

# ORDER IN COUNCIL

**XVII  
2003**

ratifying a Projet de Loi

ENTITLED

## **The Bail (Bailiwick of Guernsey) Law, 2003**

(Registered on the Records of the Island of Guernsey  
on the 11th August, 2003.)



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2003

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 11th day of August, 2003 before Sir de Vic Carey, Bailiff;  
present:— David Charles Lowe, Esquire, Mrs. Eileen May Glass,  
Laurence Lenfestey Guille, Derek Martin Le Page, Stephen Edward  
Francis Le Poidevin, Alan Cecil Bisson, David Michael Jory, Keith  
Bichard, OBE, Michael Henry De La Mare, and Michael John  
Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court the copy of an Order of Her Majesty in Council dated the 17th day of July, 2003, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Bail (Bailiwick of Guernsey) Law, 2003”, THE COURT, after having heard Her Majesty’s Comptroller thereon, ORDERED:—

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, 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.

# At the Court at Buckingham Palace

The 17th day of July, 2003

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 the 22nd day of February 1952 the Committee have considered a petition of the States of Guernsey:”

“That, in pursuance of their Resolution of 30th January, 2002, the States of Deliberation at a meeting on 30th April, 2003 approved a Projet de Loi entitled “The Bail (Bailiwick of Guernsey) Law, 2003” 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 Bail (Bailiwick of Guernsey) Law, 2003” and to order that it shall have force of law in the Bailiwick of Guernsey.”

“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 of and ratify the said 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 Bailiwick of Guernsey 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.

*A. K. Galloway*

# PROJET DE LOI

ENTITLED

## **The Bail (Bailiwick of Guernsey) Law, 2003**

### ARRANGEMENT OF SECTIONS

1. Bail in criminal proceedings
2. The right to bail
3. General provisions
4. Exceptions to the right to bail – imprisonable offences
5. Exceptions to the right to bail – non imprisonable offences
6. Review of decisions to refuse bail
7. Restriction of conditions on bail
8. Procedures in respect of bail
9. Reconsideration of decisions granting bail
10. Offence of absconding by person released on bail
11. Liability to arrest for absconding or breaking conditions of bail
12. Bail with sureties
13. Offence of agreeing to indemnify sureties in criminal proceedings
14. Defendant's right of appeal
15. Prosecution right of appeal
16. Length of remands in custody
17. Supplementary – provisions relating to production at court
18. Rules of Court
19. Interpretation
20. Transitional provisions
21. Citation, Extent & Commencement

SCHEDULE: Bail Procedures

# PROJET DE LOI

ENTITLED

## **The Bail (Bailiwick of Guernsey) Law, 2003**

**THE STATES**, in pursuance of their resolution of the 30<sup>th</sup> January, 2002<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 Bailiwick of Guernsey.

### **Bail in criminal proceedings**

1. (1) Bail in criminal proceedings shall be granted, and in particular shall be granted unconditionally or conditionally, in accordance with this Law.

(2) In this Law “bail in criminal proceedings” means -

(a) bail grantable in or in connection with proceedings for an offence to a person who is accused or convicted of the offence, or

(b) bail grantable in connection with an offence to a person who is under arrest for the offence or for whose arrest for the offence a warrant (endorsed for bail) is being issued.

(3) This section applies -

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<sup>a</sup>

Article VII of Billet d'État No. I of 2002.

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- (a) whether the offence was committed in the Bailiwick or elsewhere, and
- (b) whether it is an offence under the law of the Bailiwick, or of any other country or territory.

(4) In this Law “bail” means bail grantable under the law (including common or customary law) for the time being in force.

**The right to bail**

2. (1) A person to whom this section applies shall be granted bail except as provided by sections 4 and 5.

(2) This section applies to a person who is accused of an offence when-

- (a) he appears or is brought before a court in the course of or in connection with proceedings for the offence, or
- (b) he applies to a court for bail or a variation of the conditions of bail in connection with the proceedings.

(3) Subsection (2) does not apply in respect of proceedings on or after a person’s conviction of the offence, or in respect of proceedings against a fugitive offender for the offence.

(4) This section also applies to a person who, having been convicted of an offence, appears or is brought before a court to be dealt with under the following provisions –

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- (a) section 2 of the Criminal Justice (Suspended Sentence Supervision Orders) (Bailiwick of Guernsey) Law, 1984<sup>b</sup>;
- (b) section 5 of the Loi relative à la probation de Délinquants of 1929<sup>c</sup>;
- (c) section 10 of the Children and Young Persons (Guernsey) Law, 1967<sup>d</sup>;
- (d) section 2 of the Criminal Justice (Attendance Centre) (Guernsey) Law, 1982<sup>e</sup>.

(5) This section also applies to a person who has been convicted of an offence and whose case is adjourned by the court for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence.

(6) In this Law, “the defendant” means a person to whom this section applies and any reference to a defendant whose case is adjourned for inquiries or a report is a reference to a person to whom this section applies by virtue of subsection (5).

**General provisions**

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- <sup>b</sup> Ordres en Conseil Vol. XXVIII, p. 540.
  - <sup>c</sup> Ordres en Conseil Vol. VIII, p. 363.
  - <sup>d</sup> Ordres en Conseil Vol. XXI, p. 34.
  - <sup>e</sup> Ordres en Conseil Vol. XXVII, p. 409.

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3. (1) Persons granted bail in criminal proceedings shall be under a duty to surrender to custody, and that duty is enforceable in accordance with section 10.

(2) Save as provided by this section, a person granted bail in criminal proceedings shall not be required to provide –

- (a) a security or recognisance; or
- (b) a surety or sureties;

for his surrender to custody, and save as aforesaid no other requirement shall be imposed on him as a condition of bail.

(3) A person granted bail in criminal proceedings may be required, before release on bail –

- (a) to provide a surety or sureties to secure his surrender to custody;
- (b) to give security for his surrender to custody, and the security may be given by him or on his behalf.

(4) A person granted bail in criminal proceedings may be required to comply, before release on bail or later, with such requirements as appear to the court to be necessary to secure that –

- (a) he surrenders to custody,
- (b) he does not commit an offence while on bail,

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- (c) he does not interfere with witnesses or otherwise obstruct the course of justice whether in relation to himself or any other person,
- (d) he makes himself available for the purpose of enabling inquiries or a report to be made to assist the court in dealing with him for the offence,
- (e) before the time appointed for him to surrender to custody, he attends an interview with an advocate acting on his behalf in the proceedings;

and in any enactment “the normal powers to impose conditions of bail” means the powers to impose conditions under paragraphs (a), (b) or (c) above.

(5) A person granted bail in criminal proceedings may be required to comply with such conditions as appear to the court are necessary to secure his own protection or welfare.

(6) In the case of a person accused of murder the court granting bail shall, unless it considers that satisfactory reports on his mental condition have already been obtained, impose as conditions of bail –

- (a) a requirement that the accused shall undergo examination by two medical practitioners for the purpose of enabling such reports to be prepared; and
- (b) a requirement that he shall for that purpose attend such an institution or place as the court directs and comply

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with any other directions which may be given to him for that purpose by either of those practitioners.

(7) If a parent or guardian of a child or young person consents to be surety for the child or young person for the purposes of this subsection, the parent or guardian may be required to secure that the child or young person complies with any requirement imposed on him by virtue of subsection (4), (5) or (6), but –

- (a) no requirement shall be imposed on the parent or the guardian of a young person by virtue of this subsection where it appears that the young person will attain the age of seventeen before the time to be appointed for him to surrender to custody; and
- (b) the parent or guardian shall not be required to secure compliance with any requirement to which his consent does not extend and shall not, in respect of those requirements to which his consent does extend, be bound in a sum greater than £500, or such other sum as the States may by Ordinance specify.

(8) Nothing in subsection (6) shall prevent the court imposing the requirements set out in paragraphs (a) and (b) of that subsection in the case of a person accused of an offence other than murder where it appears to the court that it is necessary to do so to secure any of the events mentioned in subsections (4) or (5).

(9) Where a court has granted bail in criminal proceedings that court or, where that court has committed a person on bail to the Royal Court for trial or to be otherwise dealt with, that court or the Royal Court may on application

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- (a) by or on behalf of the person to whom bail was granted, or
- (b) by or on behalf of Her Majesty's Procureur,

vary the conditions of bail or impose conditions in respect of bail which has been granted unconditionally.

**Exceptions to the right to bail – imprisonable offences**

4. (1) This section applies where the offence or one of the offences of which the defendant is accused or convicted in the proceedings is punishable with imprisonment.

(2) The defendant need not be granted bail if the court is satisfied that there are substantial grounds for believing that the defendant, if released on bail (whether subject to conditions or not) would -

- (a) fail to surrender to custody, or
- (b) commit an offence while on bail, or
- (c) interfere with witnesses or otherwise obstruct the course of justice, whether in relation to himself or any other person.

(3) The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

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(4) The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court or of any authority acting under any of the Services Acts.

(5) The defendant need not be granted bail where the court is satisfied that it has not been practicable to obtain sufficient information for the purpose of taking the decisions required by this section for want of time since the institution of the proceedings against him.

(6) Where his case is adjourned for inquiries or a report, the defendant need not be granted bail if it appears to the court that it would be impracticable to complete the inquiries or make the report without keeping the defendant in custody.

(7) In taking any decisions required by this section, the court shall have regard to such of the following considerations as appear to it to be relevant, that is to say -

- (a) the nature and seriousness of the offence or default and the probable method of dealing with the defendant for it,
- (b) the character, antecedents, associations and community ties of the defendant,
- (c) the defendant's record as respects the fulfilment of his obligations under previous grants of bail in criminal proceedings,

- (d) except in the case of a defendant whose case is adjourned for inquiries or a report, the strength of the evidence of his having committed the offence or having defaulted,

as well as to any others which appear to be relevant.

(8) In taking any decisions required by this section, the considerations to which the court is to have regard include, so far as is relevant, any misuse of controlled drugs by the defendant (“controlled drugs” and “misuse” having the same meanings as in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974<sup>f</sup>).

(9) In taking any decisions required by this section the court may have regard, so far as is relevant, as to whether the defendant was on bail in criminal proceedings on the date of the offence.

**Exceptions to the right to bail – non imprisonable offences**

5. (1) This section applies where the offence or every offence of which the defendant is accused or convicted in the proceedings is one which is not punishable with imprisonment.

(2) The defendant need not be granted bail if -

- (a) it appears to the court that, having been previously granted bail in criminal proceedings, he has failed to surrender to custody in accordance with his obligations under the grant of bail; and

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<sup>f</sup> Ordres en Conseil Vol. XXIV, p. 273.

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(b) the court believes, in view of that failure, that the defendant, if released on bail (whether subject to conditions or not) would fail to surrender to custody.

(3) The defendant need not be granted bail if the court is satisfied that the defendant should be kept in custody for his own protection or, if he is a child or young person, for his own welfare.

(4) The defendant need not be granted bail if he is in custody in pursuance of the sentence of a court or of any authority acting under any of the Services Acts.

(5) The defendant need not be granted bail if, having been released on bail in or in connection with the proceedings for the offence -

(a) he has been arrested in pursuance of section 11, and

(b) the court is satisfied that there are substantial grounds for believing that any of the events mentioned in section 4(2) would occur if the defendant is granted bail (whether subject to conditions or not).

**Review of decisions to refuse bail**

6. (1) If the court decides not to grant the defendant bail, it is the court's duty to consider, at each subsequent hearing while the defendant is a person to whom section 2 applies and remains in custody, whether he ought to be granted bail.

(2) At the first hearing after that at which the court decided not to

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grant the defendant bail he may support an application for bail with any argument as to fact or law that he desires (whether or not he has advanced that argument previously).

(3) At subsequent hearings the court need not hear arguments as to fact or law which it has heard previously.

### **Restriction of conditions on bail**

7. (1) Subject to subsections (3) and (4), where the defendant is granted bail, no conditions or requirements shall be imposed under subsections (3) to (7) of section 3 (with the exception of subsections (4)(d), or (4)(e) and (5)) unless it appears to the court that it is necessary to do so for the purpose of preventing the occurrence of any of the events mentioned in section 4(2).

(2) This section also applies on any application to the court to vary the conditions of bail or to impose conditions in respect of bail which has been granted unconditionally.

(3) No condition shall be imposed under section 3(4)(d) unless it appears to be necessary to do so for the purpose of enabling inquiries or a report to be made.

(4) The restriction imposed by subsection (3) does not apply to the conditions required to be imposed under section 3(6).

### **Procedures in respect of bail**

8. (1) The Schedule to this Law shall have effect.

(2) Subsection (1) and the Schedule shall apply in relation to bail granted by a police officer in cases where the normal powers to impose conditions

of bail are available to him.

- (3) Rules of Court may specify -
  - (a) the manner and form of recording decisions on bail, including any conditions imposed;
  - (b) the particulars of fact or information of any description which are to be included in the record of a bail decision;
  - (c) the persons to whom copies of any documents, certificates or bail records are to be given;
  - (d) the manner and procedure for the taking of any security or surety imposed by a court under this Law.

**Reconsideration of decisions granting bail**

9. (1) Where a court or a police officer has granted bail in criminal proceedings in respect of an offence to which this section applies, that court or the appropriate court in relation to the police officer may, on application by or on behalf of Her Majesty's Procureur for the decision to be reconsidered -

- (a) vary the conditions of bail,
- (b) impose conditions in respect of bail which has been granted unconditionally, or
- (c) withhold bail.

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(2) The offences to which this section applies are offences other than those triable only summarily.

(3) No application for the reconsideration of a decision under this section shall be made unless it is based on information which was not available to the court or police officer when the decision was taken.

(4) Whether or not the person to whom the application relates appears before it, the court shall take the decision in accordance with section 2 (1) (and sections 4, 5 and 7).

(5) Where the decision of the court on a reconsideration under this section is to withhold bail from the person to whom it was originally granted the court shall-

(a) if that person is before the court, remand him in custody, and

(b) if that person is not before the court, order him to surrender himself forthwith into the custody of the court.

(6) Where a person surrenders himself into the custody of the court in compliance with an order under subsection (5), the court shall remand him in custody.

(7) A person who has been ordered to surrender to custody under subsection (5) may be arrested without warrant by a police officer if he fails without reasonable cause to surrender to custody in accordance with the order.

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(8) A person arrested in pursuance of subsection (7) shall be brought as soon as practicable, and in any event within 24 hours after his arrest, before the court making the order, and the court shall remand him in custody.

(9) Where the court, on a reconsideration under this section, refuses to withhold bail from a relevant person after hearing representations from or on behalf of Her Majesty's Procureur in favour of withholding bail, then the court shall give reasons for refusing to withhold bail.

(10) In subsection (9), "relevant person" means a person to whom sections 2 (1) (and sections 4 and 5) are applicable.

(11) A court which is by virtue of subsection (9) required to give reasons for its decision shall include a note of those reasons in any record of its decision and, if requested to do so by or on behalf of Her Majesty's Procureur, shall cause Her Majesty's Procureur to be given a copy of any such record as soon as practicable after the record is made.

(12) Rules of Court shall include provision -

- (a) requiring notice of an application under this section and of the grounds for it to be given to the person affected, including notice of the powers available to the court under it;
- (b) for securing that any representations made by the person affected (whether in writing or orally) are considered by the court before making its decision; and

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- (c) designating the court which is the appropriate court in relation to the decision of any police officer to grant bail.

**Offence of absconding by person released on bail**

10. (1) If a person who has been released on bail in criminal proceedings fails without reasonable cause to surrender to custody he shall be guilty of an offence.

(2) If a person who -

- (a) has been released on bail in criminal proceedings, and
- (b) having reasonable cause therefor, has failed to surrender to custody,

fails to surrender to custody at the appointed place as soon after the appointed time as is reasonably practicable he shall be guilty of an offence.

(3) It shall be for the accused to prove that he had reasonable cause for his failure to surrender to custody.

(4) A failure to give to a person granted bail in criminal proceedings a copy of the record of the decision shall not constitute a reasonable cause for that person's failure to surrender to custody.

(5) Subject to subsection (6), an offence under subsection (1) or (2) shall be triable only -

- (a) by the court in respect of which the failure to

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surrender has occurred; or

- (b) where bail has been granted by a police officer, by the appropriate court in relation to the police officer.

(6) Where in relation to a person charged with an offence under subsection (1) or (2), the Magistrate's Court, or the Royal Court sitting as an Ordinary Court and exercising its summary jurisdiction –

- (a) commits him for trial to the Royal Court for another offence; and
- (b) considers it would be appropriate for him to be dealt with for the offence under subsection (1) or (2) by the Royal Court when he is tried for the other offence,

the court may commit him in custody or on bail to the Royal Court for trial on indictment on the offence under this section.

(7) A person who is convicted summarily of an offence under subsection (1) or (2) shall be liable to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the uniform scale or to both and a person who is dealt with by the Royal Court on indictment shall be liable to imprisonment for a term not exceeding 12 months or to a fine or to both.

(8) In any proceedings for an offence under subsection (1) or (2) a document purporting to be a copy of the part of the prescribed record which relates to the time and place appointed for the person specified in the record to surrender to custody and to be duly certified to be a true copy of that part of the record shall be evidence of the time and place appointed for that person to surrender

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to custody.

- (9) For the purposes of subsection (8) -
- (a) “the prescribed record” means the record of the decision of the court or police officer made in pursuance of section 8 and the Schedule to this Law;
  - (b) the copy of the prescribed record is duly certified if it is certified by the appropriate officer of the court or, as the case may be, by the police officer who took the decision or a police officer designated for the purpose by the officer in charge of the police station from which the person to whom the record relates was released;
  - (c) “the appropriate officer” of the court is -
    - (i) in the case of the Magistrate’s Court, subject to subparagraphs (ii) and (iii), Her Majesty’s Greffier or any of his deputies;
    - (ii) in the case of the Court of Alderney, the Clerk of the Court;
    - (iii) in the case of the Court of the Seneschal of Sark, the Greffier of Sark;
    - (iv) in the case of the Royal Court, Her Majesty’s Greffier or any of his deputies;

- (v) in the case of the Court of Appeal, the Registrar thereof or such other officer as may be authorised by him to act for the purpose.

**Liability to arrest for absconding or breaking conditions of bail**

11. (1) If a person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court fails to surrender to custody at the time appointed for him to do so the court may issue a warrant for his arrest.

(2) If a person who has been released on bail in criminal proceedings absents himself from the court at any time after he has surrendered into the custody of the court and before the court is ready to begin or to resume the hearing of the proceedings, the court may issue a warrant for his arrest; but no warrant shall be issued under this subsection where that person is absent in accordance with leave given to him by or on behalf of the court.

(3) A person who has been released on bail in criminal proceedings and is under a duty to surrender into the custody of a court may be arrested without warrant by a police officer –

- (a) if the police officer has reasonable grounds for believing that that person is not likely to surrender to custody;
- (b) if the police officer has reasonable grounds for believing that that person is likely to break any of the conditions of his bail or has reasonable grounds for suspecting that that person has broken any of those

conditions; or

- (c) in a case where that person was released on bail with one or more surety or sureties, if a surety notifies a police officer in writing that that person is unlikely to surrender to custody and that for that reason the surety wishes to be relieved of his obligations as a surety.

(4) A person arrested in pursuance of subsection (3) shall be brought as soon as practicable and in any event within 24 hours after his arrest before the court at which he was to have surrendered to custody.

(5) A court before whom a person is brought under subsection (4) may, subject to subsection (6), if of the opinion that that person -

- (a) is not likely to surrender to custody, or
- (b) has broken or is likely to break any condition of his bail,

remand him in custody or commit him to custody, as the case may require, or alternatively, grant him bail subject to the same or to different conditions, but if not of that opinion shall grant him bail subject to the same conditions (if any) as were originally imposed.

(6) Where the person so brought before the court is a child or young person and that court does not grant him bail, subsection (5) shall have effect subject to the provisions of section 9 of the Juvenile Court (Guernsey) Law, 1989<sup>g</sup>.

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<sup>g</sup> Ordres en Conseil Vol. XXXI, p. 326 (remands in custody of juveniles).

**Bail with sureties**

12. (1) This section applies where a person is granted bail in criminal proceedings on condition that he provides one or more surety or sureties for the purpose of securing that he surrenders to custody.

(2) In considering the suitability for that purpose of a proposed surety, regard may be had (amongst other things) to -

- (a) the surety's financial resources;
- (b) his character and any previous convictions of his; and
- (c) his proximity (whether in point of kinship, place of residence or otherwise) to the person for whom he is to be surety.

(3) Where a court grants a person bail in criminal proceedings on such a condition but is unable to release him because no surety or no suitable surety is available, the court shall fix the amount in which the surety is to be bound and subsections (4) and (5) shall apply for the purpose of enabling the recognizance of the surety to be entered into subsequently.

(4) Where this subsection applies the recognizance of the surety may be entered into before such person as the court may by order specify or, if it makes no such order, before any of the following persons -

- (a) in Guernsey, Herm or Jethou, the Magistrate, Assistant Magistrate or a Jurat;

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- (b) in Alderney, the Clerk of the Court or a Jurat;
- (c) in Sark, the Seneschal, the deputy Seneschal, or the Greffier;

or a police officer of at least the rank of inspector or a person of such other description as may be specified in Rules of Court.

(5) Rules of Court may prescribe the manner in which a recognisance is to be entered into under subsection (4), and the persons by whom and the manner in which the recognisance may be enforced.

(6) Where a surety seeks to enter into his recognisance before any person in accordance with subsection (4) but that person declines to take his recognisance because he is not satisfied of the surety's suitability, the surety may apply to the court which fixed the amount of the recognisance in which the surety was to be bound for the court to take his recognisance and that court shall, if satisfied of his suitability, take his recognisance.

(7) Where a court fixes the amount of the recognisance with a view to its being taken subsequently as provided by subsection (3), the court shall in the meantime commit the person so remanded to custody.

(8) Where a court grants a person bail in criminal proceedings conditionally upon him providing a surety or sureties, the court may direct that the surety be conditioned to secure that the person so appears at every time and place to which a hearing during the course of the proceedings may from time to time be adjourned.

**Offence of agreeing to indemnify sureties in criminal proceedings**

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13. (1) If a person agrees with another to indemnify that other against any liability which that other may incur as a surety to secure the surrender to custody of a person accused or convicted of or under arrest for an offence, he and that other person shall be guilty of an offence.

(2) An offence under subsection (1) is committed whether the agreement is made before or after the person to be indemnified becomes a surety and whether or not he becomes a surety and whether the agreement contemplates compensation in money or in money's worth.

(3) A person guilty of an offence under subsection (1) shall be liable -

- (a) on summary conviction, to imprisonment for a term not exceeding 3 months or to a fine not exceeding level 5 on the uniform scale or to both; or
- (b) on conviction on indictment, to imprisonment for a term not exceeding 12 months or to a fine or to both.

**Defendant's right of appeal**

14. (1) Where in criminal proceedings the Magistrate's Court or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction adjourns a trial or an inquiry into an offence, and remands a person in custody, that person may appeal to the Royal Court against the refusal to grant bail.

(2) The Royal Court may only hear an appeal under subsection (1) if the Magistrate's Court or Ordinary Court has certified under paragraph 9 of the Schedule that it has heard full argument upon the application for bail before the application was refused.

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(3) Where the Royal Court grants a person bail pursuant to an appeal under subsection (1), it may direct him to appear at a time and place which the Magistrate's Court or Ordinary Court could have directed, and the recognisance of any surety shall be conditioned accordingly.

(4) Rules of Court may prescribe the procedure to be followed in connection with an appeal under this section, including provisions -

- (a) prescribing the form of the notice of appeal, the period of notice required, and who shall be notified;
- (b) specifying what particulars of fact or information shall be included in the notice of appeal, or in any written response by or on behalf of the Her Majesty's Procureur;
- (c) setting down the practice and procedure to be followed at the hearing of the appeal, including the recording of any decisions on bail;
- (d) permitting the varying or dispensing with requirements as to sureties, or postponing the taking of recognisances as the Royal Court may direct;
- (e) allowing the Royal Court to direct that a recognisance shall be entered into or other security given before such person as the Royal Court may by order specify, or, if it makes no such order, before a person of such other description as may be specified in the Rules;

- (f) prescribing the manner in which a recognisance is to be entered into or other security is to be given, and the persons by whom and the manner in which the recognisance or security may be enforced;
- (g) dealing generally with all matters of practice and procedure to give effect to the provisions of this section.

(5) A person appealing to the Royal Court in respect of bail under this section shall not be entitled to be present on the hearing of his application unless that court gives him leave to be present.

(6) For the purposes of this section, the Royal Court shall be constituted by the Bailiff sitting alone.

**Prosecution right of appeal**

**15.** (1) Where the Magistrate's Court or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction grants bail to a person who is charged with or convicted of -

- (a) an offence punishable by a term of imprisonment of 5 years or more, or
- (b) an offence under section 12 (taking a conveyance without authority) of the Theft (Bailiwick of Guernsey) Law, 1983<sup>h</sup>,

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<sup>h</sup> Ordres en Conseil Vol. XXVIII, p. 5.

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Her Majesty's Procureur may appeal to the Royal Court against the granting of bail.

- (2) Such an appeal may be made only if -
  - (a) the prosecution made representations that bail should not be granted; and
  - (b) the representations were made before it was granted.

(3) In the event of Her Majesty's Procureur wishing to exercise the right of appeal set out in subsection (1), oral notice of appeal shall be given by or on behalf of Her Majesty's Procureur to the court at the conclusion of the proceedings in which such bail has been granted and before the release from custody of the person concerned.

(4) Written notice of appeal shall thereafter be served on the court and the person concerned within two hours of the giving of the oral notice of appeal.

(5) Upon receipt of the oral notice of appeal from its decision to grant bail the court shall remand in custody the person concerned, until the appeal is determined or otherwise disposed of.

(6) Where one or both of the notices required by subsection (4) is not served by or on behalf of Her Majesty's Procureur within the period of two hours mentioned in that subsection, the appeal shall be deemed to have been disposed of.

- (7) The hearing of an appeal under subsection (1) against a

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decision of the court to grant bail shall be commenced within forty-eight hours, excluding weekends and any public holiday, from the date on which oral notice of appeal is given.

(8) At the hearing of any appeal under this section, such appeal shall be by way of re-hearing, and at the hearing the Royal Court may remand the person concerned in custody or may grant bail subject to such conditions (if any) as are considered fit.

(9) In relation to a child or young person -

(a) the reference in subsection (1) to an offence punishable by a term of imprisonment is to be read as a reference to an offence which would be so punishable in the case of an adult; and

(b) the reference in subsection (5) to remand in custody is to be read subject to the provisions of section 9 of the Juvenile Court (Guernsey) Law, 1989.

(10) For the purposes of this section, the Royal Court shall be constituted by the Bailiff sitting alone.

**Length of remands in custody**

**16.** (1) The Magistrate's Court or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction may remand the defendant in custody for any period up to but not exceeding 28 clear days provided that -

(a) he is before the court; and

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- (b) after affording the parties an opportunity to make representations, a date has been set upon which the court expects that it will be possible for the next stage in the proceedings, other than a hearing relating to a further remand in custody or on bail, to take place,

but only for a period ending not later than that date or for a period up to 28 clear days, whichever is the less.

(2) Nothing in this section affects the right of the accused to apply for bail during the period of the remand.

(3) This section does not affect the requirements of sections 6, 7 and 8 of the Children and Young Persons (Secure Accommodation) Ordinance, 1997.<sup>i</sup>

(4) Where a court is considering exercising the power conferred by subsection (1) or (5), it shall have regard to the total length of time which the accused would spend in custody if it were to exercise the power.

(5) Where any person who has been remanded in criminal proceedings (whether on bail or in custody) is unable to appear before the court at the expiration of the period for which he was remanded, the court may in his absence-

- (a) remand him for a further period;

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<sup>i</sup> Ordinance XXIII of 1997 (maximum periods of authorisation for juveniles detained in secure accommodation).

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- (b) appoint a later time as the time at which he is to appear;
- (c) enlarge the recognisance of any surety for him to a later time;

and the appointment of the time or enlargement of the recognisance shall be deemed to be a further remand and may exceed 28 days.

**Supplementary – provisions relating to production at court.**

17. (1) In any proceedings for an offence, a court may, after hearing representations from the parties, direct that the accused may be treated as present in court for any particular hearing before the start of the trial, if, during that hearing -

- (a) the accused is held in custody in a prison or other place of detention; and
- (b) whether by means of a live television link or otherwise, the accused is able to see and hear the court and to be seen and heard by it.

(2) A court shall not give a direction under subsection (1) unless it is satisfied that there are facilities available for enabling persons held in custody in the prison or place of detention in which the accused is or is to be so held to see and hear the court and to be seen and heard by it.

(3) Where a person has been arrested in pursuance of section 9(7) or section 11(3) and it is not practicable to bring him within 24 hours before -

- (a) in relation to a person arrested under section 9(7), the

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court making the order; or

- (b) in relation to a person arrested under section 11(3), the court at which he was due to surrender to custody,

the person shall be brought before the nearest available Bailiwick court exercising a summary jurisdiction as soon as practicable.

(4) A court before whom a person is brought under subsection (3) shall have the same powers under this Law to remand him in custody or to grant bail as the court before whom he would otherwise have been brought.

**Rules of Court**

**18.** Rules of Court under this Law -

- (a) shall be made by the Royal Court;
- (b) may contain such supplementary, incidental, transitional and consequential provision as may appear to be necessary or expedient;
- (c) may be amended or repealed by subsequent Rules of Court; and
- (d) may make different provision in relation to proceedings before different courts of the Bailiwick.

**Interpretation**

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19. (1) The provisions of the Interpretation (Guernsey) Law, 1948<sup>j</sup> shall apply to the interpretation of this Law throughout the Bailiwick.

(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.

(3) For the purposes of this Law the question whether an offence is one which is punishable with imprisonment shall be determined without regard to any enactment prohibiting or restricting the imprisonment of young offenders or first offenders.

(4) References in this Law to previous grants of bail in criminal proceedings include references to bail granted before the coming into force of this Law.

(5) References in this Law to a defendant's being kept in custody or being in custody include (where the defendant is a child or young person) references to his being detained in the custody of the States Children Board in pursuance of an order under section 9 of the Juvenile Court (Guernsey) Law, 1989<sup>k</sup>.

(6) In this Law, unless the context otherwise requires:-

**“appropriate court”** in relation to a police officer means a court designated by Rules of Court made under section 9(12);

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<sup>j</sup> Ordres en Conseil Vol. XIII, p. 355..

<sup>k</sup> Ordres en Conseil Vol. XXXI, p. 326.

“**bail**” and “**bail in criminal proceedings**” have the meanings given by section 1;

“**child**” means a person under the age of fourteen;

“**conviction**” includes –

- (a) a finding of guilt,
- (b) a finding that a person is not guilty by reason of insanity,
- (c) any finding that the person in question did the act or made the omission charged, and
- (d) a finding under section 1 of the Loi relative à la probation de Délinquants of 1929<sup>I</sup>, in respect of which an order is made placing the person convicted on probation, dismissing the charge or discharging him conditionally;

and “**convicted**” shall be construed accordingly;

“**court**” means –

- (a) the Royal Court -
  - (i) on a trial on indictment;

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<sup>I</sup> Ordres en Conseil Vol. VIII, p. 365.

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- (ii) on an appeal from the Magistrate's Court; or
  - (iii) sitting as an Ordinary Court and exercising its summary jurisdiction;
- (b) the Criminal Division of the Court of Appeal; or
  - (c) the Magistrate's Court on a summary trial;

“**court**”, in the expression “**sentence of a court**”, includes a service court as defined in section 12 (1) Visiting Forces Act 1952, and “**sentence**”, in that expression, shall be construed in accordance with that definition;

“**default**”, in relation to a defendant, means the default for which he is to be dealt with under any of the provisions referred to in section 2(4);

“**defendant**” has the meaning given by section 2(6);

“**Her Majesty’s Procureur**” includes Her Majesty’s Comptroller;

“**Magistrate’s Court**” includes the Court of Alderney and the Court of the Seneschal of Sark;

“**the normal powers to impose conditions of bail**” has the meaning given by section 3(4);

“**offence**” includes an alleged offence;

“**police officer**” means -

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- (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 salaried police force of the Island of Guernsey, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed pursuant to section 46A of the Government of Alderney Law, 1987<sup>m</sup>;
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the salaried police force of the Island of Guernsey; and
- (d) an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972<sup>n</sup>, as amended;

**“proceedings against a fugitive offender”** means proceedings under the Extradition Act 1989 or section 2 (1) or 4 (3) of the Backing of Warrants (Republic of Ireland) Act 1965;

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<sup>m</sup> Ordres en Conseil Vol. XXX, p. 37; as amended by Order in Council No. 1 of 2000.

<sup>n</sup> Ordres en Conseil Vol. XXIII, p. 573; Order in Council No. XIII of 1991.

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**“public holiday”** means a day appointed as a public holiday by Ordinance –

- (a) in relation to the Bailiwick excluding the islands of Alderney and Sark, of the States of Guernsey;
- (b) in relation to the island of Alderney, of the States of Alderney;
- (c) in relation to the island of Sark, of the Chief Pleas of Sark;

**“the Services Acts”** means the Army Act 1955, the Air Force Act 1955 and the Naval Discipline Act 1957;

**“surrender to custody”** means, in relation to a person released on bail, surrendering himself into the custody of the court or of a police officer (according to the requirements of the grant of bail) at the time and place for the time being appointed for him to do so;

**“vary”**, in relation to bail, means imposing further conditions after bail is granted, or varying or rescinding conditions;

**“young person”** means a person who has attained the age of fourteen and is under the age of seventeen.

(7) In reckoning any period of 24 hours for the purposes of subsection (8) of section 9 and subsection (4) of section 11, no account shall be taken of Christmas Day, Good Friday or any Sunday.

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(8) Where an enactment (whenever passed) which relates to bail in criminal proceedings refers to the person bailed appearing before a court it is to be construed unless the context otherwise requires as referring to his surrendering himself into the custody of the court.

**Transitional provisions**

20. (1) In respect of recognisances entered into or security given by persons granted bail in criminal proceedings before the appointed day, or in relation to the recognisances of any sureties given on their behalf, nothing in this Law shall affect the doing of any of the following things after the appointed day -

- (a) the enforcement of the recognisance of such a person in the event of a breach of recognisance after the appointed day;
- (b) the exercise of any power to issue and the execution of a warrant for the arrest of such a person for breach of his recognisance after the appointed day;
- (c) the exercise of any power to enlarge the recognisance of such a person and of any surety for him to a later time in the absence of that person and his surety (if any);
- (d) the exercise of any power to vary any conditions on which a person was granted bail before the appointed day or to reduce the amount in which he or any surety is to be bound or to discharge or dispense with any of the sureties;

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and no application shall be made under section 3(8) for the variation of conditions of bail so granted or for the imposition of conditions in respect of bail so granted.

- (2) Where before the appointed day a court has -
- (a) given a direction that the recognisance of a person to whom it has granted bail may be entered into before another court or any person, or
  - (b) endorsed a warrant for the arrest of a person with a direction that he be released on his entering into such a recognisance as is specified in the endorsement,

the recognisance may be entered into and taken after the appointed day in accordance with the direction and subsection (1) shall apply to such a recognisance as it applies to a recognisance entered into before the appointed day.

(3) Where a person has been granted bail before the appointed day and his recognisance and that of any surety for him is conditioned for his appearance before a court from time to time, then, on his first appearance before a court after the appointed day -

- (a) the recognisance of that person shall be discharged;  
and
- (b) the recognisance of any surety for him shall, as directed by the court, either be discharged or continue in force.

(4) In this section the “appointed day” means the day appointed

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under section 21(3) of this Law for it to come into force.

**Citation, extent & commencement**

21. (1) This Law may be cited as the Bail (Bailiwick of Guernsey) Law, 2003.

(2) This Law does not apply to bail in or in connection with proceedings outside the Bailiwick.

(3) This Law shall come into force on such day as the States may by Ordinance appoint.

## SCHEDULE

Section 8

### BAIL PROCEDURES

#### Recording decisions on bail

1. Subject to paragraph 2 below, where
  - (a) a court or a police officer grants bail in criminal proceedings, or
  - (b) a court withholds bail in criminal proceedings from a person to whom section 2 of this Law applies, or
  - (c) a court, an officer of a court or a police officer appoints a time or place, or a court or an officer of a court appoints a different time or place for a person granted bail in criminal proceedings to surrender to custody, or
  - (d) a court or police officer varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

that court, officer or police officer shall make a record of the decision in the prescribed manner and containing the prescribed particulars and, if requested to do so by the person in relation to whom the decision was taken, shall cause him to be given a copy of the record of the decision as soon as practicable after the record is made.

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2. Where bail in criminal proceedings is granted by endorsing a warrant of arrest for bail the police officer who releases on bail the person arrested shall make the record required by paragraph 1 instead of the court which issued the warrant.

**Reasons for granting or refusing bail**

3. Where a court grants bail in criminal proceedings to a person to whom section 2 applies after hearing representations by or on behalf of Her Majesty's Procureur in favour of withholding bail, then the court shall give reasons for granting bail.

4. A court which is by virtue of paragraph 3 required to give reasons for its decision shall include a note of those reasons in the record of its decision and, if requested to do so by or on behalf of Her Majesty's Procureur, shall cause a copy of the record of the decision to be given to Her Majesty's Procureur as soon as practicable after the record is made.

5. Where a court -

- (a) withholds bail in criminal proceedings, or
- (b) imposes conditions in granting bail in criminal proceedings, or
- (c) varies any conditions of bail or imposes conditions in respect of bail in criminal proceedings,

and does so in relation to a person to whom section 2 applies, then the court shall, with a view to enabling him to consider making an application in the matter to

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another court, give reasons for withholding bail or for imposing or varying the conditions.

6. A court which is by virtue of paragraph 5 required to give reasons for its decision shall include a note of those reasons in the record of its decision and shall (except in a case where, by virtue of paragraph 7, this need not be done) give a copy of that note to the person in relation to whom the decision was taken.

7. The Royal Court (except when sitting as an Ordinary Court and exercising its summary jurisdiction) need not give a copy of the note of the reasons for its decision to the person in relation to whom the decision was taken where that person is represented by an advocate unless his advocate requests the court to do so.

**Informing defendants of right to appeal to the Royal Court**

8. Where the Magistrate's Court, or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction, withholds bail in criminal proceedings from a person who is not represented by an advocate, the court shall, if it is committing him for trial to the Royal Court or if it issues a certificate under paragraph 9, inform him that he may apply to the Royal Court to be granted bail.

**Certificates of full argument**

9. Where in criminal proceedings the Magistrate's Court, or the Royal Court sitting as Ordinary Court and exercising its summary jurisdiction, adjourns a trial or an inquiry into an offence and remands a person in custody after hearing full argument on an application for bail from him, and either -

- (a) it has not previously heard such argument on an application for bail from him in those proceedings; or
- (b) it has previously heard full argument from him on

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such an application but it is satisfied that there has been a change in his circumstances or that new considerations have been placed before it,

it shall be the duty of the court to issue a certificate in the prescribed form that it has heard full argument on his application for bail before the application was refused.

10. Where a court issues a certificate under paragraph 9 in a case to which subparagraph (b) of that paragraph applies, it shall state in the certificate the nature of the change of circumstances or the new considerations which caused it to hear a further fully argued bail application.

11. Where a court issues a certificate under paragraph 9 it shall cause the person to whom it refuses bail to be given a copy of the certificate.

**Forfeiture of security**

12. Where a person has given security in pursuance of section 3 (3), and a court is satisfied that he failed to surrender to custody then, unless it appears that he had reasonable cause for his failure, the court may order the forfeiture of the security.

13. If a court orders the forfeiture of a security under paragraph 12, the court may declare that the forfeiture extends to such amount less than the full value of the security as it thinks fit to order.

14. An order under paragraph 12 shall, unless previously revoked, take effect at the end of twenty-one days beginning with the day on which it is made.

15. A court which has ordered the forfeiture of a security under

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paragraph 12 may, if satisfied on an application made by or on behalf of the person who gave it that he did after all have reasonable cause for his failure to surrender to custody, by order remit the forfeiture or declare that it extends to such amount less than the full value of the security as it thinks fit to order.

16. An application under paragraph 15 may be made before or after the order for forfeiture has taken effect, but shall not be entertained unless the court is satisfied that Her Majesty's Procureur was given reasonable notice of the applicant's intention to make it.

17. A security which has been ordered to be forfeited by a court under paragraph 14 shall, to the extent of the forfeiture -

- (a) if it consists of money, be accounted for and paid in the same manner as a fine imposed by that court would be;
- (b) if it does not consist of money, be enforced by such means as may be specified in the order.

18. Where an order is made under paragraph 15 after the order for forfeiture of the security in question has taken effect, any money which would have fallen to be repaid or paid over to the person who gave the security if the order under paragraph 15 had been made before the order for forfeiture took effect shall be repaid or paid over to him.

**Interpretation of Schedule**

19. In this Schedule "prescribed" means, in relation to the decision of a court or an officer of a court, prescribed by Rules of Court, or, in relation to a decision of a police officer, prescribed by any relevant enactment or Order of the

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Committee for the time being in force.

**20.** In this Schedule, “the Committee” means –

- (a) in relation to police officers described in paragraph (a), (b) or (c) of the definition of police officer in section 19, the Committee for Home Affairs;
- (b) in relation to police officers described in paragraph (d) of that definition, the Board of Administration.