

PROJET DE LOI

ENTITLED

The Obscene Publications (Bailiwick of Guernsey) Law, 1985 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. 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. XXIX, p. 98; as amended by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); the Obscene Publications (Amendment) (Bailiwick of Guernsey) Law, 1989 (No. XV of 1989); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the Police Force (Bailiwick of Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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ARRANGEMENT OF SECTIONS

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3. Interpretation.
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THE STATES, in pursuance of their Resolution of the 25th day of April, 1984, 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.

Prohibition on obscene matter.

1. (1) It is an offence for a person to –
 - (a) make, or have in his possession, import, circulate, export or cause any other person to import, circulate or export, any obscene publication for trade or business or for distribution or for public display or for circulation in any manner whatsoever,
 - (b) deal, even though such dealing be not with the public at large, with obscene publications, or do any act whatsoever relating to such publications, distribute them, display them in public or offer them for letting on hire,
 - (c) with intent to further the circulation or distribution of obscene publications, publicise or make known by any means whatsoever that a person is engaged in any of

the aforesaid acts, publicise or make known, directly or indirectly, in what way and from whom obscene publications may be obtained.

(2) A person found guilty of an offence under the provisions of subsection (1) of this section shall be liable –

- (a) on summary conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding [level 4 on the uniform scale],
- (b) on conviction on indictment to imprisonment for a term not exceeding three years, or to a fine, or to both.

[(3) It shall be a defence to any prosecution under this law for the defendant to establish –

- (a) that he was licensed to supply video works in accordance with the Video Licensing (Guernsey) Law, 1985^{*}, or any Ordinance made thereunder, and
- (b) that the article alleged to be obscene was a video work which he had been authorised to supply under a licence granted by the States [Committee for Home Affairs].]

NOTES

In section 1,

the words and figure in square brackets in paragraph (a) of

* Ordres en Conseil No. XIII of 1985.

subsection (2) were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989;

subsection (3) was inserted by the Obscene Publications (Amendment) (Bailiwick of Guernsey) Law, 1989, section 1, with effect from 18th July, 1989;

the words in square brackets in paragraph (b) of subsection (3) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 6(a), with effect from 1st May, 2016.¹

The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

The following case has referred to this Law:

Law Officers of the Crown v. Town and Sanderson (1987) 5.GLJ.20.

The Video Licensing (Guernsey) Law, 1985 has since been repealed by the Video Recordings (Guernsey) Law, 2000, section 16, with effect from 4th September, 2001.

Powers of search and forfeiture.

2. (1) If the Bailiff is satisfied by information on oath that there is reasonable cause to believe that any person has in his custody or possession or on his premises any obscene publication or copy thereof to which this Law applies, the Bailiff may grant a warrant to search for and seize the same; but no warrant to search for such articles shall be addressed to a person other than a police officer except under the authority of an enactment expressly so providing.

(2) Where under this section a police officer is authorised to search premises, he may enter and search the premises accordingly and may seize any obscene publication and any copies thereof and any other object which he has reasonable cause to believe to be one to which this Law applies.

(3) The court by or before which a person is convicted of an offence under this Law shall order any obscene publication or other object to which the conviction relates to be forfeited and either destroyed or dealt with in such other manner as the court may order:

Provided that an order made under this subsection shall not take effect until the expiration of the ordinary time within which an appeal in the matter of the proceedings in which the order was made may be lodged or, where such an appeal is duly lodged, until the appeal is finally decided or abandoned.

Interpretation.

3. In this Law, unless the context otherwise requires –

"the Bailiff" means –

- (a) in relation to Guernsey, Herm and Jethou, the Bailiff, the Deputy Bailiff, a Lieutenant Bailiff or the Juge Délégué,
- (b) in relation to Alderney, the Chairman of the Court of Alderney, and
- (c) in relation to Sark, the Seneschal,

"obscene publication" means any book, writing, drawing, engraving, painting, print, picture, poster, emblem, photograph, cinematograph or video film or any other object whatsoever containing obscene representations,

"police officer" means –

- (a) in relation to Guernsey, Herm and Jethou, a member of

the salaried police force of the Island of Guernsey and within the limit of his jurisdiction, a member of the special constabulary of the Island of Guernsey,

- (b) in relation to Alderney, a member of the said police force and a member of any police force which may be established by the States of Alderney, and
- (c) in relation to Sark, the Constable, the Vingtenier and a member of the said police force of Guernsey,

"premises" includes any vehicle, vessel or stall.

NOTE

In accordance with the provisions of the Police Force (Bailiwick of Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

Repeal.

4. The Law entitled "Loi ayant rapport à la répression de la circulation et du trafic des publications obscènes, 1924" registered on the 22nd November, 1924^a is hereby repealed.

Citation.

5. This Law may be cited as the Obscene Publications (Bailiwick of Guernsey) Law, 1985.

^a Ordres en Conseil Vol. VII, p. 297.

NOTE

The Law received Royal Sanction on 30th October, 1985 and was registered on the Records of the Island of Guernsey and came into force on 3rd December, 1985.

1 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 6, with effect from 6th May, 2004.

2 The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Broadcasting Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 6, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.