

ORDER IN COUNCIL

XXVI

1989

ratifying a Projet de Loi

ENTITLED

The Road Traffic (Drink Driving) (Guernsey) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 6th February, 1990.)



1989

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 6th day of February, 1990 before Sir Charles Frossard, Kt., Bailiff; present:— Harry Wilson Bisson, Herbert Nicolle Machon, 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 and Kenneth John Rowe, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of December, 1989, approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Road Traffic (Drink Driving) (Guernsey) Law, 1989", 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, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of December 1989

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 15th day of November 1989 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 Resolution of the 29th day of March 1989 the States of Deliberation at a meeting held on the 27th day of July, 1989, approved a Bill or “Projet de Loi” entitled “The Road Traffic (Drink Driving) (Guernsey) Law, 1989” 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 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 Road Traffic (Drink Driving) (Guernsey) Law, 1989” 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 Road Traffic (Drink Driving)
(Guernsey) Law, 1989**

ARRANGEMENT OF SECTIONS

Section

1. Driving, or being in charge, when under influence of drink or drugs.
2. Driving, or being in charge, with alcohol concentration above the prescribed limit.
3. Provision of specimens for analysis.
4. Protection for hospital patients.
5. Evidence in proceedings for an offence under section 1 or section 2.
6. Cycling when under influence of drink or drugs.
7. Drunk in charge of carriage or livestock.
8. Penalties.
9. Detention of persons affected by alcohol or a drug.
10. Interpretation.
11. Repeal.
12. Citation.
13. Commencement.

PROJET DE LOI

ENTITLED

The Road Traffic (Drink Driving) (Guernsey) Law, 1989

THE STATES, in pursuance of their Resolution of the 29th day of March, 1989, 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.

Driving, or being in charge, when under influence of drink or drugs.

1. (1) A person who, when driving or attempting to drive, or when in charge of, a motor vehicle on a road is unfit to drive through drink or drugs shall be guilty of an offence.

(2) For the purposes of subsection (1) above, a person shall be deemed not to have been in charge of a motor vehicle if he proves that at the material time the circumstances were such that there was no likelihood of his driving so long as he remained unfit to drive through drink or drugs but in determining whether there was such a likelihood the court may disregard any injury to him and any damage to the vehicle.

(3) For the purposes of this section, a person shall be taken to be unfit to drive if his ability to drive properly is for the time being impaired.

Driving, or being in charge, with alcohol concentration above the prescribed limit.

2. (1) In this section "the prescribed limit" means, as the case may require—

(a) 35 microgrammes of alcohol in 100 millilitres of breath;

- (b) 80 milligrammes of alcohol in 100 millilitres of blood; or
- (c) 107 milligrammes of alcohol in 100 millilitres of urine;

or such other proportion as may be prescribed from time to time by Ordinance.

(2) If a person—

(a) drives or attempts to drive a motor vehicle on a road;

(b) is in charge of a motor vehicle on a road; after consuming so much alcohol that the proportion of it in his breath, blood or urine exceeds the prescribed limit he shall be guilty of an offence.

(3) It is a defence for a person charged with an offence under subsection (2)(b) above to prove that at the time he is alleged to have committed the offence the circumstances were such that there was no likelihood of his driving the vehicle whilst the proportion of alcohol in his breath, blood or urine remained likely to exceed the prescribed limit; but in determining whether there was such a likelihood the court may disregard any injury to him and any damage to the vehicle.

3. (1) In the course of an investigation whether a person has committed an offence under section 1 or section 2 of this Law, an officer of police may, subject to the following provisions of this section and section 4 below, require him—

Provision
of specimens
for analysis.

- (a) to provide two specimens of breath for analysis by means of a device approved by the Island Police Committee; or
- (b) to provide a specimen of blood or urine for a laboratory test.

(2) If an accident occurs owing to the presence of a motor vehicle on a road, an officer of police may—

- (a) if he has reasonable cause to believe that a person was driving or attempting to drive or was in charge of the vehicle at the time of the accident; and
- (b) if he has reasonable cause to suspect that person of having committed an offence under section 1(1) or section 2(2) of this Law;

require that person to provide a specimen of breath, blood or urine in the same manner as under subsection (1) of this section, for a laboratory test.

(3) A requirement under this section to provide specimens of breath can only be made at a police station.

(4) A requirement under this section to provide a specimen of blood or urine can only be made at a police station or at a hospital; and it cannot be made at a police station unless—

- (a) the officer of police making the requirement has reasonable cause to believe that for medical reasons a specimen of breath cannot be provided or should not be required; or
- (b) at the time the requirement is made a device or a reliable device of the type mentioned in subsection (1)(a) is not available at the police station or it is then for any other reason not practicable to use such a device there; or
- (c) the suspected offence is one under section 1

of this Law and the officer of police making the requirement has been advised by a medical practitioner that the condition of the person required to provide the specimen might be due to some drug;

but may then be made notwithstanding that the person required to provide the specimen has already provided or been required to provide two specimens of breath.

(5) If the provision of a specimen other than of breath may be required under this section, the question of whether it is to be a specimen of blood or a specimen of urine shall be at the discretion of the officer of police making the requirement, except that if a medical practitioner is of the opinion that for medical reasons a specimen of blood cannot or should not be taken, the specimen shall be a specimen of urine.

(6) An officer of police making a requirement under subsection (4) above shall not be obliged to mention to the person required to provide the specimen what the alternatives were.

(7) The specimen of urine shall be provided within one hour of the requirement for the provision being made and after the provision of a previous specimen of urine.

(8) Of any two specimens of breath provided by any person in pursuance of this section that with the lower proportion of alcohol in the breath shall be used and the other shall be disregarded.

(9) A person who, without reasonable excuse, fails to provide a specimen when required to do so in pursuance of this section shall be guilty of an offence.

(10) On requiring any person to provide a specimen in pursuance of this section an officer of police shall warn him that a failure to provide it may render him liable to prosecution.

(11) If it is established that the accused, when requested by an officer of police under this section, refused to consent to the taking or providing of a specimen of breath, blood or urine for analysis, his refusal may, unless reasonable cause therefore is shown, be treated as supporting any evidence given on behalf of the prosecution, or as rebutting any evidence given on behalf of the defence with respect to his state of mind or condition at that time.

Protection
for hospital
patients.

4. (1) While a person is at a hospital as a patient he shall not be required to provide a specimen of breath for a breath test or to provide a specimen for a laboratory test unless the medical practitioner immediately in charge of his case has been notified of the proposal to make the requirement; and—

(a) if the requirement is made it shall be for the provision of a specimen at the hospital; but

(b) if the medical practitioner objects on the ground specified in subsection (2) below the requirement shall not be made.

(2) The ground on which the medical practitioner may object is that the requirement or the provision of a specimen, or, in the case of a specimen of blood or urine, the warning required under section 3(10) above, would be prejudicial to the proper care or treatment of the patient.

Evidence in
proceedings
for an
offence under
section 1 or
section 2.

5. (1) The following provisions apply to proceedings for an offence under section 1 or section 2 of this Law.

(2) Evidence of the proportion of alcohol or any drug or a specimen of breath, blood or urine provided by the accused shall, in all cases, be taken into account, and it shall be assumed that the proportion of alcohol in the accused's breath, blood or urine at the time of the alleged offence was not less than in the specimen; but if the proceedings are for an offence under section 2 of this Law, or for an offence under section 1 of this Law in a case where the accused is alleged to have been unfit through drink, the assumption shall not be made if the accused proves—

- (a) that he consumed alcohol after he had ceased to drive, attempt to drive or be in charge of a motor vehicle on a road and before he provided the specimen; and
- (b) that if he had not done so the proportion of alcohol in his breath, blood or urine would not have exceeded the prescribed limit, and, if the proceedings are for an offence under section 1 of this Law, would not have been such as to impair his ability to drive properly.

(3) Evidence of the proportion of alcohol or a drug in a specimen of breath, blood or urine may, subject to subsections (5) and (6) below, be given by the production of a document purporting to be whichever of the following is appropriate—

- (a) a statement (including any test record document) automatically produced by the device by which the proportion of alcohol in a specimen of breath was measured and a certificate signed by an officer of police (which may but need not be contained in the same document as the statement) that

the statement relates to a specimen provided by the accused at the date and time shown in the statement; and

(b) a certificate signed by an authorised analyst as to the proportion of alcohol or any drug found in a specimen of blood or urine identified in the certificate.

(4) A specimen of blood shall be disregarded unless it was taken from the accused with his consent by a medical practitioner; but evidence that a specimen of blood was so taken may be given by the production of a document purporting to certify that fact and to be signed by a medical practitioner.

(5) A document purporting to be such a certificate, or both, as is mentioned in subsection (3)(a) above is admissible in evidence under this section only if a copy of it either has been handed to the accused when the document was produced or has been served on him not less than 7 days before the hearing, and any other document is so admissible only if a copy of it has been served on the accused not later than 7 days before the hearing; but no document is admissible if the accused not later than 3 days before the hearing, or within such time as the court may in exceptional circumstances allow, has served notice on Her Majesty's Procureur requiring the attendance at the hearing of the purported signatory of the document.

(6) Where at the time a specimen of blood or urine was provided by the accused, he asked to be supplied with such a specimen, evidence of the proportion of alcohol or any drug found in the specimen is not to be admissible on behalf of the prosecution unless—

- (a) the specimen in which the alcohol or drug was found is one of 2 parts into which the specimen provided by the accused was divided at the time it was provided;
- (b) the other part was supplied to the accused within a reasonable time.

(7) A copy of a certificate required by this section to be served on the accused or a notice required by this section to be served on Her Majesty's Procurer may be served personally or sent by registered post or recorded delivery service.

6. (1) A person who, when riding a cycle, on a road, is unfit to ride through drink or drugs shall be guilty of an offence. Cycling when under influence of drink or drugs.

(2) An officer of police may arrest without warrant any person he has reasonable cause to suspect of committing an offence under this section.

(3) In this section 'unfit to ride through drink or drugs' means being under the influence of drink or a drug to such an extent as to be incapable of having proper control of the cycle.

7. A person who is drunk while in charge on any road of any carriage or livestock shall be guilty of an offence. Drunk in charge of carriage or livestock.

8. (1) A person guilty of an offence under section 1 or section 2 of this Law shall be liable— Penalties.

- (a) on summary conviction, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both;

(b) on conviction on indictment, to imprisonment for a term not exceeding twelve months or to a fine, or to both.

(2) A person guilty of an offence under section 3(9) of this Law shall be liable, on summary conviction—

(a) where the specimen was required to ascertain ability to drive or the proportion of alcohol at the time the offender was driving or attempting to drive, to imprisonment for a term not exceeding three months, or to a fine not exceeding level 5 on the uniform scale, or to both;

(b) in any other case, to imprisonment for a term not exceeding two months, or to a fine not exceeding level 4 on the uniform scale, or to both;

(3) A person convicted of an offence under section 1, section 2 or section 3(9) if liable to punishment in accordance with subsection (2)(a) of this section, shall, unless the court for special reasons thinks fit to order otherwise and without prejudice, to the power of the court to order a longer period of disqualification, be disqualified for a period of twelve months from the date of the conviction from holding or obtaining a driving licence.

(4) A person guilty of an offence under section 6 of this Law shall be liable on summary conviction to a fine not exceeding level 4 on the uniform scale.

(5) A person guilty of an offence under section 7 of this Law shall be liable on summary conviction to a fine not exceeding level 2 on the uniform scale.

9. A person required to provide a specimen of breath, blood or urine may thereafter be detained at a police station until it appears to an officer of police that, were that person then driving or attempting to drive a motor vehicle on a road, he would not be committing an offence under section 1 or section 2 of this Law; but—

Detention of persons affected by alcohol or a drug.

- (a) a person shall not be detained in pursuance of this section if it appears to an officer of police that there is no likelihood of his driving or attempting to drive a motor vehicle whilst his ability to drive properly is impaired or whilst the proportion of alcohol in his breath, blood or urine exceeds the prescribed limit; and
- (b) an officer of police shall consult a medical practitioner on any question arising under this section whether a person's ability to drive properly is or might be impaired through drugs and shall act on the medical practitioner's advice.

10. (1) In this Law, except where the context otherwise requires:

Interpretation.

“ authorised analyst ” means a person for the time being authorised to act as an analyst for the purposes of this Law by the Island Police Committee;

“ carriage ” means any wheeled vehicle, not being a motor vehicle, propelled by a man or an animal;

“ cycle ” means a bicycle, tricycle or cycle having four or more wheels, not being in any case a motor vehicle;

- “driving licence” has the same meaning as in the Law entitled “Loi Supplémentaire relative aux Automobiles (Autorisations à Conduire), 1939”, registered on the 17th day of June, 1939(a);
- “drug” includes any intoxicant other than alcohol;
- “Her Majesty’s Procureur” includes Her Majesty’s Comptroller;
- “hospital” means an institution which provides medical or surgical treatment for in-patients or out-patients;
- “The Island Police Committee” means the Committee referred to in Article 11 of the “Ayant rapport à la Police Salariée Part l’Ile entière” registered on the 10th day of January, 1920(b), as amended(c);
- “laboratory test” means the analysis of a specimen provided for the purpose;
- “livestock” includes cattle, horses, asses, mules, hinnies, deer, sheep, pigs, goats, dogs and poultry;
- “medical practitioner” means a person authorised to practise in Guernsey as a medical practitioner according to the law for the time being in force;
- “motor vehicle” has the same meaning as the expression “automobile” has in the Law entitled “Loi relative aux Automobiles”, registered on the 11th day of December, 1926(d);

(a) Ordres en Conseil Vol. XI, p. 299.

(b) Ordres en Conseil Vol. VI, p. 176.

(c) Ordres en Conseil Vol. XIII, p. 249.

(d) Ordres en Conseil Vol. VIII, p. 56.

“officer of police” means a member of the salaried police force of the Island of Guernsey, and within the limits of his jurisdiction, a member of the Special Constabulary of the Island of Guernsey;

“road” means any road, street, lane, way or place which is a public highway or to which the public have access, and includes any road or car-park owned by the States which is not a public highway;

(2) A person does not provide a specimen of breath, blood or urine for analysis unless the specimen is sufficient to enable the analysis to be carried out, and provided in such a way as to enable the objective of the analysis to be satisfactorily achieved.

(3) A person provides a specimen of blood if and only if he consents to its being taken by a medical practitioner and it is so taken.

11. The Road Traffic (Driving under the Influence of Drink or Drugs (Guernsey) Law 1986^(d) is repealed. Repeal.

12. This Law may be cited as the Road Traffic (Drink Driving) (Guernsey) Law, 1989. Citation.

13. This Law shall come into operation on the 28th day after the date of its registration on the records of the Island of Guernsey. Commencement.

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