

PROJET DE LOI

ENTITLED

The Criminal Damage (Bailiwick of Guernsey) Law, 1983 *

[CONSOLIDATED TEXT]

NOTE

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

© States of Guernsey

* Ordres en Conseil Vol. XXVIII, p. 203; as amended by the Firearms (Amendment) (Guernsey) Law, 1984 (Ordres en Conseil Vol. XXVIII, p. 511); the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 (Ordres en Conseil Vol. XXXII, p. 77). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Firearms (Sark) Law, 2001 (No. XII of 2002, Ordres en Conseil Vol. XLII(1), p. 296).

PROJET DE LOI

ENTITLED

The Criminal Damage (Bailiwick of Guernsey) Law, 1983

ARRANGEMENT OF SECTIONS

PART I CRIMINAL DAMAGE

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

...

7. ...
8. ...
9. ...
10. ...
11. ...

PART III MISCELLANEOUS PROVISIONS

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

Destroying or damaging property.

1. (1) A person who without lawful excuse destroys 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.

NOTE

In accordance with the provisions of the Firearms (Sark) Law, 2001, section 17, Schedule 1, respectively paragraph 1, paragraph 8 and paragraph 9, with effect from 1st January, 2003, subsection (2) of that section is applied to offences, to the aiding or abetting the commission of offences, and to attempting to commit offences under section 1 of this Law.

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.

"Without lawful excuse".

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.

(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

Compensation orders against convicted persons.

7. ...

NOTE

Section 7 was repealed by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990, section 8, with effect from 1st January, 1991.

Appeals in the case of compensation orders.

8. ...

NOTE

Section 8 was repealed by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990, section 8, with effect from 1st January, 1991.

Review of compensation orders.

9. ...

NOTE

Section 9 was repealed by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990, section 8, with effect from 1st January, 1991.

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

10. ...

NOTE

Section 10 was repealed by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990, section 8, with effect from 1st January, 1991.

Young offenders.

11. ...

NOTE

Section 11 was repealed by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990, section 8, with effect from 1st January, 1991.

PART III

MISCELLANEOUS PROVISIONS

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

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 –

- (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.

Jurisdiction of the Magistrate's Court.

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.

Trial of offences.

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 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 assisting 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.

Attempts.

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 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,

^a Ordres en Conseil Vol. XVI, p. 103.

- (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
- (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.

NOTES

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Magistrate's Court (Guernsey) Law, 1954 has since been repealed by the Magistrate's Court (Guernsey) Law, 2008, section 46(b), with effect from 1st September, 2009, subject to the savings and transitional provisions in section 47 of the 2008 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Effect on existing law and construction 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.

Amendments.

21. (1) In subsection (2) of section twenty of the Government of

^b Ordres en Conseil Vol. XIII, p. 355.

Alderney Law, 1948^c, the word "arson" is hereby repealed.

(2) ...

NOTES

In section 21, subsection (2) was repealed by the Firearms (Amendment) (Guernsey) Law, 1984, section 2, with effect from 1st October, 1984.

The Government of Alderney Law, 1948 has since been repealed by the Government of Alderney Law, 1987, section 63(1), Schedule 3, with effect from 1st August 1987, subject to the savings and transitional provisions in section 63(2) and section 64 of the 1987 Law. The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in section 63(2) and section 64 of the 2004 Law.

Repeals.

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.

Citation.

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

Commencement.

24. This Law shall come into force on such day as the States of Guernsey

^c Ordres en Conseil, Vol. III, p. 52.

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

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

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.

NOTE

The Law was brought into force on 1st July, 1984 by the Criminal Damage (Bailiwick of Guernsey) Law, 1983 (Commencement) Ordinance, 1984, section 1.
