

ORDER IN COUNCIL

XXIX
2008

ratifying a Projet de Loi

ENTITLED

The Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006

(Registered on the Records of the Island of Guernsey
on the 1st December, 2008.)



2008

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

1st day of December, 2008 before before Richard John Collas, Esquire, Deputy Bailiff; present:- David Charles Lowe, Esquire, OBE, Derek Martin Le Page, Stephen Edward Francis Le Poidevin, Alan Cecil Bisson, The Reverend Peter Gerald Lane, Michael Henry De La Mare, Esquires, Susan Mowbray, Barbara Jean Bartie, David Osmond Le Conte, John Ferguson and Stephen Murray Jones Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated 5th November 2008 approving and ratifying a Projet de Loi entitled "The Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ORDERED that the said Order in Council be registered on the records of this Island.



At the Court at Buckingham Palace

THE 5th DAY OF NOVEMBER 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 27th April 2006, the States of Deliberation at a meeting on 27th September 2006 approved a Projet de Loi entitled The Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006 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 Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006, and to order that it shall have force of law in the Island 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 Island 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 Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006

THE STATES, in pursuance of their Resolution of the 27th April, 2006^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 Island of Guernsey.

Amendment of Law of 1989

1. The Road Traffic (Drink Driving) (Guernsey) Law, 1989, as amended^b ("**the Law of 1989**"), is further amended in accordance with the provisions of this Law.

2. After section 1 of the Law of 1989 insert the following section -

"Causing death by careless driving when under influence of drink or drugs.

1A. (1) If a person causes the death of another person by driving a motor vehicle on a road or other public place without due care and attention, or without reasonable consideration for other persons using the road or place, and -

^a Article XI of Billet d'État No. VIII of 2006.

^b Ordres en Conseil Vol. XXXI, p. 512; amended by Vol. XXXII, p. 391 and No. V of 2004.

- (a) he is, at the time when he is driving, unfit to drive through drink or drugs,
- (b) he has consumed so much alcohol that the proportion of it in his breath, blood or urine at that time exceeds the prescribed limit, or
- (c) he is, within 18 hours after that time, required to provide a specimen in pursuance of section 3, but without reasonable excuse fails to provide it,

he is guilty of an offence.

(2) For the purposes of this section a person shall be taken to be unfit to drive at any time when his ability to drive properly is impaired."

3. In section 3(1) of the Law of 1989 after "section 1" insert ", section 1A".

4. After section 3 of the Law of 1989 insert the following section -

"Specimens of blood taken from persons incapable of consenting.

3A. (1) An officer of police may make a request to a medical practitioner for him to take a specimen of blood from a person ("**the person concerned**") irrespective of whether that person consents if -

- (a) that person is a person from whom the officer

of police would (in the absence of any incapacity of that person and of any objection under section 4) be entitled under section 3 to require the provision of a specimen of blood for a laboratory test,

- (b) it appears to the officer of police that that person has been involved in an accident that constitutes or is comprised in the matter that is under investigation or the circumstances of that matter,
 - (c) it appears to the officer of police that that person is or may be incapable (whether or not he has purported to do so) of giving a valid consent to the taking of a specimen of blood, and
 - (d) it appears to the officer of police that that person's incapacity is attributable to medical reasons.
- (2) A request under this section -
- (a) shall not be made to a medical practitioner who for the time being has any responsibility (apart from the request) for the clinical care of the person concerned, and
 - (b) shall not be made to a medical practitioner

other than a police medical practitioner unless -

- (i) it is not reasonably practicable for the request to be made to a police medical practitioner,
- (ii) it is not reasonably practicable for such a medical practitioner (assuming him to be willing to do so) to take the specimen.

(3) It shall be lawful for a medical practitioner to whom the request is made under this section, if he thinks fit -

- (a) to take a specimen of blood from the person concerned irrespective of whether that person consents, and
- (b) to provide the sample to an officer of police.

(4) If a specimen is taken in pursuance of a request under this section, the specimen shall not be subjected to a laboratory test unless the person from whom it was taken -

- (a) has been informed that it was taken, and
- (b) has been required by an officer of police to give his permission for a laboratory test of the specimen, and

(c) has given his permission.

(5) An officer of police must, on requiring a person to give his permission for the purposes of this section for a laboratory test of a specimen, warn that person that a failure to give the permission may render him liable to prosecution.

(6) A person who, without reasonable excuse, fails to give his permission for a laboratory test of a specimen of blood taken from him under this section is guilty of an offence.

(7) In this section "**police medical practitioner**" means a medical practitioner who is engaged under any agreement to provide medical services for purposes connected with the activities of the salaried police force of the Island of Guernsey."

5. After section 8(1) of the Law of 1989 insert the following subsection-

"(1A) A person guilty of an offence under section 1A -

- (a) is liable on conviction on indictment to imprisonment for a term not exceeding 14 years, or to a fine, or to both, and
- (b) shall also be disqualified from holding or obtaining a driving licence for a period of not less than 2 years from the date of conviction, unless the court for special reasons thinks fit to order him to be disqualified for a shorter period or not to order him to be disqualified."

6. In section 8(2) of the Law of 1989 -
 - (a) after "section 3(9)" insert "or 3A(6)", and
 - (b) delete ", on summary conviction".

7. In section 8(2)(a) of the Law of 1989 -
 - (a) after "attempting to drive" insert "or was in charge of a motor vehicle",
 - (b) for "three months" substitute "6 months".

8. In section 8(2)(b) of the Law of 1989 for "two months" substitute "3 months".

9. In section 8(3) of the Law of 1989 after "section 3(9)" insert "or 3A(6)".

10. After section 9 of the Law of 1989 insert the following section -

Special reasons.

9A. If, following the conviction of a person for an offence under any provision of this Law, the court finds a special reason for not disqualifying the person for the offence, it may nonetheless proceed to impose a disqualification for any period of time if, in the opinion of the court, it is warranted because of the person's standard of driving at the time of the commission of the offence."

11. After section 10 of the Law of 1989 insert the following section -

"Power to amend Law by Ordinance.

10A. (1) The States may by Ordinance amend this Law.

(2) An Ordinance under this Law -

(a) may, for the avoidance of doubt -

(i) create new offences, and

(ii) repeal, replace, amend, extend, adapt, modify or disapply any rule of customary or common law,

(b) may be amended or repealed by a subsequent Ordinance hereunder, and

(c) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient.

(3) Any power conferred by this Law to make an Ordinance 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."

Citation.

12. This Law may be cited as the Road Traffic (Drink Driving) (Guernsey) (Amendment) Law, 2006.

Commencement.

13. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions.

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

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