

ORDER IN COUNCIL

IX
2008

ratifying a Projet de Loi

ENTITLED

The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007

(Registered on the Records of the Island of Guernsey
on the 19th May, 2008.)



2008

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

19th day of May, 2008 before John Russell Finch, Esquire, Lieutenant Bailiff; present:- Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson and Keith Bichard, O.B.E., Esquires, The Reverend Peter Gerald Lane, Michael Henry De La Mare and Michael John Tanguy, Esquires, Susan Mowbray, and David Osmond Le Conte, Esquire, Jurats.

The Lieutenant Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 7th May 2008 approving and ratifying a Projet de Loi entitled The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007, 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 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 7th DAY OF MAY 2008

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 May 2007, the States of Deliberation at a meeting on 27th June 2007 approved a *Projet de Loi* entitled *The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law 2007* 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 (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law 2007*, 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 (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007

THE STATES, in pursuance of their Resolution of the 30th May, 2007^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.

Amendment to Law of 2001.

1. The Criminal Justice (International Co-operation) (Bailiwick of Guernsey) Law, 2001^b ("**the Law**") is amended as follows.

2. In section 4(4) of the Law for "The Schedule" substitute "Schedule 1".

3. After section 4 of the Law insert the following sections -

"Hearing witnesses in the Bailiwick through television links.

4A. (1) This section applies where Her Majesty's Procureur receives a request, from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence through a live television link in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

^a Article XVIII of Billet d'État No. XIV of 2007.

^b Order in Council No. VII of 2001.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in subsection (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question through a live television link.

(5) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(6) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(7) Part 1 of Schedule 2 (evidence given by television link) has effect.

(8) Subject to subsections (5) and (6) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick.

Hearing witnesses in the Bailiwick by telephone.

4B. (1) This section applies where Her Majesty's Procureur receives a request from an authority mentioned in subsection (3) ("**the external authority**") for a person in the Bailiwick to give evidence by telephone in criminal proceedings before a court or tribunal in a country or territory outside the Bailiwick.

(2) "**Criminal proceedings**" include any proceedings on an appeal before a court or tribunal against a decision in administrative proceedings.

(3) The authority referred to in section (1) is the authority in that country or territory which appears to Her Majesty's Procureur to have the function of making requests of the kind to which this section applies.

(4) A request from the external authority under subsection (1) must -

- (a) specify the court or tribunal in the requesting country or territory,
- (b) give the name and address of the witness,
- (c) state that the witness is willing to give evidence by telephone in the proceedings before that court or tribunal.

(5) Her Majesty's Procureur shall, unless he considers it inappropriate to do so, by notice specify the appropriate court where the witness may be heard in the proceedings in question by telephone.

(6) Anything done by the witness in the presence of the appropriate court which, if it were done in proceedings before the appropriate court, would constitute contempt of court is to be treated for that purpose as done in proceedings before the appropriate court.

(7) A statement made on oath by a witness giving evidence in pursuance of this section is to be treated for the purposes of the offence of perjury as made in proceedings before the appropriate court.

(8) Part 2 of Schedule 2 (evidence given by telephone) has effect.

(9) Subject to subsections (6) and (7) and the provisions of Schedule 2, evidence given pursuant to this section is not to be treated for any purpose as evidence given in proceedings in the Bailiwick."

4. In section 9(2) of the Law for "the Schedule" substitute "either schedule".

5. After section 9 of the Law insert the following sections -

"Power to amend Law by Ordinance.

9A. (1) The States may by Ordinance amend this Law.

(2) The provisions of subsection (1) are without prejudice to any other provision of this Law conferring power to enact Ordinances or rules (and vice versa).

General provisions as to subordinate legislation.

9B. (1) An Ordinance or rule under this Law -

- (a) may be amended or repealed by a subsequent Ordinance or rule, as the case may be, hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient including, without limitation, in the case of an Ordinance, provisions repealing, amending or modifying any enactment (whether passed before or after the commencement of this Law).

(2) Any power conferred by this Law to make an Ordinance or rule 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."

6. (1) The Schedule to the Law is numbered as Schedule 1.

(2) After Schedule 1 (as so numbered) insert the following

Schedule -

"SCHEDULE 2

Sections 4A and 4B

EVIDENCE GIVEN BY TELEVISION LINK OR TELEPHONE

PART I

EVIDENCE GIVEN BY TELEVISION LINK

Securing attendance of witness

1. The appropriate court has the like powers for securing the attendance of the witness to give evidence through the link as it has for the purpose of proceedings before the appropriate court.

Conduct of hearing

2. The witness is to give evidence in the presence of the appropriate court.

3. The appropriate court is to establish the identity of the witness.

4. The appropriate court is to intervene where it considers it necessary to do so to safeguard the rights of the witness.

5. The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

6. The evidence is to be given in accordance with -

(a) the laws of the country or territory, and

(b) any measures for the protection of the witness agreed between Her Majesty's Procureur and the authority in that country or territory which appears to him to have the function of entering into agreements of that kind.

7. Rules of court under section 9 may make provision for the use of interpreters.

Privilege of witness

8. (1) The witness cannot be compelled to give any evidence which he could not be compelled to give in criminal proceedings before the appropriate court.

(2) The witness cannot be compelled to give any evidence if his doing so would be prejudicial to the security of the Bailiwick.

(3) A certificate signed by or on behalf of Her Majesty's Procureur to the effect that it would be prejudicial for that person to do so is conclusive evidence of that fact.

(4) The witness cannot be compelled to give any evidence in his capacity as an officer or servant of the Crown.

(5) Subparagraphs (2) and (4) are without prejudice to the generality of subparagraph (1).

Record of hearing

9. Rules of court under section 9 may make provision -

(a) for the drawing up of a record of the hearing,

(b) for sending the record to Her Majesty's Procureur for transmission to the external authority.

PART II

EVIDENCE GIVEN BY TELEPHONE

Notification of witnesses

10. The appropriate court must notify the witness of the time when and the place at which he is to give evidence by telephone.

Conduct of hearing

11. The appropriate court must be satisfied that the witness is willingly giving evidence by telephone.

12. The witness is to give evidence in the presence of the appropriate court.

13. The appropriate court is to establish the identity of the witness.

14. The evidence is to be given under the supervision of the court or tribunal of the country or territory concerned.

15. The evidence is to be given in accordance with the laws of that country or territory.

16. Rules of court under section 9 may make provision for the use of interpreters."

Citation.

7. This Law may be cited as the Criminal Justice (International Co-operation) (Bailiwick of Guernsey) (Amendment) Law, 2007.