

ORDER IN COUNCIL

VI
1990

ratifying a Projet de Loi

ENTITLED

The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990

(Registered on the Records of the Island of Guernsey
on the 10th April, 1990.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 10th day of April, 1990 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:— Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe and Lawrence Oscar Ozanne, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 14th day of February, 1990 approving and ratifying a *Projet de Loi* entitled “The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990”, 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, of which Order in Council the tenor followeth:—

At the Court of Saint James

The 14th day of February 1990

PRESENT,

The Counsellors of State in Council

WHEREAS Her Majesty, in pursuance of the Regency Acts 1937 to 1953, was pleased, by Letters Patent dated the 18th day of January 1990, to delegate to the six Counsellors of State therein named or any two or more of them full power and authority during the period of Her Majesty's absence from the United Kingdom to summon and hold on Her Majesty's behalf Her Privy Council and to signify thereat Her Majesty's approval for anything for which Her Majesty's approval in Council is required:

AND 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 18th day of January 1990 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 1989 the States of Deliberation at a meeting held on the 27th day of September 1989 approved a Bill or “Projet de Loi” entitled “The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990”, 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 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 Justice (Compensation) (Bailiwick of Guernsey) Law, 1990", 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."

NOW, THEREFORE, Her Majesty Queen Elizabeth, The Queen Mother and His Royal Highness The Prince Charles, Prince of Wales, being authorised thereto by the said Letters Patent, have taken the said Report into consideration and do hereby, by and with the advice of Her Majesty's Privy Council, on Her Majesty's behalf, approve of and ratify the said Projet de Loi, and order, and it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

AND do 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.

G. I. de Deney.

PROJET DE LOI

ENTITLED:

The Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990

THE STATES, in pursuance of their Resolution of the 29th day of March, 1989, 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.

1. (1) A court by which a person is convicted of an offence, in addition to dealing with him in any other way, may, on application or otherwise, make an order (a "compensation order") requiring him to pay compensation for any personal injury, loss or damage (including terror and distress directly occasioned by the commission of the offence) resulting from that offence or any offence which is taken into consideration by the court in determining sentence.

Power to
award com-
pensation.

(2) Compensation shall be of such amount as the court considers appropriate having regard to any evidence and to any representations made by or on behalf of the accused or the prosecution.

(3) In the case of an offence under the Theft (Bailiwick of Guernsey) Law, 1983(a), where the property in question is recovered, any damage to the property occurring whilst out of the owner's possession shall be treated for the purposes of subsection (1) above as having resulted from the offence, however and by whomsoever the damage was caused.

(a) No. 1 of 1983.

(4) No compensation order shall be made in respect of loss suffered by the dependants of a person in consequence of his death, and no such order shall be made in respect of any injury, loss or damage due to an accident arising out of the presence of a motor vehicle on a road, except such damage as is treated by subsection (3) above as resulting from an offence under the Theft (Bailiwick of Guernsey) Law, 1983.

(5) Where the court considers—

- (a) that it would be appropriate both to impose a fine and make a compensation order; but
- (b) that the offender has insufficient means to pay both an appropriate fine and appropriate compensation,

the court shall give preference to compensation (though it may impose a fine as well).

**Payment of
compensa-
tion orders.**

2. (1) 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 dates or at such intervals as the court may specify.

(2) 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.

(3) The compensation to be paid under a compensation order made by the Magistrate's Court in

respect of any offence, or offence taken into consideration, shall not exceed £2,000 or such other sum as the States of Guernsey may, from time to time, by Ordinance prescribe.

(4) Subject to the provisions 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.

(5) 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 decision of the court 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.

3. 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.

4. 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.

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

5. (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.

(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.

6. (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 commission of the offence 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 either—

- (a) the father, the mother or the guardian cannot be found; or
- (b) the father, the mother or the guardian satisfy the court that they have not conduced 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 and for the purposes of execution shall have effect as a judgment of a civil court for the like amount.

7. In this Law unless the context requires otherwise—

Interpretation.

“the Magistrate’s Court” means—

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

(b) 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.

Repeal. 8. Part II of the Criminal Damage (Bailiwick of Guernsey) Law, 1983(c) is repealed.

Transitional provisions. 9. This Law shall only have effect in relation to offences committed on or after the date of commencement, and for any offence committed before the date of commencement an offender dealt with after the date of commencement shall be sentenced as if this Law had not been passed.

Citation. 10. This Law may be cited as the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990.

Commencement. 11. This Law shall come into force on such day as the States may by Ordinance appoint.

D. R. DOREY,
Her Majesty's Deputy Greffier.