

ORDER IN COUNCIL

XXVI

1990

ratifying a Projet de Loi

ENTITLED

The Income Tax (Amendment) (Guernsey) Law, 1990

(Registered on the Records of the Island of Guernsey
on the 11th December, 1990.)



1990

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of December, 1990 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Harry Wilson Bisson, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, 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 11th day of December, 1990, approving and ratifying a *Projet de Loi* entitled "The Income Tax (Amendment) (Guernsey) Law, 1990", 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 Clerk of the Court of Alderney for registration on the records of that Island of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 20th day of November 1990

PRESENT,

The Queen's Most Excellent Majesty in Council

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 14th day of November 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 Resolutions of the 8th day of November, 1989, the 13th day of December, 1989, the 31st day of January, 1990, and the 26th day of July 1990, the States of Deliberation at a meeting held on the siad 6th day of July, 1990, approved a Bill or “Projet de Loi” entitled “The Income Tax (Amendment) (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 as 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 Income Tax (Amendment) (Guernsey) Law, 1990”, and to order that the same shall have force of law in the Island 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

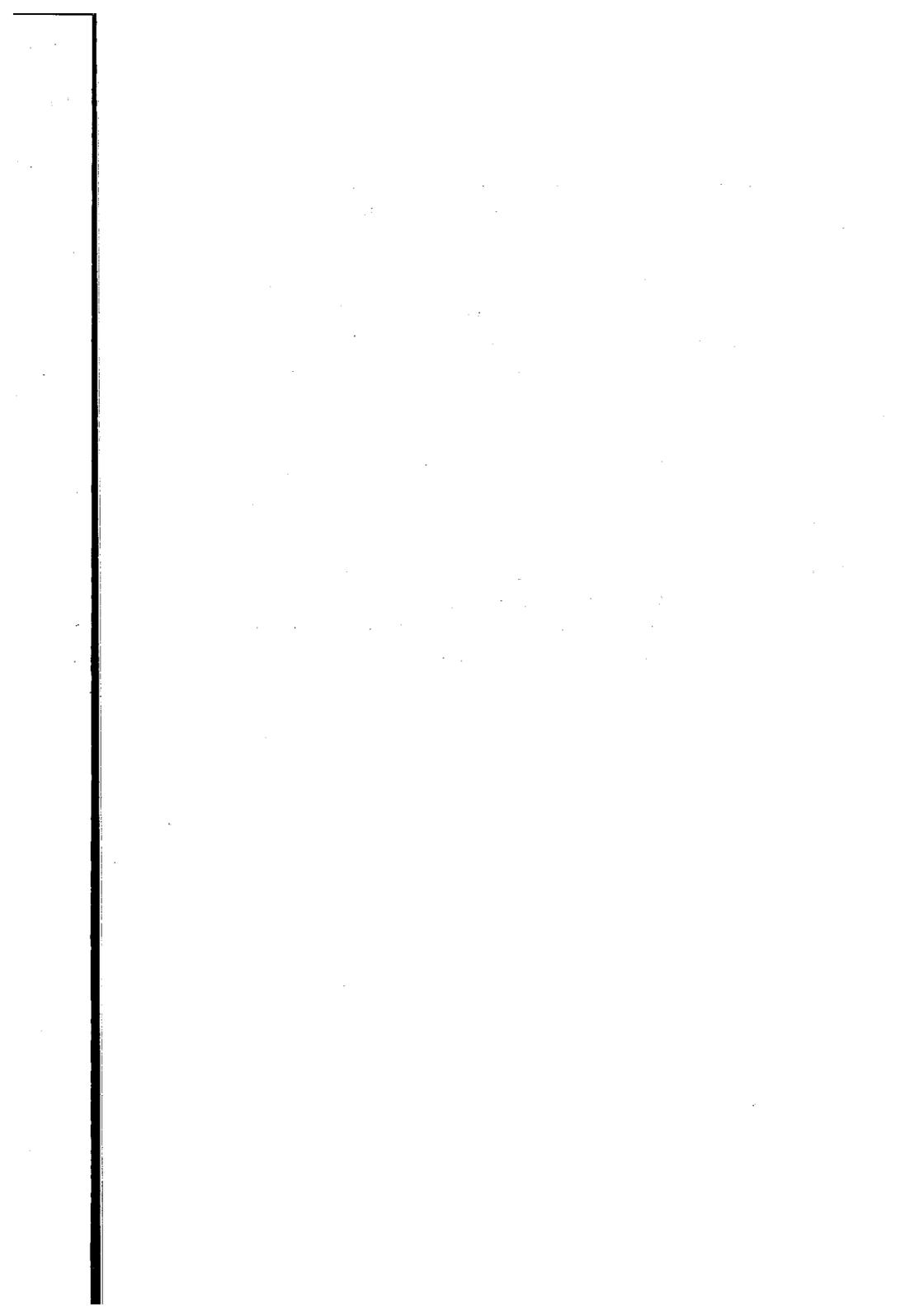
it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth 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 Income Tax (Amendment) (Guernsey) Law, 1990

THE STATES, in pursuance of their Resolutions of the 8th November 1989(a), 13th December 1989(b), 31st January 1990 (c), and 26th July 1990(d), have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

1. (1) In Part VII of the principal Law—

The
Guernsey
Tax Tribunal.

- (a) except in the proviso to section 78(2), for “the Authority”, wherever appearing, substitute “the appropriate body”;
- (b) immediately after section 80 insert:

“Interpretation. 80A. In this Part of this Law
“the appropriate body”—

- (a) where the appeal relates to an assessment, penalty, direction or order made or imposed in relation to a year of charge for which the

(a) on Articles IX and X of Billet d'Etat No. XX of 1989.
 (b) on Article I of Billet d'Etat No. XXVI of 1989.
 (c) on Article XIV of Billet d'Etat No. II of 1990.
 (d) on Article V of Billet d'Etat No. XV of 1990.

appellant has not delivered a return as to his income in accordance with section 68 of this Law, means the Authority; and

(b) in any other case, means the Guernsey Tax Tribunal established by the Third Schedule to this Law.”.

(2) In sections 44(2)(b), 63(6), 81A(11), 130(1), 130(2), 155(5), 157(A)(7) and 179(7) of the principal Law the words “to the Authority”, wherever appearing, are repealed.

(3) In sections 82(1), 198 and 200 of the principal Law, immediately after “the Authority”, wherever appearing, insert “or the Guernsey Tax Tribunal”.

(4) Immediately after the Second Schedule to the principal Law insert the Schedule set out in Schedule 1 to this Law.

(5) In the Dwellings Profits Tax (Guernsey) Law, 1975(e)—

(a) in section 15(1) for “the Authority”, wherever appearing, substitute “the Guernsey Tax Tribunal”;

(b) in section 28(1), immediately after the definition of “flat” insert:

(e) Ordres en Conseil Vol. XXV, p. 91.

““the Guernsey Tax Tribunal” means the Tribunal established by the Third Schedule to the Income Tax (Guernsey) Law, 1975;”.

(6) A reference in any enactment to “the Guernsey Tax Tribunal” is to the Tribunal established by the Third Schedule to the principal Law.

(7) Schedule 2 to this Law contains transitional provisions which shall have effect.

2. (1) In section 81A of the principal Law—
- Amendments
to E.T.I.
provisions.
- (a) in subsection (2) for “nineteen hundred and eighty” substitute “1991”;
- (b) in paragraph (c) of subsection (2):
- (i) insert at the beginning “subject to subsection (2A) of this section,”; and
- (ii) omit “personally performed by that individual”;
- (c) immediately after subsection (2) insert:
- “(2A) Subsection (2) of this section does not apply to a payment made in the circumstances described in paragraph (c) of that subsection if:
- (a) the payment is in whole or in part in respect of manual labour performed by somebody other than the individual to whom it is made (“the payee”), and
- (b) the payee has produced to the person making the payment (“the payer”) a currently valid E.T.I. exemption certificate in the payee’s name, and

- (c) the payer complies with any regulations made under subsection (4) of this section as to the keeping of records and making of returns to the Administrator.”;
- (d) at the end of the words in subsection (3) insert “; and in this subsection “the person who has borne the deduction” means, where the relevant payment is made in whole or in part in respect of manual labour performed by somebody other than the payee, the person who performed the manual labour”;
- (e) immediately after subsection (4) insert:

“(4A) For the avoidance of doubt, regulations under subsection (4) of this section may, in relation to an E.T.I. exemption certificate, empower the Administrator, if he considers that to do so would be in the interests of efficient tax collection,

- (a) to require an applicant to provide additional information;
- (b) to refuse to issue a certificate;
- (c) to attach conditions to the issue or continued validity of a certificate (including conditions requiring tax deducted to be paid to him at more frequent intervals than those for the time being generally prescribed by such regulations);
- (d) to reduce or extend a certificate’s period of validity;

- (e) to cancel a certificate and publish a notice to that effect in *La Gazette Officielle*.”;
- (f) in subsection (6), immediately after “prescribed by” insert “or under”;
- (g) in subsection (11)—
- (i) immediately after “(hereinafter called a “coding notice”)” insert “, or where an individual objects to a decision of the Administrator to refuse, cancel, attach a condition to, or reduce the period of validity of, an E.T.I. exemption certificate,”; and
 - (ii) immediately after “the coding notice” insert “, or the Administrator’s decision, as the case may be,”;
- (h) at the end of the words in subsection (12) insert:
- “(d) an “E.T.I. exemption certificate” means a certificate issued by the Administrator in accordance with regulations made under subsection (4) of this section, and is “currently valid” until the earlier of—
- (i) the expiry date shown on it, or
 - (ii) publication in *La Gazette Officielle* of notice of its cancellation”.

(2) In section 193A of the principal Law—

- (a) in subsection (1), immediately after “any form” insert “, schedule or list”;
- (b) in subsection (2), immediately after “such regulations” insert “requiring him to keep any record or”;
- (c) in subsection (3), immediately after “shall be liable” insert “, without prejudice to his liability to prosecution under section 201A of this Law,”.

(3) Immediately after section 201 of the principal Law insert:

“E.T.I.
offences.

201A. (1) A person who, having deducted tax from a payment in accordance with section 81A of this Law, fails to pay that tax to the Administrator within the time provided by or under regulations made under subsection (4) of that section, is guilty of an offence and liable on conviction to—

- (a) imprisonment for a term not exceeding two years, or
- (b) a fine not exceeding ten times level 5 on the uniform scale, or
- (c) both.

(2) A person who wilfully fails to deduct the tax which he is required, by section 81A of this Law, to deduct from any payment is guilty of an offence and liable, on conviction, to—

- (a) imprisonment for a term not exceeding 12 months; or
- (b) a fine not exceeding level 5 on the uniform scale; or
- (c) both.

(3) A person who—

- (a) uses or attempts to use an E.T.I. exemption certificate which is not currently valid; or
- (b) fails to surrender an E.T.I. exemption certificate when required to do so by the Administrator; or
- (c) permits another person to possess an E.T.I. exemption certificate for that other person's unauthorised use,

is guilty of an offence and liable on conviction to

- (i) imprisonment for a term not exceeding six months, or
- (ii) a fine not exceeding level 4 on the uniform scale, or
- (iii) both.”.

3. (1) Each of the provisions of the principal Law ^{Penalties.} referred to in column 1 of Schedule 3 to this Law is amended as set out in column 2 of that Schedule opposite the reference to it.

(2) In section 201 of the principal Law—

- (a) for “shall be liable, in lieu of having proceedings taken against him by the Administrator under the last preceding section, to be prosecuted” substitute “may, in lieu of having proceedings taken against him by the Administrator under the last preceding section, be prosecuted”;
- (b) the proviso is repealed.

Widows’
Allowances.

4. In section 27(2) of the principal Law, immediately after paragraph (l) insert:

“(m) any widow’s allowance payable on or after 1st January 1990.”.

5. In this Law—

- (a) “the principal Law” means the Income Tax (Guernsey) Law, 1975(f); and
- (b) a reference to any enactment is to that enactment as amended, repealed and replaced, extended or applied, by or under any other enactment including this Law.

Interpreta-
tion.

Citation.

6. This Law may be cited as the Income Tax (Amendment) (Guernsey) Law, 1990.

Collective
title.

7. This Law and the Income Tax (Guernsey) Laws, 1975 to 1989 may be cited together as the Income Tax (Guernsey) Laws, 1975 to 1990.

Commence-
ment.

8. This Law shall come into force as follows:

- (a) paragraphs (e), (f), (g) and (h) of section 2(1), section 2(3), section 3 (including Schedule 3) and sections 4, 5, 6 and 7, on the day after the registration of this Law on the records of the Island of Guernsey;

(f) Ordres en Conseil Vol. XXV, p. 124; Vol. XXVI, pp. 146, 200 and 292; Vol. XXVII, pp. 84, 118, 200, 333 and 565; Vol. XXVIII, pp. 184, 278, 353 and 409; No. XIII of 1986; Nos. XIV and XXIII of 1989.

- (b) paragraphs (a), (b), (c) and (d) of section 2(1), and section 2(2), on 1st January 1991;
- (c) section 1 (including Schedules 1 and 2) on such day as the States of Guernsey may appoint by Ordinance; and different days may be so appointed for different provisions and for different purposes.

Schedule 1 Section 1(4)

The Guernsey Tax Tribunal

“ THIRD SCHEDULE Section 80A(b)

THE GUERNSEY TAX TRIBUNAL

Establishment and functions of the Tribunal

1. (1) There is established by, and in accordance with the provisions of, this Schedule a body to be known as the Guernsey Tax Tribunal.

(2) The Tribunal's functions consist of—

- (a) hearing and determining appeals, and,
- (b) stating and signing cases for submission to the Ordinary Court,

in relation to any matter which may be referred to it under, and in accordance with the provisions of, any enactment.

Membership of the Tribunal

2. (1) The Tribunal is to comprise—

- (a) a President, and
- (b) A Vice-President, and

(c) not more than seven other members,
appointed from time to time by the Full Court.

(2) A member of the Tribunal shall hold office until whichever is the earlier of—

- (a) the date specified in that behalf in the Act of Court appointing him, or
- (b) his 72nd birthday, or, if the Full Court so determines by reason of special circumstances in any particular case, his 75th birthday, or
- (c) his death, or
- (d) his resignation in accordance with subparagraph (3) of this paragraph, or
- (e) his removal in accordance with subparagraph (4) of this paragraph.

(3) A member of the Tribunal may resign his office by giving not less than one month's written notice—

- (a) in the case of the President, to the Bailiff, or
- (b) in the case of any other member, to the Tribunal's President.

(4) The Full Court may, at the instance of Her Majesty's Procureur, remove a Tribunal member from office if it appears to the Court that he—

- (a) has misbehaved in his office as such, or
- (b) is incapable of continuing as a member by reason of physical or mental illness, or

- (c) has been declared insolvent, or
- (d) has been unavailable without reasonable cause to sit as a member of the Tribunal for a period in excess of six consecutive months.

(5) When a person ceases to be a member of the Tribunal—

- (a) a member to replace him shall be appointed by the Full Court, but
- (b) the vacancy does not affect the validity of anything done by the Tribunal, and
- (c) any appeal which has been commenced but not completed may be continued, even if the former member was sitting on the hearing of the appeal, notwithstanding paragraph 5(2)(a) of this Schedule.

Clerk, support services and expenses

3. (1) The States Advisory and Finance Committee shall appoint a person who appears to the Committee, after consultation with the Tribunal's President, to have appropriate qualifications and experience to be the clerk to the Tribunal.

(2) The clerk shall—

- (a) be responsible for the Tribunal's administration, and
- (b) advise the Tribunal when so requested on questions of law.

(3) The appointment of the clerk shall be on such terms (as to his remuneration and otherwise) as the States Advisory and Finance Committee may from time to time determine, but he shall not be removed from office without the consent of the Tribunal's President.

(4) The States Advisory and Finance Committee shall provide for the Tribunal such accommodation and such secretarial, clerical and recording services as are reasonably necessary to enable it to discharge its functions.

(5) A member of the Tribunal shall be entitled to be paid an allowance in respect of his expenses in attending for the hearing of an appeal or for any meeting of the Tribunal, of such amount as the States Advisory and Finance Committee may from time to time resolve, but shall not be paid any remuneration for his services as such a member.

(6) The cost of meeting the requirements of this paragraph shall be paid by the States Advisory and Finance Committee from the general revenue account of the States.

Oaths of secrecy

4. (1) Every person who is appointed as a member of the tribunal or as its clerk shall, before discharging any function as such, take an oath or make an affirmation before the Ordinary Court, in the form prescribed from time to time by Ordinance of the States and appropriate to his office.

(2) Section 206(3) of this Law applies to a person violating such an oath.

Appeal hearings

5. (1) On receiving notice of an appeal in relation to any matter which may be referred to the Tribunal under any enactment, the Administrator shall forward the

notice to the Tribunal, whose President or Vice-President shall convene sufficient members to constitute a quorum.

(2) At the hearing of an appeal—

- (a) any three members constitute a quorum;
- (b) the President or the Vice-President shall preside;
- (c) a member shall not sit if he has any direct or indirect pecuniary interest in the appeal;
- (d) every member, party, representative and witness has the same protections, immunities and duties as he would have if sitting or appearing in proceedings before the Ordinary Court;
- (e) the proceedings shall be conducted:
 - (i) in accordance with natural justice;
 - (ii) with as little formality, and with as much expedition, as a proper consideration of the matters before the Tribunal will permit;
- (f) every question shall be determined by the opinion of the majority of the members sitting but if they are equally divided the opinion of the person presiding shall prevail;
- (g) subject to this Schedule and the provisions of any other enactment, the Tribunal's procedure is within its discretion.

(3) Proceedings before the Tribunal are not to be held bad for want of form or void by reason of any informality.

(4) The President or Vice-President may, by means of a certificate signed by him, correct any error arising from an accidental slip or omission in a decision of the Tribunal.

Interpretation

6. In this Schedule

“the clerk” means the clerk to the Tribunal appointed in accordance with paragraph 3(1) of this Schedule;

“the Full Court” means the Royal Court sitting as a Full Court;

“member” means a member, including the President and the Vice-President, of the Tribunal;

“the Ordinary Court” means the Royal Court sitting as an Ordinary Court;

“the Tribunal” means the Guernsey Tax Tribunal established by this Schedule. ”

Schedule 2

Section 1(7)

Transitional provisions relating to appeals

1. This Schedule applies in any case in which, on the day on which section 1(1) of this Law comes into force, an appeal has been instituted but not completed.
2. If no appeal hearing has taken place, then the appeal shall be heard and determined by the appropriate body in accordance with Part VII of, and the Third Schedule to, the principal Law, as if the notice of appeal had been received by the Administrator on the day on which a section 1(1) of this Law comes into force.

3. If an appeal hearing has commenced and stands adjourned, then the appeal hearing shall be continued before, and the appeal shall be determined by, the appropriate body in accordance with Part VII of, and the Third Schedule to, the principal Law.
4. Where a pending appeal is continued before the Guernsey Tax tribunal pursuant to paragraph 3 of this Schedule that Tribunal—
 - (a) may, with the consent of the appellant and the Administrator, receive the record of the proceedings which have been conducted on the appeal before the Authority as part of the evidence in the appeal before the Tribunal; but in any other case
 - (b) shall hear the appeal de novo.
5. If the appeal hearing has concluded but the Authority has not announced its determination, then the Authority shall act in accordance with sections 79 and 80 of the principal Law as if section 1 of this Law had not been passed.

Schedule 3
New maximum penalties

Section 3(1)

(1) Provision of Income Tax Law	(2) Extent of amendment
section 189	For "fifty pounds" substitute "£300".
section 190	For "fifty pounds" substitute "£300"; for "ten pounds" substitute "£50"; for "five pounds" substitute "£50".
section 191	Omit "the aggregate of a sum of twenty pounds and".
section 192	Omit "the aggregate of the sum of twenty pounds and".
section 193(1)	For "fifty pounds" substitute "£300". for "ten pounds" substitute "£50".
section 193(2)	For "one hundred pounds" substitute "£1,000"; for "five hundred pounds" substitute "£5,000".
section 193A(1)	For "fifty pounds" substitute "£300"; for "ten pounds" substitute "£50".
section 193A(2)	For "fifty pounds" substitute "£300"; for "ten pounds" substitute "£50".
section 195(1)	Omit "the aggregate of twenty pounds and" in both places where those words appear.
section 195(2)	For "one hundred pounds" substitute "£1,000"; for "five hundred pounds" substitute "£5,000".
section 197	For "five hundred pounds" substitute "£5,000".
section 198	For "twenty pounds" substitute "£300".

K. H. TOUGH,
Her Majesty's Greffier.