

ORDER IN COUNCIL

I
2003

ratifying a Projet de Loi

ENTITLED

The Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002

(Registered on the Records of the Island of Guernsey
on the 20th January, 2003.)



2003

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 20th day of January, 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, Esquires, The Reverend Peter Gerald Lane, Michael
John Wilson, Michael Henry De La Mare and Michael John
Tanguy, Esquires, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 17th day of December, 2002, approving and ratifying a Projet de Loi of the States of Guernsey entitled “The Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002”, THE COURT, after the reading of the said Order in Council and 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 December, 2002

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 September, 1998, the States of Deliberation at a meeting on 31st May, 2002 approved a Projet de Loi entitled “The Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002” 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 Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002” 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 Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002

ARRANGEMENT OF SECTIONS

PART I

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

1. First hand hearsay.
2. Business, etc. documents.
3. Principles to be followed by court.
4. Statements in documents which appear to have been prepared for purposes of criminal proceedings or investigations.
5. Proof of statements contained in documents.
6. Documentary evidence - supplementary.
7. Microfilm copies.
8. Proof by comparison of handwriting.
9. Expert reports.
10. Form of evidence and glossaries.
11. Advance notice of expert evidence in court.
12. Proof by written statement.
13. Interpretation of Part I.

PART II

MISCELLANEOUS

14. Abolition of corroboration rules.
15. Abolition of "year and a day rule".
16. Indecent pseudo-photographs of children.
17. Abolition of the presumption of sexual incapacity.
18. Amendment to Magistrate's Court (Guernsey) Law 1954.
19. References to Borstal training.
20. Rules of Court.
21. Citation.

Schedule: Documentary evidence - supplementary.

PROJET DE LOI

ENTITLED

The Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002

THE STATES, in pursuance of their resolution of the 30th day of September 1998^a, 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

DOCUMENTARY EVIDENCE IN CRIMINAL PROCEEDINGS

First hand hearsay.

1. (1) Subject to subsection (4) a statement made by a person in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence by him would be admissible if -

(a) the requirements of one of the paragraphs of subsection (2) are satisfied; or

(b) the requirements of subsection (3) are satisfied.

(2) The requirements mentioned in subsection (1)(a) are -

^a

Article XVI of Billet d'État No. XXI of 1998.

Order in Council No. I of 2003

- (a) that the person who made the statement is dead or by reason of his bodily or mental condition unfit to attend as a witness; or
 - (b) that -
 - (i) the person who made the statement is outside the Bailiwick; and
 - (ii) it is not reasonably practicable to secure his attendance; or
 - (c) that all reasonable steps have been taken to find the person who made the statement, but that he cannot be found.
- (3) The requirements mentioned in subsection (1)(b) are -
- (a) that the statement was made to a police officer or some other person charged with the duty of investigating offences or charging offenders; and
 - (b) that the person who made it does not give evidence through fear or because he is being kept out of the way.
- (4) Subsection (1) does not render admissible a confession by an accused person that would not otherwise be admissible.

Order in Council No. I of 2003

Business, etc. documents.

2. (1) Subject to subsections (3) and (4) a statement in a document shall be admissible in criminal proceedings as evidence of any fact of which direct oral evidence would be admissible, if the following conditions are satisfied -

- (a) the document was created or received by a person in the course of a trade, business, profession or other occupation, or as the holder of a paid or unpaid office; and
- (b) the information contained in the document was supplied by a person (whether or not the maker of the statement) who had, or may reasonably be supposed to have had, personal knowledge of the matters dealt with.

(2) Subsection (1) applies whether the information contained in the document was supplied directly or indirectly but, if it was supplied indirectly, only if each person through whom it was supplied received it -

- (a) in the course of a trade, business, profession or other occupation; or
- (b) as the holder of a paid or unpaid office.

(3) Subsection (1) does not render admissible a confession made by an accused person that would not otherwise be admissible.

(4) A statement prepared otherwise than in accordance with

Order in Council No. I of 2003

section 3 of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001^b or under section 9 or 10, for the purposes -

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

shall not be admissible by virtue of subsection (1) unless -

- (i) the requirements of one of the paragraphs of subsection (2) of section 1 are satisfied; or
- (ii) the requirements of subsection (3) of that section are satisfied; or
- (iii) the person who made the statement cannot reasonably be expected (having regard to the time which has elapsed since he made the statement and to all the circumstances) to have any recollection of the matters dealt with in the statement.

Principles to be followed by court.

3. (1) If having regard to all the circumstances the court is of the opinion that in the interests of justice a statement which is admissible by virtue of section 1 or 2 nevertheless ought not to be admitted, it may direct that the statement shall not be admitted.

^b Order in Council No. VII of 2001.

Order in Council No. I of 2003

(2) Without prejudice to the generality of subsection (1), it shall be the duty of the court to have regard -

- (a) to the nature and source of the document containing the statement and to whether or not, having regard to its nature and source and to any other circumstances that appear to the court to be relevant, it is likely that the document is authentic;
- (b) to the extent to which the statement appears to supply evidence which would otherwise not be readily available;
- (c) to the relevance of the evidence that it appears to supply to any issue which is likely to have to be determined in the proceedings; and
- (d) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them.

Statements in documents which appear to have been prepared for purposes of criminal proceedings or investigations.

4. Where a statement which is admissible in criminal proceedings by

Order in Council No. I of 2003

virtue of section 1 or 2 appears to the court to have been prepared otherwise than in accordance with section 3 of the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001 or under section 9 or 10, for the purposes -

- (a) of pending or contemplated criminal proceedings; or
- (b) of a criminal investigation,

the statement shall not be given in evidence in any criminal proceedings without leave of the court, and the court shall not give leave unless it is of the opinion that the statement ought to be admitted in the interests of justice; and in considering whether its admission would be in the interests of justice, it shall be the duty of the court to have regard -

- (i) to the contents of the statement;
- (ii) to any risk, having regard in particular to whether it is likely to be possible to controvert the statement if the person making it does not attend to give oral evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and
- (iii) to any other circumstances that appear to the court to be relevant.

Proof of statements contained in documents.

5. Where a statement contained in a document is admissible as evidence in criminal proceedings, it may be proved -

Order in Council No. I of 2003

- (a) by the production of that document; or
- (b) (whether or not that document is still in existence) by the production of a copy of that document, or the material part of it,

authenticated in such manner as the court may approve; and it is immaterial for the purposes of this section how many removes there are between a copy and the original.

Documentary evidence – supplementary.

6. (1) Nothing in this part of this Law shall prejudice -

- (a) the admissibility of a statement not made by a person while giving oral evidence in court which is admissible otherwise than by virtue of this Part of this Law; or
- (b) any power of a court to exclude at its discretion a statement admissible by virtue of this Part of this Law.

(2) The Schedule to this Law shall have effect for the purpose of supplementing this Part of this Law.

Microfilm copies.

7. (1) In any criminal proceedings the contents of a document may (whether or not the document is still in existence) be proved by the production of an enlargement of a microfilm copy of that document or of the material part of it, authenticated in such a manner as the court may approve.

Order in Council No. I of 2003

(2) Nothing in this section shall prejudice the power of any court to exclude evidence (whether by preventing questions from being put or otherwise) at its discretion.

Proof by comparison of handwriting.

8. Comparison of a disputed writing with any writing proved to the satisfaction of the court to be genuine shall be permitted to be made by witnesses; and such writings, and the evidence of witnesses respecting the same, may be submitted to the court as evidence of the genuineness or otherwise of the writing in dispute.

Expert reports.

9. (1) An expert report shall be admissible as evidence in criminal proceedings, whether or not the person making it attends to give oral evidence in those proceedings.

(2) If it is proposed that the person making the report shall not give oral evidence the report shall only be admissible with the leave of the court.

(3) For the purposes of determining whether to give leave the court shall have regard -

- (a) to the contents of the report;
- (b) to the reasons why it is proposed that the person making the report shall not give oral evidence;
- (c) to any risk, having regard in particular to whether it is likely to be possible to controvert statements in the report if the person making it does not give oral

Order in Council No. I of 2003

evidence in the proceedings, that its admission or exclusion will result in unfairness to the accused or, if there is more than one, to any of them; and

(d) to any other circumstances that appear to the court to be relevant.

(4) An expert report, when admitted, shall be evidence of any fact or opinion of which the person making it could have given oral evidence.

(5) In this section "expert report" means a written report by a person dealing wholly or mainly with matters on which he is (or would if living be) qualified to give expert evidence.

Form of evidence and glossaries.

10. For the purpose of helping members of the court to understand complicated issues of fact or technical terms, Rules of Court may make provision -

(a) as to the furnishing of evidence in any form, notwithstanding the existence of admissible material from which the evidence to be given in that form would be derived; and

(b) as to the furnishing of glossaries for such purposes as may be specified;

in any case where the court gives leave for, or requires, evidence or a glossary to be so furnished.

Advance notice of expert evidence in court.

Order in Council No. I of 2003

11. (1) Rules of Court may make provision for -

- (a) requiring any party to proceedings before the court to disclose to the other party or parties any expert evidence which he proposes to adduce in the proceedings; and
- (b) prohibiting a party who fails in respect of any evidence with any requirement imposed by virtue of paragraph (a) from adducing that evidence without leave of the court.

(2) Rules of Court made by virtue of this section may specify the kinds of expert evidence to which they apply and may exempt facts or matters of any description specified in the Rules.

Proof by written statement.

12. In section 1(3)(a) of the Administration of Justice (Bailiwick of Guernsey) Law, 1991^c for "twenty-one" there shall be substituted "eighteen".

Interpretation of Part I.

13. (1) In this Part of this Law -

"**copy**" in relation to a document, means anything onto which information recorded in the document has been copied, by whatever means and whether directly or indirectly;

^c

Order in Council No. 1 of 1991.

Order in Council No. I of 2003

“court” means -

- (a) the Royal Court -
 - (i) on a trial on indictment;
 - (ii) on an appeal from the Magistrate's Court, the Court of Alderney or the Court of the Seneschal in Sark; 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, the Court of Alderney or the Court of the Seneschal in Sark on a summary trial;

"document" means anything in which information of any description is recorded; and

"statement" includes any representation of fact, however made.

(2) For the purposes of Part I of this Law where by reason of a defect of speech or hearsay, a witness gives evidence in writing or by signs, that evidence shall be treated as given orally.

PART II
MISCELLANEOUS

Abolition of corroboration rules.

14. (1) Any requirement whereby at a trial on indictment it is obligatory for the Bailiff to give the Jurats a warning about convicting the accused on the uncorroborated evidence of a person merely because that person is -

- (a) an alleged accomplice of the accused; or
- (b) where the offence charged is a sexual offence, the person in respect of whom it is alleged to have been committed,

is hereby abrogated.

(2) Any requirement that -

- (a) is applicable at the summary trial of a person for an offence, and
- (b) corresponds to the requirement mentioned in subsection (1),

is hereby abrogated.

Abolition of "year and a day rule".

15. (1) The rule known as the "year and a day rule" (that is, the rule that, for the purposes of offences involving death and of suicide, an act or omission is conclusively presumed not to have caused a person's death if more than a year and a day elapsed before he died) is abolished for all purposes.

(2) Subsection (1) does not affect the continued application of the said rule to a case where the act or omissions (or the last of the acts or omissions) which caused the death occurred before the day on which this Law comes into force.

Indecent pseudo-photographs of children.

16. (1) The Protection of Children (Bailiwick of Guernsey) Law, 1985^d shall be amended as provided for in subsections (2), (3), (4) and (5).

(2) In section 3 (which penalises the taking and distribution of indecent photographs of children and related acts) -

(a) in paragraph (a) of subsection (1) -

(i) after the word "taken" there shall be inserted the words "or to make";

(ii) after the word "photograph" there shall be inserted the words "or pseudo-photograph";

(b) in paragraphs (b), (c) and (d) of subsection (1), after the word "photographs" there shall be inserted the words "or pseudo-photographs";

(c) in subsection (2) after the word "photograph" there shall be inserted the words "or pseudo-photograph";
and

Order in Council No. I of 2003

- (d) in paragraphs (a) and (b) of subsection (3) after the word "photographs" there shall be inserted the words "or pseudo-photographs".

(3) In section 3A^e (which penalises the possession of indecent photographs of children) -

- (a) in subsection (1) after the word "photograph" there shall be inserted " or pseudo-photograph"; and
- (b) in paragraphs (a), (b) and (c) of subsection (2) after the word "photograph" there shall be inserted " or pseudo-photograph".

(4) In section 9 (interpretation) -

- (a) in the definition of "child" in subsection (1) after "means" insert "subject to subsection (7)";
- (b) in subsection (3), at the end there shall be inserted the words "and so as respects pseudo-photographs" and;
- (c) for subsection (4) there shall be substituted the following subsection -

“(4) References to a photograph include -

^e Inserted by Order in Council No. I of 1991.

Order in Council No. I of 2003

- (a) the negative as well as the positive version;
and
- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a photograph.”;
- (d) after subsection (5) there shall be inserted the following subsections -

“(6) **"Pseudo-photograph"** means an image, whether made by computer graphics or otherwise howsoever, which appears to be a photograph.

(7) If the impression conveyed by a pseudo-photograph is that the person shown is a child, the pseudo-photograph shall be treated for all purposes of this Law as showing a child and so shall a pseudo-photograph where the predominant impression conveyed is that the person shown is a child notwithstanding that some of the physical characteristics shown are those of an adult.

(8) References to an indecent pseudo-photograph include -

- (a) a copy of an indecent pseudo-photograph; and
-

- (b) data stored on a computer disc or by other electronic means which is capable of conversion into a pseudo-photograph.”.

(5) In section 3A(4) (which provides for the penalty for possessing indecent photographs of children) after the words "on conviction to" insert "imprisonment for a term not exceeding six months or" and at the end the words ", or both".

Abolition of the presumption of sexual incapacity.

17. (1) The presumption of criminal law that a boy under the age of fourteen is incapable of sexual intercourse (whether natural or unnatural) is hereby abolished.

(2) Subsection (1) does not apply to acts done before this Law came into force.

Amendment to Magistrate's Court (Guernsey) Law, 1954.

18. In section 18 of the Magistrate's Court (Guernsey) Law 1954, as amended^f after "subsection (1)" substitute "subsections (1) to (5)".

References to Borstal Training.

19. Any reference in an enactment, howsoever expressed, to a sentence of borstal training within the meaning of the Criminal Justice (Borstal Training) (Guernsey) Law, 1963^g shall be construed as a reference to a sentence of youth

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

^g Ordres en Conseil Vol. XIX, p.187; the Law was repealed by the Criminal

detention within the meaning of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^h.

Rules of Court.

20. 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.

Citation.

21. This Law may be cited as the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002.

^h Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.
Ordres en Conseil Vol. XXXII, p.106.

SCHEDULE

Section 6

DOCUMENTARY EVIDENCE - SUPPLEMENTARY

1. Where a statement is admitted as evidence in criminal proceedings by virtue of Part I of this Law -

- (a) any evidence which, if the person making the statement had been called as a witness, would have been admissible as relevant to his credibility as a witness shall be admissible for that purpose in those proceedings;
- (b) evidence may, with the leave of the court, be given of any matter which, if that person had been called as a witness, could have been put to him in cross-examination as relevant to his credibility as a witness but of which evidence could not have been adduced by the cross-examining party; and
- (c) evidence tending to prove that that person, whether before or after making the statement, made (whether orally or not) some other statement which is inconsistent with it shall be admissible for the purpose of showing that he has contradicted himself.

2. A statement which is given in evidence by virtue of Part I of this Law shall not be capable of corroborating evidence given by the person making it.

3. In estimating the weight, if any, to be attached to such a statement

Order in Council No. I of 2003

regard shall be had to all the circumstances from which any inference can be reasonably be drawn as to its accuracy or otherwise.

4. Rules of Court may be made if it appears necessary or expedient for the purposes of Part I of this Law.