

PROJET DE LOI

ENTITLED

The Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972 *

[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. XXIII, p. 344. See also the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002 (No. 1 of 2003, Ordres en Conseil Vol. XLIII(1), p. 3); the Government of Alderney Law, 2004 (No. III of 2005).

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ARRANGEMENT OF SECTIONS

1. Suspended sentences of imprisonment.
2. Power of Court on conviction of further offence to deal with suspended sentence.
3. Discovery of subsequent offences.
4. Rights of Appeal.
5. Interpretation.
6. Citation.

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THE STATES, in pursuance of their Resolution of the fifteenth day of December, nineteen hundred and seventy-one, 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.

Suspended sentences of imprisonment.

1. (1) Any Court which passes a sentence of imprisonment for a term not exceeding two years for an offence may, at the time of passing such sentence, order that the sentence shall not take effect unless, during the period of three years from the date of the order or such lesser period as may be specified in the order, the offender commits another offence punishable with imprisonment and thereafter the Court by which the offender is convicted of that subsequent offence orders, under the provisions of the next succeeding section, that the original sentence shall take effect.

(2) The Court shall, on passing a suspended sentence, explain to the offender in ordinary language his liability if during the period of suspension he commits an offence punishable with imprisonment.

(3) Where a Court has passed a suspended sentence on any person and that person is subsequently sentenced to borstal training or is made subject to a special care order, he shall cease to be liable to be dealt with in respect of the suspended sentence unless the subsequent sentence or any conviction or finding on which it was passed is quashed on appeal.

NOTES

The following cases have referred to this Law:

Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);

Law Officers of the Crown v. Heywood (1987) (Unreported, Court of Appeal, 5th January) (Court of Appeal Judgments, 1964-89, p. 366);

Law Officers of the Crown v. McDonald (1995) 20.GLJ.89;

Bourgaize v. Law Officers of the Crown (2014) (Unreported, Royal Court, 10th December) Guernsey Judgment 49/2014);

Law Officers of the Crown v A. M. Saunders [2023]GRC010 (Unreported, Royal Court, 27th March).

In accordance with the provisions of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 19, the reference in this section to a sentence of borstal training within the meaning of the Criminal Justice (Borstal Training) (Guernsey) Law, 1963 shall be construed as a reference to a sentence of youth detention within the meaning of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

Power of Court on conviction of further offence to deal with suspended sentence.

2. (1) Where an offender is convicted of an offence punishable with imprisonment committed during the period of suspension of a suspended sentence, then, unless the sentence has already taken effect, the Court which so convicts the offender shall consider his case and deal with him by one of the following methods –

- (a) the Court may order that the suspended sentence shall take effect with the original term unaltered, or
- (b) the Court may order that the suspended sentence shall take effect with the substitution of a lesser term for the original term, or
- (c) the Court may by order vary the original order made under subsection (1) of section one of this Law by

substituting for any period of suspension specified therein any other period expiring not later than three years from the date of the original order, or

- (d) the Court may make no order with respect to the suspended sentence,

and a Court shall make an order under the provisions of paragraph (a) of this subsection unless the Court is of opinion that it would be unjust to do so in view of all the circumstances which have arisen since the suspended sentence was passed, including the facts of the subsequent offence:

Provided that if the suspended sentence was passed by the Court of Appeal or the Royal Court and the Court which convicts the offender of the subsequent offence is a Court other than the Court of Appeal or the Royal Court, the Court shall not consider his case in relation to the suspended sentence but after passing sentence in respect of the subsequent offence shall commit the offender to the Royal Court to be dealt with in respect of the suspended sentence and the Royal Court shall deal with the offender under the provisions of this section in respect of the suspended sentence.

(2) Where a Court orders that a suspended sentence shall take effect, with or without any variation of the original term, the Court may order that such sentence shall take effect immediately or that the term thereof shall commence so as to run consecutively to or concurrently with any term of imprisonment passed on the offender in respect of the subsequent offence of which he has been convicted and if the offender has been in custody awaiting trial for that subsequent offence the Court may order that the suspended sentence or any term of imprisonment passed in respect of that subsequent offence shall commence from the date the offender was taken into custody.

(3) Where a Court deals with an offender under the provisions of

this section in respect of a suspended sentence the Clerk of the Court shall notify the Clerk of the Court which passed the sentence of the method adopted.

(4) Where on consideration of the case of an offender a Court makes no order with respect to a suspended sentence, the Clerk of the Court shall record that fact.

NOTE

The following cases have referred to section 2:

Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);

Law Officers of the Crown v. Heywood (1987) (Unreported, Court of Appeal, 5th January) (Court of Appeal Judgments, 1964-89, p. 366);

Law Officers of the Crown v A. M. Saunders [2023]GRC010 (Unreported, Royal Court, 27th March).

Discovery of subsequent offences.

3. If the Royal Court sitting as an Ordinary Court is satisfied that an offender has been convicted of an offence punishable with imprisonment committed during the period of suspension of a suspended sentence and that he has not been dealt with in respect of the suspended sentence, the Court may order that he be apprehended or be warned to appear before the Court and the Court shall consider his case and shall have in relation thereto all the powers vested in the Court which convicted the offender of the subsequent offence under the provisions of section two of this Law:

Provided that if the suspended sentence was passed by the Court of Appeal or the Royal Court sitting as a Full Court the powers under section two of this Law shall be exercised by the Royal Court.

Rights of Appeal.

4. For the purposes of any enactment conferring rights of appeal any order made by a Court under the provisions of subsection (1) of section one or subsection (1) of section two of this Law shall be treated as a sentence passed on the offender by that Court for the offence for which the suspended sentence was passed.

Interpretation.

5. (1) In this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say –

"the Clerk of the Court" means –

- (a) in relation to a Court in the Island of Guernsey, Her Majesty's Greffier,
- (b) in relation to the Court of Alderney, the Clerk of the Court of Alderney,
- (c) in relation to the Court of the Seneschal, the Greffier of Sark,

"Royal Court" means the Royal Court sitting as a Full Court except in the case where a suspended sentence has been passed by the Royal Court sitting as an Ordinary Court in which case it shall mean the Royal Court sitting as an Ordinary Court,

"suspended sentence" means a sentence to which an order under subsection (1) of section one of this Law relates and **"the period of suspension"**, in relation thereto, means the period of three years from the date of the order or such lesser period as may be specified in the order.

(2) Any reference in this Law to any enactment shall, except where the context otherwise requires, be construed as including a reference to that enactment as amended, repealed or replaced, extended or applied by or under any other enactment including this Law.

NOTE

In accordance with the provisions of the Government of Alderney Law, 2004, section 20(1), with effect from 1st May, 2005, the person appointed to the office of Greffier is to act as the Clerk of the Court of Alderney and in accordance with the provisions of section 25(1)(e), with effect from that same date, the functions of the Greffier include the functions assigned by law to the Clerk of the Court.

Citation.

6. This Law may be cited as the Criminal Justice (Power to Suspend Sentence) (Bailiwick of Guernsey) Law, 1972.

NOTE

The Law received Royal Sanction on 24th May, 1972 and was registered on the Records of the Island of Guernsey and came into force on 27th June, 1972.
