

ORDER IN COUNCIL

XIII
2007

ratifying a Projet de Loi

ENTITLED

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006

(Registered on the Records of the Island of Guernsey
on the 29th October, 2007.)



2007

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

29th day of October, 2007 before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, OBE, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, Keith Bichard, OBE, Esquires, Michael Henry De La Mare, Michael John Tanguy, Esquires, Susan Mowbray, Barbara Jean Bartie, and John Ferguson Esquire, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 10th October 2007 approving and ratifying a Projet de Loi entitled the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law 2006, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur 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 Greffier of the Court of Alderney and to the Sénéchal of Sark for registration on the records of those Islands respectively.



At the Court at Buckingham Palace

THE 10th DAY OF OCTOBER 2007

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 22nd February 1952 the Committee have considered a Petition of the States of Guernsey:

"That, in pursuance of their Resolution of 30th November 2005, the States of Deliberation at a meeting on 13th December 2006 approved a Projet de Loi entitled The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law 2006 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 Justice (Community Service Orders) (Bailiwick of Guernsey) Law 2006, 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 and ratify the 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.

Judith Simpson

PROJET DE LOI

ENTITLED

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006

ARRANGEMENT OF SECTIONS

Community service orders

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2. Making of a community service order.
3. Requirements of a community service order.

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5. Breach of community service order.
6. Breach - disposal by Magistrate's Court.
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Powers on further conviction

8. Powers on further conviction by Magistrate's Court when existing Magistrate's Court order.
9. Powers on further conviction by Magistrate's Court when existing Royal Court order.
10. Disposal by Royal Court following order by Magistrate's Court under s9(2)(c) and (3)(b).
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PROJET DE LOI

ENTITLED

The Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006

THE STATES, in pursuance of their Resolution of the 30th November, 2005^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have the force of law in the Bailiwick of Guernsey.

Community service orders

Community service orders.

1. (1) Where a person aged 14 or over is convicted of an offence punishable with imprisonment, the court by or before which he is convicted may, instead of dealing with him in any other way make a community service order.

(2) A person who is made the subject of a community service order is required to perform unpaid work in accordance with this Law.

(3) The number of hours which a person may be required to work under a community service order shall be specified in the order and shall be in the aggregate not less than 40 and not more than -

(a) where the order is made by the Magistrate's Court,

^a Article XII of Billet d'État No. XX of 2005.

180, and

(b) where made by the Royal Court, 240.

(4) Where the court makes community service orders in respect of two or more offences, it may direct that the number of hours of work specified in each order shall be concurrent with or additional to those specified in any other of those orders, but so that the aggregate number of hours which are not concurrent shall not exceed the maximum described in subsection (3).

Making of a community service order.

2. (1) A court considering making a community service order shall obtain and consider a written or verbal report from a probation officer or a designated person upon -

- (a) the offender and his relevant circumstances,
- (b) the suitability of the offender to perform community service, and
- (c) the availability of community service.

(2) A court may not make a community service order unless it is of the opinion such an order is justified due to either -

- (a) the seriousness of the offence or combination of offences, or
- (b) the combination with the offence or offences of any previous convictions recorded against the offender.

(3) The court may impose a community service order as an alternative to a sentence of imprisonment or youth detention.

(4) If a community service order is made as an alternative to a sentence of imprisonment or youth detention, the court must -

- (a) inform the offender of this fact at the time the order is made,
- (b) inform the offender the sentence of imprisonment or youth detention which it was considering passing, and
- (c) ensure that a note of (a) and (b) is included in the order.

(5) Before making a community service order, the court shall be satisfied that a probation officer or a designated person has explained to the offender in plain language and the offender has understood -

- (a) the purpose and effect of the order and, in particular, the requirements described in section 3(1),
- (b) the power of the court under section 4 to review the order on the application of either the offender or the relevant officer, and
- (c) the consequences which may follow if he fails to comply with any of the requirements of the order, or if he is convicted of a further offence while the order

is in force.

(6) A court shall not make a community service order in respect of an offender unless it is satisfied -

- (a) that provision can be made for the offender to perform work, and
- (b) after considering the report described in subsection (1), that the offender is a suitable person to perform work under such an order.

(7) The court shall as soon as practicable provide the offender and a probation officer or designated person with a copy of the order.

(8) Where a community service order is made, the Chief Probation Officer shall assign a probation officer or a designated person to be the relevant officer in relation to it.

Requirements of a community service order.

3. (1) An offender in respect of whom a community service order is in force shall -

- (a) keep in contact with the relevant officer in accordance with such instructions as he may from time to time be given by that officer,
- (b) notify the relevant officer of any change of address or working arrangements,

- (c) perform, to the satisfaction of the relevant officer and for the number of hours specified in the order, such work at such times as he may be instructed by the officer,
- (d) behave in a reasonable, orderly and decent manner while present at the place designated for the performance of work or under the instruction of the relevant officer, and
- (e) only be absent from any work or appointments designated by the relevant officer if he has an explanation acceptable to or written permission from the relevant officer.

(2) The work required under a community service order should be performed within 12 months of the date the order was made.

(3) Notwithstanding subsection (2), a community service order shall remain in force until the offender has worked under it for the number of hours specified or until it is revoked.

(4) The instructions to be given by the relevant officer under subsection (1) shall, as far as practicable, be such as to avoid any conflict with the offender's religious beliefs or any exceptional commitments and any interference with the times, if any, at which he normally works or attends a school or other educational establishment.

(5) The Home Department may by regulations provide for such matters it deems appropriate in connection with the performance of community

service orders.

Variation of order

Variation or revocation of community service order due to change in circumstances.

4. (1) Where a community service order is in force in respect of any offender and, on the application of the offender or the relevant officer, it appears to the court that made the order that it would be in the interests of justice to do so having regard to the circumstances which have arisen since the order was made, the court may -

- (a) revoke the order, or
- (b) revoke the order and deal with the offender for the offence in respect of which the order was made, in any manner in which it could deal with him if he had just been convicted by the court of the offence.

(2) Where a court proposes to consider exercising its powers under subsection (1) otherwise than on the application of the offender, the court may either direct the offender to appear before it on a date and at a time specified, or issue a warrant.

Breach of order

Breach of community service order.

5. (1) If at any time while a community service order is in force, it appears to the relevant officer that the offender has failed to comply with any of the requirements of section 3(1), the officer may inform the Magistrate's Court that a

breach of the order may have occurred.

(2) On receipt of information under subsection (1) the Magistrate's Court may either issue a summons requiring the offender to appear before it on a date and at a time specified therein, or issue a warrant.

(3) Prior to the appearance of the offender before the Magistrate's Court, the relevant officer shall, if possible, inform the offender of the facts of the alleged breach of a requirement of section 3(1).

(4) If the offender admits that he is in breach of a requirement of section 3(1), the facts concerning the breach may be presented to the Magistrate's Court by the relevant officer who may also make written or oral representations concerning the disposal of the case.

(5) If the offender does not admit to a breach of any of the requirements of section 3(1), the Magistrate's Court shall hear evidence to determine whether any breach occurred .

(6) If -

(a) the offender admits that he has breached a requirement of section 3(1), or

(b) it is proved to the satisfaction of the Magistrate's Court that the offender has breached a requirement of section 3(1),

the court shall proceed in one of the ways described in section 6.

Breach - disposal by Magistrate's Court.

6. (1) If the order which is the subject of proceedings under section 5 was made by the Magistrate's Court, that court may -

(a) order that the order continue (with or without variation) without any fine,

(b) order that -

(i) the order continue (with or without variation),
and

(ii) the offender pay a fine not exceeding level 4 on the uniform scale,

(c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or

(d) revoke the order.

(2) If the order which is the subject of proceedings under section 5 was made by the Royal Court, the Magistrate's Court may -

(a) order that the order continue without any fine,

(b) order that -

(i) the order continue, and

(ii) the offender pay a fine not exceeding level 4 on the uniform scale, or

(c) order that the offender appear before the Royal Court on a date and at a time specified in the order.

(3) If the Magistrate's Court acts under subsection (1)(c), it may not sentence the offender to a period of imprisonment or youth detention unless -

(a) at the time the community service order was imposed the requirements of section 2(4) were met, or

(b) in the opinion of the court the offender has wilfully or persistently failed to comply with the requirements of section 3(1).

(4) If the Magistrate's Court hears evidence and decides that the offender has breached a requirement of section 3(1) and the court makes an order under subsection (2)(c), the court shall provide the Royal Court, the offender and the relevant officer with a note of the facts found by it.

(5) If the Magistrate's Court makes an order under subsection (2)(c), it shall remand the offender in custody or on bail.

Breach - disposal by Royal Court.

7. (1) When an offender appears before the Royal Court as a result of an order made under section 6(2)(c) the court may -

(a) order that the order continue (with or without

variation) without any fine,

- (b) order that -
 - (i) the order continue (with or without variation),
and
 - (ii) the offender pay a fine,
- (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
- (d) revoke the order.

(2) If the Royal Court acts under subsection (1)(c), it may not sentence the offender to a period of imprisonment or youth detention unless -

- (a) at the time the community service order was imposed the requirements of section 2(4) were met, or
- (b) in the opinion of the court the offender has wilfully or persistently failed to comply with the requirements of section 3(1).

Powers on further conviction by Magistrate's Court when existing Magistrate's Court order.

8. (1) When an offender in respect of whom a community service order made by the Magistrate's Court has not been satisfied, is convicted of a

further offence by that court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Magistrate's Court may -
 - (a) order that the order continue (with or without variation) without any fine,
 - (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine not exceeding level 4 on the uniform scale,
 - (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
 - (d) revoke the order.

Powers on further conviction by Magistrate's Court when existing Royal Court Order.

9. (1) When an offender in respect of whom a community service order made by the Royal Court has not been satisfied, is convicted of a further offence by the Magistrate's Court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Magistrates Court may -
 - (a) order that the order continue without any fine,
 - (b) order that -
 - (i) the order continue, and
 - (ii) the offender pay a fine not exceeding level 4 on the uniform scale, or
 - (c) order that the offender appear before the Royal Court on a date and at a time specified in the order.

(3) If the Magistrate's Court makes an order under subsection (2)(c) the court shall -

- (a) remand the offender in custody or on bail, and
- (b) order that the sentence for the further offence be determined by the Royal Court.

Disposal by Royal Court following order by Magistrate's Court under s. 9(2)(c) and (3)(b).

10. (1) When the offender appears before the Royal Court pursuant to an order made under section 9(2)(c), he may be dealt with as far as the order is concerned, in accordance with subsection (2).

(2) The Royal Court may -

- (a) order that the order continue (with or without variation) without any fine,
- (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine,
- (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
- (d) revoke the order.

(3) If an order is made under section 9(3)(b), the Royal Court may not impose a greater penalty for the further offence than the maximum that may have been imposed by the Magistrate's Court.

(4) The Royal Court shall also deal with any other sentences or other orders of the Magistrate's Court of which the offender is in breach as a result of the commission of the offence for which he is to be sentenced pursuant to an order under section 9(3)(b).

Powers on further conviction by Royal Court when existing Royal Court Order.

11. (1) When an offender in respect of whom a community service order made by the Royal Court has not been satisfied, is convicted of a further

offence by that court, he may be dealt with, as far as the order is concerned, in accordance with subsection (2).

- (2) The Royal Court may -
 - (a) order that the order continue (with or without variation) without any fine,
 - (b) order that -
 - (i) the order continue (with or without variation), and
 - (ii) the offender pay a fine,
 - (c) revoke the order and deal with the offence in respect of which the order was made, in any manner in which the offender could have been dealt with for that offence, or
 - (d) revoke the order.

Supplemental provisions

Supplemental provisions.

12. (1) The variations which may be made under section 6(1)(a), 6(1)(b)(i), 7(1)(a), 7(1)(b)(i), 8(2)(a), 8(2)(b)(i), 10(2)(a), 10(2)(b)(i), 11(2)(a) or 11(2)(b)(i) include, subject to section 1(3), an increase or decrease in the number of hours for which the offender is required to work by a maximum of 60.

(2) A fine imposed under section 6(1)(b)(ii), 6(2)(b)(ii), 7(1)(b)(ii), 8(2)(b)(ii), 9(2)(b)(ii), 10(2)(b)(ii) or 11(2)(b)(ii) shall be deemed for the purposes of any enactment to be a sum adjudged to be paid on a conviction.

(3) A community service order made by the Court of Appeal or by the Royal Court on any appeal shall have the same effect and be enforced as if it had been made by the court from which the appeal was made and any reference in this Law to the court which made the order shall be construed accordingly.

General

Designated person.

13. The Chief Probation Officer may designate such persons, in addition to probation officers, as he thinks fit to prepare reports, give explanations and act as relevant officers for the purposes of this Law.

Power to amend Law by Ordinance and provisions relating to Ordinances and regulations..

14. (1) The States may by Ordinance amend this Law.

(2) An Ordinance under subsection (1) may, for the avoidance of doubt -

(a) create new offences, and

(b) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law.

(3) An Ordinance or regulations made under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or regulations hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(4) Any power conferred by this Law to make an Ordinance or regulations may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised -
 - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
 - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(5) Any regulations made under this Law must be laid as soon as practicable before a meeting of the States; and if, at that or their next meeting, the States resolve to annul the regulations they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

15. (1) In this Law -

"the Bailiwick" means the Bailiwick of Guernsey,

"Chief Probation Officer" means the person employed in that capacity by the States Home Department,

"Court of Appeal" means the court established by the Court of Appeal (Guernsey) Law, 1961^b,

"designated person" means a person designated pursuant to section 13,

"Home Department" means the States Home Department,

"Magistrate's Court" means -

(a) in Alderney, the Court of Alderney,

(b) in Guernsey, the Magistrate's Court established by section 1 of the Magistrate's Court (Guernsey) Law,

^b Ordres en Conseil Vol. XVIII, p. 315.

1954^c, and

(c) in Sark, the Court of the Seneschal,

"offender" means a person in respect of whom a community service order is or may be made,

"probation officer" means a person employed in that capacity by the States Home Department,

"relevant officer" means, in relation to a community service order, the person so assigned pursuant to section 2(8),

"Royal Court" means the Royal Court of Guernsey,

"States" means the States of Guernsey,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^d, and

"youth detention" means a custodial sentence which is one of youth detention under the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990^e.

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

^d Ordres en Conseil Vol. XXXI, p.278

^e Ordres en Conseil Vol. XXXII, p. 106.

(2) The provisions of the Interpretation (Guernsey) Law, 1948^f apply to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, repealed and re-enacted (with or without modification) extended or applied.

Citation and commencement.

16. (1) This Law may be cited as the Criminal Justice (Community Service Orders) (Bailiwick of Guernsey) Law, 2006.

(2) This Law shall come into force on a day specified by regulations made by the Home Department.

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