsey) Law, 1985", and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"THE LORDS OF THE COMMITTEE, in obedience to Your Majesty's said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi."

NOW, THEREFORE, Her Majesty Queen Elizabeth The Queen Mother and His Royal Highness The Prince Edward, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf, approve of and ratify the said Projet de Loi, and order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND do hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty's Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Protection of Children (Bailiwick of Guernsey) Law, 1985

THE STATES, in pursuance of their Resolutions of the 25th day of April, 1984 and the 25th day of July, 1984, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

1. Any person who commits an act of gross indecency with or towards a child or who incites a child to such an act with him or another, shall be liable—

Indecent
conduct
towards
young child.

(a) on conviction on indictment, to imprisonment for a term not exceeding five years, or to a fine, or to both;

(b) on summary conviction, to imprisonment for a term not exceeding six months, or to a fine not exceeding £500, or to both.

2. (1) The provisions of this section apply to any book, magazine, video or photographic film or other like work which is of a kind likely to fall into the hands of children and consists wholly or mainly of stories told in pictures (with or without the addition of written matter) being stories portraying—

Harmful
publica-
tions.

(a) the commission of crimes; or

(b) acts of violence or cruelty; or

(c) incidents of a repulsive or horrible nature;
or

(d) human sexual activity;

in such a way that the work as a whole would tend to corrupt a child into whose hands it might fall.

(2) It is an offence for a person to print, publish, sell or let on hire a work to which this section applies, or to have any such work in his possession for the purpose of selling it or letting it on hire: Provided that, in any proceedings taken under this subsection against a person in respect of selling or letting on hire such a work or of having it in his possession for the purpose of selling it or letting it on hire, it shall be a defence for him to prove that he had not examined the contents of the work and had no reasonable cause to suspect that it was one to which this section applies.

Indecent
photographs
of children.

3. (1) It is an offence for a person—

(a) to take, or permit to be taken, any indecent photograph of a child;

or

(b) to distribute or show such indecent photographs; or

(c) to have in his possession such indecent photographs, with a view to their being distributed or shown by himself or others;

or

(d) to publish or cause to be published any advertisement likely to be understood as conveying that the advertiser distributes or shows such indecent photographs, or intends to do so.

(2) For the purposes of this section, a person is to be regarded as distributing an indecent photograph if he parts with possession of it to, or exposes or offers it for acquisition by, another person.

(3) Where a person is charged with an offence under subsection(1)(b) or (c) of this section, it shall be a defence for him to prove—

- (a) that he had a legitimate reason for distributing or showing the photographs or (as the case may be) having them in his possession; or
- (b) that he had not himself seen the photographs and did not know, nor had any cause to suspect them to be indecent.

4. On a charge of an offence under section 1 or section 3(1)(a) of this Law, the wife or husband of the accused shall be competent to give evidence at every stage of the proceedings, whether for the defence or for the prosecution, and whether the accused is charged solely or jointly with any other person: Evidence by spouse.

Provided that—

- (a) the wife or husband shall not be compellable either to give evidence or, in giving evidence, to disclose any communication made to her or him during the marriage by the accused; and
- (b) the failure of the wife or husband of the accused to give evidence shall not be made the subject of any comment by the prosecution.

Liability of
company
officers for
offences by
company.

5. (1) Where an offence committed by a body corporate under section 2 or 3 of this Law is proved to have been committed with the consent or connivance of any director, manager, secretary or other similar officer of the body corporate, or any person who was purporting to act in any such capacity, he as well as the body corporate shall be guilty of that offence, and shall be liable to be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, this section shall apply in relation to the acts and defaults of a member in connection with his functions of management as if he were a director of the body corporate.

Power of
arrest.

6. (1) A police officer may arrest without warrant a person who has committed, or whom the police officer with reasonable cause, suspects of having committed an offence under this Law.

(2) This section shall not prejudice any power of arrest conferred by law apart from this section.

Search and
forfeiture.

7. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person has in his custody, possession or on his premises—

(a) any work or copy thereof to which section 2 of this Law applies; or

(b) any plate prepared for the purpose of printing copies of the said work or any other work to which section 2 applies or any video or photographic film prepared for that purpose; or

(c) any indecent photographs or copies thereof to which section 3 of this Law applies, the Bailiff may grant a warrant to search for and seize the same; but no warrant to search for such articles shall be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under this section a police officer is authorised to search premises, he may enter and search the premises accordingly and may seize—

- (a) any copies of the work and any copies of any other work which he has reasonable cause to believe to be one to which section 2 of this Law applies; and
- (b) any plate which he has reasonable cause to believe to have been prepared for the purpose of printing copies of any such work as is mentioned in paragraph (a) of this subsection and any video or photographic film which he has reasonable cause to believe to have been prepared for that purpose; and
- (c) any articles which he has reasonable cause to believe to be or include indecent photographs of children taken or shown on the premises or kept there with a view to their being distributed or shown.

(3) The court by or before which a person is convicted of an offence under section 2 or section 3 of this Law shall order any copies of the work in question and any plate prepared for the purpose of printing copies of that work or video or photographic film prepared for that purpose or indecent photographs of children being copies which have, or a plate or film which has or photographs which have,

been found in his possession or under his control, to be forfeited:

Provided that an order made under this subsection shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

Punishment. 8. A person guilty of any offence under section 2 or section 3 of this Law shall be liable—

- (a) on conviction on indictment, to imprisonment for a term not exceeding three years, or to a fine, or to both;
- (b) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding £500, or to both.

Interpretation.

9. (1) In this Law—
“the Bailiff” means—

- (a) in relation to Guernsey, Herm and Jethou, the Bailiff, the Deputy Bailiff or Lieutenant Bailiff or the Juge Délégué;
 - (b) in relation to Alderney, the Chairman of the Court of Alderney; and
 - (c) in relation to Sark, the Seneschal;
- “child” means a person under the age of sixteen years;
- “photographic film” includes photographic plate;
- “plate” (except where it occurs in the expression “photographic plate”) includes block, mould, matrix and stencil;
- “police officer” means—

- (a) in relation to Guernsey, Herm and Jethou, a member of the salaried police force of the Island of Guernsey, and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey;
- (b) in relation to Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney; and
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of Guernsey;

“premises” includes any vehicle, vessel or stall.

(2) References to an indecent photograph include an indecent film, a copy of an indecent photograph or film, and an indecent photograph comprised in a film.

(3) Photographs (including those comprised in a film) shall, if they show children and are indecent be treated for all purposes of this Law as indecent photographs of children.

(4) References to photograph include the negative as well as the positive version.

(5) For the purposes of section 3, “photograph” includes any form of video recording.

10. This Law may be cited as the Protection of Children (Bailiwick of Guernsey) Law, 1985. Citation.

K. H. TOUGH,

Her Majesty's Greffier.