

PROJET DE LOI

ENTITLED

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

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. However, while it is believed to be accurate and up to date, it is not authoritative and has no legal effect, having been prepared in-house for the assistance of the Law Officers. 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.

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* Ordres en Conseil Vol. XXXII, p. 77; as amended by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 (No. VI of 2009); the Fraud (Bailiwick of Guernsey) Law, 2009 (No. XVI of 2009). See also the Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009).

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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.

Power to award compensation.

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.

(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 [or Fraud (Bailiwick of Guernsey) Law 2009], where the property in question is recovered, any damage to the property occurring whilst out

^a No. 1 of 1983.

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.

(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 [or Fraud (Bailiwick of Guernsey) Law 2009].

(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).

NOTES

In section 1, the words in square brackets in subsection (3) and subsection (4) were inserted by the Fraud (Bailiwick of Guernsey) Law, 2009, section 14, Schedule, paragraph 10, with effect from 1st October, 2009.

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 31 (shown, incorrectly, in the printed version of the 2008 Law as paragraph 30), with effect from 4th January, 2010, this Law is one of those specific enactments that the States may repeal, amend, extend, adapt, modify or disapply, and make

transitional and savings provisions in relation to, by Ordinance made under the said section 123.

Payment of compensation 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.

Appeals in the case of compensation orders.

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.

Review 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.

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.

[Child offenders.]

6. (1) Subject to subsection (2), where a court makes a compensation order against a child offender, it –

- (a) shall, if he has not attained the age of 14 years, and
- (b) may, in any other case,

order that the amount due shall be paid by his parent or any other person with parental responsibility for him ("**other person**").

(2) The court shall not make an order under subsection (1) if either –

- (a) his parent or other person cannot be found, or
- (b) his parent or other person satisfies the court that he has not contributed to the commission of the offence in respect of which the compensation order is made by neglecting to exercise appropriate care, protection, guidance and control in respect of the offender.

(3) A parent or other person 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 was a sentence passed upon his conviction.

(4) Any amount which is ordered to be paid by a parent or other person under this section –

- (a) shall be recoverable as a civil debt from the parent or other person, and
- (b) shall not be recoverable as a civil debt from the child offender,

and for the purposes of execution shall have effect as a judgment of a civil court for such amount.

- (5) In this section –
- (a) "**child offender**" means a person under the age of 18 years who has been convicted of an offence, and
 - (b) "**parental responsibility**" has the meaning given in section 5 of the Children (Guernsey and Alderney) Law, 2008.]

NOTE

Section 6 was substituted by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008, section 23(1), Schedule 2, Part I, paragraph 1, with effect from 4th January, 2010, subject to the transitional provisions in section 23(3) of, and Part III of Schedule 2 to, the 2008 Law.

Interpretation.

7. In this Law unless the context requires otherwise –

"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) in relation to the Island of Guernsey, the Magistrate's

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

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.

NOTE

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.

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.

^c Ordres en Conseil No. XI of 1983.

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.

NOTE

The Law was brought into force on 1st January, 1991 by the Criminal Justice (Compensation) (Bailiwick of Guernsey) Law, 1990 (Commencement) Ordinance, 1990, section 1.
