

PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 1983 *

[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. XXVIII, p. 316; as amended by the: Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989 (Ordres en Conseil Vol. XXXI, p. 278); Sexual Offences (Amendment) (Guernsey) Law, 2000 (No. VI of 2000); Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011 (No. XVII of 2012). See also the: Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996 (No. IX of 1996, Ordres en Conseil Vol. XXXVI, p. 639); Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (No. IX of 2014); Sexual Offences (Bailiwick of Guernsey) Law, 1983 (Continuation) Ordinance, 1986 (Recueil d'Ordonnances Tome XXIII, p. 472). This Law has been repealed by the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (No. VII of 2021).

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The Sexual Offences (Bailiwick of Guernsey) Law, 1983

ARRANGEMENT OF SECTIONS

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THE STATES, in pursuance of their Resolution of the thirtieth day of March, nineteen hundred and eighty-three, 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.

Amendment of law relating to homosexual acts in private.

1. [(1) Notwithstanding the provisions of the Law of 1929 or any rule of customary law, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of 16 years.]

(2) ...

(3) A man who is suffering from severe mental handicap cannot in law give any consent which, by virtue of subsection (1) of this section, would prevent a homosexual act from being an offence, but a person shall not be convicted, on account of the incapacity of such a man to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that man to be suffering from severe mental handicap.

[(4) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of 16 years.]

(5) For the purposes of this section a man shall be treated as doing a homosexual act if, and only if, he commits, or attempts to commit, buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.

(6) In subsection (3) of this section "**severe mental handicap**" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.

NOTE

In section 1, subsection (1) and subsection (4) were substituted, and subsection (2) was repealed, by the Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011, section 1, Schedule, with effect from 5th November, 2012, and subject both to the provisions on past offences and the transitional provisions in section 4 of the 2012 Law.¹

Homosexual acts on merchant ships.

2. ...

NOTE

Section 2 was repealed by, first, the Sexual Offences (Amendment) (Guernsey) Law, 2000, section 2(1), with effect from 24th May, 2000, subject both to the saving provision in section 2(2) and the provisions relating to past offences in section 4 of the 2000 Law; and, second, by the Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011, section 1, Schedule, with effect from 5th November, 2012, to the extent that it was still in force anywhere in the Bailiwick of Guernsey, and subject both to the provisions on past offences and the transitional provisions in section 4 of the 2012 Law.

Revised punishments for homosexual acts.

3. (1) Notwithstanding the provisions of the Law of 1929 or any rule of customary law –

[(a) the maximum punishment which may be imposed on conviction on indictment of a man for buggery, or attempt to commit buggery, with another man, where both the defendant and the other man are of or over the age of sixteen years, shall be –

(i) imprisonment for a term of ten years, except where that other man consented thereto, and

(ii) in the said excepted case, imprisonment for a term of two years,]

(b) the maximum punishment which may be imposed on conviction on indictment of a man –

(i) of committing an act of gross indecency with another man, or

(ii) of being a party to or procuring or attempting to procure the commission by a man of such an act with another man,

shall be two years except as provided by paragraph (c) of this subsection,

(c) the maximum punishment which may be imposed on conviction on indictment of a man of or over the age of

twenty-one years –

- [(i) of committing an act of gross indecency with another man under the age of 16 years, or
- (ii) of being a party to or procuring or attempting to procure the commission by a man under the age of 16 years of such an act with another man,]

shall be imprisonment for a term of five years.

(2) References in this section to a person's age, in relation to any offence, are references to his age at the time of the commission of the offence.

NOTES

In section 3, paragraph (a), and sub-paragraph (i) and (ii) of paragraph (c), of subsection (1) were substituted by the Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011, section 1, Schedule, with effect from 5th November, 2012, subject both to the provisions on past offences and the transitional provisions in section 4 of the 2012 Law.²

In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalties prescribed for the offences in section 3 a court (in Guernsey but not in Alderney or Sark), instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.

Procuring others to commit homosexual acts.

4. (1) A man who procures another man to commit with a third man an act of buggery which by reason of section one of this Law is not an offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

(2) It shall not be an offence under Article 3 of the Law of 1929 for a man to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of section one of this Law is not an offence under the said Article 3.

NOTES

In accordance with the provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 1(1)(e), with effect from 29th April, 2015, an offence under this section (procuring a man to commit buggery) is a "relevant offence" for the purposes of that Law.

In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalty prescribed for the offence in subsection (1), a court (in Guernsey but not in Alderney or Sark), instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.

Living on earnings of male prostitution.

5. A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be liable –

- (a) on summary conviction, to imprisonment for a term not exceeding six months, or
- (b) on conviction on indictment, to imprisonment for a term not exceeding seven years.

NOTES

In accordance with the provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 1(1)(e), with effect from 29th April, 2015, an offence under this section (living on the earnings of male prostitution) is a "relevant offence" for the purposes of that Law.

In accordance with the provisions of the Magistrate's Court and Miscellaneous Reforms (Guernsey) Law, 1996, section 6, and with reference to the penalty prescribed for the offence in section 5 a court (in Guernsey but not in Alderney or Sark), instead of or in addition to any other punishment which may lawfully be imposed, may fine the offender for such offence.

Premises resorted to for homosexual practices.

6. (1) It is an offence under this section for a person to keep, or to manage, or act or assist in the management of, any premises to which people resort for the purpose of lewd homosexual practices in circumstances in which resort to those premises for lewd heterosexual practices would have led to those premises being treated as a brothel for the purposes of the Law entitled "Loi relative à la protection des Femmes et des Filles mineures" registered on the first day of August, nineteen hundred and fourteen^a.

(2) It is an offence under this section for the lessor or landlord of any premises, or his agent, to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as premises of the description set out in subsection (1) of this section or, where the whole or part of the premises is used as premises of such description, to be wilfully a party to that use continuing.

(3) It is an offence under this section for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as premises of the description set out in subsection (1) of this section.

(4) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding [level 5 on the uniform scale], or to both such imprisonment and fine.

^a Ordres en Conseil Vol. V, p. 74.

NOTES

In section 6, the words and figure in square brackets were substituted by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989, section 2(2), with effect from 1st July, 1989.

In accordance with the provisions of the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 1(1)(e), with effect from 29th April, 2015, an offence under this section (permitting the use of premises for lewd homosexual practices) is a "relevant offence" for the purposes of that Law.

Past offences.

7. (1) Except as provided by the following provisions of this section, sections one, three and four of this Law shall have effect in relation to acts done before the commencement of this Law as they apply in relation to acts done after the commencement of this Law.

(2) Except as provided in the next following subsection, this Law shall not have effect in relation to any act which is, or apart from this Law would be, an offence where the defendant to an indictment for that offence has been committed for trial before the commencement of this Law.

(3) The foregoing provisions of this section shall not operate to increase the punishment for any offence committed before the commencement of this Law.

Extension of amending Law of 1948 to the whole Bailiwick.

8. The Law entitled "Loi de 1948 portant amendement à la Loi de 1929 relative à la Sodomie" registered on the thirteenth day of January, nineteen hundred and forty-nine^b, shall have effect throughout the Bailiwick.

^b Ordres en Conseil Vol. XIV, p. 13.

Citation, interpretation and extent.

9. (1) This Law may be cited as the Sexual Offences (Bailiwick of Guernsey) Law, 1983.

(2) In this Law –

- (a) "**the Bailiwick**" means the Bailiwick of Guernsey,
- (b) "**the Law of 1929**" means the Law entitled "Loi relative à la Sodomie" registered on the first day of June, nineteen hundred and twenty-nine^c [,
- (c) "**man**" means any person of the male gender.]

(3) References in this Law to any other Law shall be construed as references to that other Law as amended or extended by any subsequent Law including this Law.

(4) This Law shall have effect throughout the Bailiwick.

NOTES

In section 9, paragraph (c) of subsection (2), and the punctuation immediately after paragraph (b) thereof, were substituted by the Sexual Offences (Bailiwick of Guernsey) (Amendment) Law, 2011, section 1, Schedule, with effect from 5th November, 2012, subject both to the provisions on past offences and the transitional provisions in section 4 of the 2012 Law.

The Law received Royal Sanction on 19th October, 1983 and was registered on the Records of the Island of Guernsey and came into force on 15th November, 1983.

^c Ordres en Conseil Vol. VIII, p. 273.

Duration.

10. (1) The provisions of sections one, two, four and seven of this Law shall cease to have effect on the expiration of the three years next following the commencement of this Law unless the States of Guernsey provide by Ordinance that those provisions shall continue in force; and in that event this Law (other than this section) shall continue in force in all respects as if this section had not been enacted.

(2) In the event of the provisions of sections one, two, four and seven of this Law ceasing to have effect by virtue of subsection (1) of this section, then, notwithstanding that those provisions shall have so ceased to have effect, this Law shall continue to have effect in relation to acts done before the date on which those provisions so ceased to have effect.

NOTE

In accordance with the provisions of the Sexual Offences (Bailiwick of Guernsey) Law, 1983 (Continuation) Ordinance, 1986, section 1, section 2 (since repealed), section 4 and section 7 of the Law shall continue in force beyond 14th November, 1986, being the date on which they would otherwise have expired.

1 Prior to their substitution, subsection (1) and subsection (4) were amended by the Sexual Offences (Amendment) (Guernsey) Law, 2000, section 1, with effect from 24th May, 2000, subject to the provisions relating to past offences in section 4 of the 2000 Law.

2 Prior to their substitution, paragraph (a) and paragraph (c) of subsection (1) were amended by the Sexual Offences (Amendment) (Guernsey) Law, 2000, section 3, with effect from 24th May, 2000, subject to the provisions relating to past offences in section 4 of the 2000 Law.