

ORDER IN COUNCIL

XI
1983

ratifying a Projet de Loi

ENTITLED

The Criminal Damage (Bailiwick of Guernsey) Law, 1983

(Registered on the Records of the Island of Guernsey
on the 23rd day of August, 1983.)



1983

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 23rd day of August, 1983, before Sir Charles Frossard, Kt., Bailiff; present:—Albert Richard McCartney Straw, Esquire, Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Sydney Haydn Heard, Esquire, M.B.E., Charles Henry Hodder, Esquire, O.B.E., Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bulstrode and Geoffrey Ernest Le Page, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 27th day of July, 1983, ratifying a *Projet de Loi* entitled “The Criminal Damage (Bailiwick of Guernsey) Law, 1983”, 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 and 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 of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 27th day of July 1983

PRESENT,

The Queen's Most Excellent Majesty in Council

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 27th day of June 1983 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 Resolution of the 29th day of March 1978, the States of Deliberation at a meeting held on the 27th day of October 1982 approved a Bill or “Projet de Loi” entitled “The Criminal Damage (Bailiwick of Guernsey) Law, 1983”, 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 in the words and figures 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 Criminal Damage (Bailiwick of Guernsey) Law, 1983”, 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.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth 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.

N. E. Leigh.

PROJET DE LOI

ENTITLED

The Criminal Damage (Bailiwick of Guernsey) Law, 1983

ARRANGEMENT OF SECTIONS

PART I

Criminal Damage

Section

1. Destroying or damaging property.
2. Threats to destroy or damage property.
3. Possessing anything with intent to destroy or damage property.
4. Punishment of offences.
5. "Without lawful excuse".
6. "Property."

PART II

Compensation Orders

7. Compensation orders against convicted persons.
8. Appeals in the case of compensation orders.
9. Review of compensation orders.
10. Effect of compensation orders on subsequent award of damages in civil proceedings.
11. Young offenders.

PART III

Miscellaneous provisions

12. Search for things intended for use in committing offences of criminal damage.
13. Jurisdiction of the Magistrate's Court.

Section

14. Trial of offences.
15. Accessories and abettors.
16. Penalties for assisting offenders.
17. Attempts.
18. Fines.
19. Interpretation.
20. Effect on existing law and construction of references.
21. Amendments.
22. Repeals.
23. Citation.
24. Commencement.

PROJET DE LOI

ENTITLED

The Criminal Damage (Bailiwick of Guernsey) Law, 1983

THE STATES, in pursuance of their Resolution of the twenty-ninth day of March, nineteen hundred and seventy-eight, 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.

PART I

Criminal Damage

1. (1) A person who without lawful excuse destroys ^{Destroying or damaging property.} or damages any property belonging to another intending to destroy or damage any such property or being reckless as to whether any such property would be destroyed or damaged shall be guilty of an offence.

(2) A person who without lawful excuse destroys or damages any property, whether belonging to himself or another—

(a) intending to destroy or damage any property or being reckless as to whether any property would be destroyed or damaged; and

(b) intending by the destruction or damage to endanger the life of another or being reckless as to whether the life of another would be thereby endangered;

shall be guilty of an offence.

(3) An offence committed under this section by destroying or damaging property by fire shall be charged as arson.

Threats to
destroy or
damage
property.

2. A person who without lawful excuse makes to another a threat, intending that that other would fear it would be carried out,—

(a) to destroy or damage any property belonging to that other or a third person; or

(b) to destroy or damage his own property in a way which he knows is likely to endanger the life of that other or a third person;
shall be guilty of an offence.

Possessing
anything
with intent
to destroy
or damage
property.

3. A person who has anything in his custody or under his control intending without lawful excuse to use it or cause or permit another to use it—

(a) to destroy or damage any property belonging to some other person; or

(b) to destroy or damage his own or the user's property in a way which he knows is likely to endanger the life of some other person;
shall be guilty of an offence.

Punishment
of offences.

4. (1) A person guilty of arson under section one of this Law, not being an offence to which subsection (2) of the said section one relates, shall on conviction be liable to imprisonment for life.

(2) A person guilty of an offence under subsection (2) of section one of this Law (whether arson or not) shall on conviction on indictment be liable to imprisonment for life.

(3) A person guilty of an offence against section one of this Law (other than an offence to which subsection (1) or subsection (2) of this section relates) or of an offence under section two or section three of this Law shall on conviction be liable to imprisonment for a term not exceeding ten years.

5. (1) This section applies to any offence under subsection (1) of section one, section two or section three of this Law other than one involving a threat by the person charged to destroy or damage property in a way which he knows is likely to endanger the life of another or involving an intent by the person charged to use or cause or permit the use of something in his custody or under his control so to destroy or damage property. “Without
lawful

(2) A person charged with an offence to which this section applies shall, whether or not he would be treated for the purposes of this Law as having a lawful excuse apart from this subsection, be treated for those purposes as having a lawful excuse—

(a) if at the time of the act or acts alleged to constitute the offence he believed that the person or persons whom he believed to be entitled to consent to the destruction of or damage to the property in question had so consented, or would have so consented to it if he or they had known of the destruction or damage and its circumstances; or

(b) if he destroyed or damaged or threatened to destroy or damage the property in question or, in the case of a charge of an offence under section three of this Law, intended to use or cause or permit the use of something to destroy or damage it, in order to

protect property belonging to himself or another or a right or interest in property which was or which he believed to be vested in himself or another, and at the time of the act or acts alleged to constitute the offence he believed—

- (i) that the property, right or interest was in immediate need of protection; and
- (ii) that the means of protection adopted or proposed to be adopted were or would be reasonable having regard to all the circumstances.

(3) For the purposes of this section it is immaterial whether a belief is justified or not if it is honestly held.

(4) For the purposes of subsection (2) of this section a right or interest in property includes any right or privilege in or over land, whether created by grant, licence or otherwise.

(5) This section shall not be construed as casting doubt on any defence recognised by law as a defence to criminal charges.

“Property”. 6. (1) In this Law “property” means property of a tangible nature, whether real or personal, including money and—

- (a) including wild creatures which have been tamed or are ordinarily kept in captivity, and any other wild creatures or their carcasses if, but only if, they have been reduced into possession which has not been lost or abandoned or are in the course of being reduced into possession; but

- (b) not including mushrooms growing wild on any land or flowers, fruit or foliage of a plant growing wild on any land.

For the purposes of this subsection “mushroom” includes any fungus and “plant” includes any shrub or tree.

(2) Property shall be treated for the purposes of this Law as belonging to any person—

- (a) having the custody or control of it;
- (b) having in it any proprietary right or interest (not being an equitable interest arising only from an agreement to transfer or grant an interest); or
- (c) having a charge on it.

(3) Where property is subject to a trust, the persons to whom it belongs shall be so treated as including any person having a right to enforce the trust.

(4) Property of a corporation sole shall be so treated as belonging to the corporation notwithstanding a vacancy in the corporation.

PART II

Compensation orders

7. (1) Subject to the provisions of this Part of this Law, a court by which a person is convicted of an offence under section one of this Law, in addition to dealing with him in any other way, may, on application or otherwise, make an order (hereinafter referred to as “a compensation order”) requiring him to pay compensation for any loss or damage resulting from that offence.

Compensation orders against convicted persons.

(2) Where a court makes a compensation order, the court may—

- (a) allow time for the payment of the amount due under the order;
- (b) direct payment of that amount by instalments of such amounts and on such dates or at such intervals as the court may specify.

(3) In determining whether to make a compensation order against any person, and in determining the amount to be paid by any person under such an order, the court shall have regard to his means so far as they appear or are known to the court.

(4) The compensation to be paid under a compensation order made by the Magistrate's Court in respect of any offence under section one of this Law shall not exceed five hundred pounds or such other sum as the States of Guernsey may, from time to time, by Ordinance prescribe.

(5) Subject to the provisions of this Part of this Law any amount awarded to a person by a compensation order shall be recoverable by that person as a civil debt and for the purposes of execution the compensation order shall have effect as a judgment of a civil court for the like amount in favour of that person.

(6) A compensation order shall be suspended—

- (a) in any case until the expiration of the period for the time being prescribed by law for the giving of notice of appeal against the conviction in relation to which the compensation order was made; and

(b) where notice of appeal is given within the period so prescribed, until the determination of the appeal.

8. A compensation order shall for the purposes of any enactment relating to appeals in criminal matters be deemed to be a part of the sentence imposed upon the person against whom it is made by the court which makes the compensation order.

Appeals in the case of compensation orders.

9. At any time before a compensation order has been complied with or fully complied with, the court by which the order was made may, on the application of the person against whom it was made, discharge the order, or reduce the amount which remains to be paid, if it appears to the court that the loss or damage in respect of which the order was made has been held in civil proceedings to be less than it was taken to be for the purposes of the order.

Review of compensation orders.

10. (1) This section shall have effect where a compensation order has been made in favour of any person in respect of any injury, loss or damage and a claim by him in civil proceedings for damages in respect thereof subsequently falls to be determined.

Effect of compensation orders on subsequent award of damages in civil proceedings.

(2) The damages in the civil proceedings shall be assessed without regard to the order; but where the whole or part of the amount awarded by the order has been paid, the damages awarded in the civil proceedings shall not exceed the amount (if any) by which, as so assessed, they exceed the amount paid under the order.

(3) Where the whole or part of the amount awarded by the order remains unpaid and the court

awards damages in the civil proceedings, then, unless the person against whom the order was made has ceased to be liable to pay the amount unpaid (whether in consequence of an appeal, or otherwise), the court shall direct that the judgment—

(a) if it is for an amount not exceeding the amount unpaid under the order, shall not be enforced; or

(b) if it is for an amount exceeding the amount unpaid under the order, shall not be enforced as to a corresponding amount;

without the leave of the court.

Young
offenders.

11. (1) Where a court makes a compensation order against a person (hereafter in this section referred to as “the offender”) who, at the date of the making of the compensation order, has not attained the age of seventeen years, the court may in any case, and shall if the offender has not attained the age of fourteen years, order that the sum awarded shall be paid by the father, the mother or the guardian of the offender unless the court is satisfied either—

(a) that the father, the mother or the guardian can not be found; or

(b) that the father, the mother or the guardian has not conducted to the commission of the offence in respect of which the compensation order is made by neglecting to exercise due care of the offender.

(2) A parent or guardian against whom an order is made under this section may appeal against the order in accordance with the provisions of any enactment relating to appeals in criminal matters as if he had been convicted of the offence in respect of which the order was made and the order were a sentence passed upon his conviction.

(3) Any amount which is ordered to be paid by a parent or guardian under this section shall be recoverable as a civil debt from the parent or guardian and shall not be recoverable as a civil debt from the offender.

PART III

General Provisions

12. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person has in his custody or under his control or on his premises anything which there is reasonable cause to believe has been used or is intended for use without lawful excuse—

Search for things intended for use in committing offences of criminal damage.

(a) to destroy or damage property belonging to another; or

(b) to destroy or damage any property in a way likely to endanger the life of another,

the Bailiff may grant a warrant authorising any police officer to search for and seize that thing.

(2) A police officer who is authorised under this section to search premises for anything, may enter (if need be by force) and search the premises accordingly and may seize anything which he believes to have been used or to be intended to be used as aforesaid.

13. The Magistrate's Court shall have jurisdiction to hear and determine any offence created by this Law other than an offence created by subsection (2) of section one thereof.

Jurisdiction of the Magistrate's Court.

14. (1) Where, on a person's trial on indictment for any offence under this Law, the court finds him not guilty of the offence specifically charged in the

Trial of offences.

indictment, but the allegations in the indictment amount to or include (expressly or by implication) an allegation of another offence falling within the jurisdiction of the court of trial, the court may find him guilty of that other offence or of an offence of which he could be guilty on an indictment specifically charging that other offence.

(2) For purposes of subsection (1) of this section any allegation of an offence shall be taken as including an allegation of attempting to commit that offence; and where a person is charged on indictment with attempting to commit an offence or with any assault or other act preliminary to an offence, but not with the completed offence, then he may be convicted of the offence charged notwithstanding that he is shown to be guilty of the completed offence.

(3) Subsection (1) of this section shall apply to an indictment containing more than one count as if each count were a separate indictment.

(4) In this section the expression "indictment" includes a charge.

**Accessories
and
abettors.**

15. Every person who knowingly and wilfully aids, abets, counsels, procures or commands the commission of an offence punishable under this Law shall be liable to be dealt with, tried and punished as a principal offender.

**Penalties
for assist-
ing offenders.**

16. (1) Where a person has committed an offence under this Law, any other person who, knowing or believing him to be guilty of the offence or of some other offence under this Law, does without lawful authority or reasonable excuse any act with intent to impede his apprehension or prosecution shall be guilty of an offence.

(2) If on the trial of a person accused of an offence under this Law the court is satisfied that the offence charged (or some other offence of which the accused might on that charge be found guilty) was committed, but finds the accused not guilty of it, the court may find him guilty of any offence under subsection (1) of this section of which the court is satisfied that he is guilty in relation to the offence charged (or that other offence).

(3) A person committing an offence under subsection (1) of this section with intent to impede another person's apprehension or prosecution shall on conviction be liable to imprisonment according to the gravity of the other person's offence as follows:—

- (a) if the offence is one for which a person may be sentenced to imprisonment for life, he shall be liable to imprisonment for not more than ten years;
- (b) if it is one for which a person may be sentenced to imprisonment for a term of ten years, he shall be liable to imprisonment for not more than five years;
- (c) in any other case he shall be liable to imprisonment for not more than three years.

17. (1) Every person who attempts to commit an offence punishable under this Law shall be guilty of an offence and shall be liable on conviction to such term of imprisonment or such fine or to such term of imprisonment and such fine as the court may deem just: Provided that as respects any attempt to commit any such offence the court may

Attempts.

not impose any punishment exceeding that which the court might have imposed if the offence had been completed.

(2) If, on the trial of any person charged with any offence under this Law, it appears to the court upon the evidence that the person so charged did not complete the offence charged but that he was guilty only of an attempt to commit the same, such person shall not by reason thereof be entitled to be acquitted, and the court may find that person not guilty of the offence charged but guilty of the attempt to commit the same and thereupon he shall be liable to be punished accordingly.

Fines.

18. On conviction of an offence punishable under this Law other than an offence under section seventeen thereof (which relates to attempts), the court, instead of or in addition to any other punishment which may be lawfully imposed, may fine the offender.

Interpretation.

19. (1) In this Law, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say:—

“ the Bailiff ” means—

- (a) in relation to Guernsey, Herm and Jethou, the Bailiff, the Deputy Bailiff, a 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;

“the Magistrate’s Court” means—

- (a) in relation to any criminal matter transferred in accordance with the provisions of Part IV of the Magistrate’s Court (Guernsey) Law, 1954(a), to the Ordinary Court from the Court of Alderney or the Court of the Seneschal, the Ordinary Court;
- (b) in relation to the Island of Guernsey, the Magistrate’s Court constituted under the provisions of the Magistrate’s Court (Guernsey) Law, 1954;
- (c) in relation to the Island of Alderney, the Court of Alderney;
- (d) in relation to the Island of Sark, the Court of the Seneschal;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

“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 limit 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

(a) Ordres en Conseil Vol. XVI, p. 103.

(c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of Guernsey.

(2) Except in so far as the context otherwise requires, any reference in this Law to an enactment shall be construed as including a reference to that enactment, as amended, extended, repealed or replaced by or under any other enactment including this Law.

(3) The Interpretation (Guernsey) Law, 1948(b) shall apply to the interpretation of this Law throughout the Bailiwick.

Effect on
existing
law and
construc-
tion of
references.

20. (1) The common law offence of arson is hereby abolished for all purposes not relating to offences committed before the coming into force of this Law.

(2) Except as regards offences committed before the coming into force of this Law, and except in so far as the context otherwise requires, any reference in any enactment for the time being in force to the offence of arson shall be construed as a reference to an offence which, under the provisions of subsection (3) of section one of this Law, shall be charged as arson.

Amend-
ments.

21. (1) In subsection (2) of section twenty of the Government of Alderney Law, 1948(c), the word "arson" is hereby repealed.

(2) The Firearms (Bailiwick of Guernsey) Law, 1982, is hereby amended as follows:—

(b) Ordres en Conseil Vol. XIII, p. 355.
(c) Ordres en Conseil Vol. XIII, p. 416.

- (a) in section fourteen thereof the words "or cause serious injury to property" in both places where they occur, and the words "to person or property" are repealed;
- (b) paragraph 1 of Schedule 1 thereto is repealed and the following paragraph is substituted therefor:—
- "1. Offences under section 1 of the Criminal Damage (Bailiwick of Guernsey) Law, 1983;"
- (c) in Schedule 2 thereto in the entry in the second column relating to section fourteen the words "or injure property" are repealed.

22. The Law entitled "Loi supplémentaire à la Loi relative à l'application des Peines" registered on the fourteenth day of November, eighteen hundred and ninety-six^(d), and the Law entitled "Loi Supplémentaire à la Loi à l'Application des Peines" registered on the seventh day of May, nineteen hundred and twenty-one^(e), are hereby repealed.

23. This Law may be cited as the Criminal Damage (Bailiwick of Guernsey) Law, 1983.

24. This Law shall come into force on such day as the States of Guernsey may by Ordinance appoint in that behalf and shall have effect only in relation to offences wholly or partly committed on or after that date.

K. H. TOUGH,
Her Majesty's Greffier.

^(d) Ordres en Conseil, Vol. III, p. 52.

^(e) Ordres en Conseil, Vol. VI, p. 278.