

# PROJET DE LOI

ENTITLED

## **The Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009 \***

*[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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\* No. X of 2015; as amended by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013 (No. IX of 2014).

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## **The Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009**

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SCHEDULE: Sexual offences for the purposes of this Law.

# PROJET DE LOI

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## **The Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009**

**THE STATES**, in pursuance of their Resolutions of the 27<sup>th</sup> April, 2006<sup>a</sup> and the 25<sup>th</sup> February, 2009<sup>b</sup>, 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.

### PART I

#### SEXUAL OFFENCES OUTSIDE THE BAILIWICK

##### *Incitement*

#### **Incitement to commit certain sexual acts outside the Bailiwick.**

1. (1) This section applies where –
  - (a) any act done by a person in the Bailiwick would amount to the offence of incitement to commit a sexual offence but for the fact that the whole or part of what he had in mind would not take place in the Bailiwick,
  - (b) the whole or part of what he had in mind was intended to take place in a country or territory outside the

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<sup>a</sup> Article XI of Billet d'État No. VIII of 2006.

<sup>b</sup> Article I of Billet d'État No. VII of 2009.

Bailiwick, and

- (c) what he had in mind would involve the commission of an offence under the law in force in that country or territory.

(2) Where this section applies –

- (a) what he had in mind is to be treated as the sexual offence referred to in subsection (1)(a) for the purposes of any charge of incitement brought in respect of that act, and

- (b) any such charge is accordingly triable in the Bailiwick.

(3) Any act done by means of a message (however communicated) is to be treated as done in the Bailiwick if the message is sent or received in the Bailiwick.

**Section 1 - supplementary.**

2. (1) Conduct punishable under the law in force in any country or territory is an offence under that law for the purposes of section 1 however it is described in that law.

(2) Subject to subsection (3), the condition in section 1(1)(c) is to be taken to be met unless, not later than the day determined by the court, the defendant serves on Her Majesty's Procureur a notice –

- (a) stating that, on the facts as alleged with respect to what he had in mind, the condition is not in his opinion met,

- (b) showing his grounds for that opinion, and
- (c) requiring Her Majesty's Procureur to show that it is met.

(3) The court, if it thinks fit, may permit the defendant to require Her Majesty's Procureur to show that the condition is met without service of a notice under subsection (2).

(4) In the Royal Court the question of whether the condition is met is to be decided by the Bailiff alone.

(5) In any proceedings in respect of any offence triable by virtue of section 1, it is immaterial to guilt whether or not the accused was a British citizen at the time of any act or other event proof of which is required for conviction of the offence.

(6) References to an offence of incitement to commit a sexual offence include an offence triable in the Bailiwick as such an incitement by virtue of section 1 (without prejudice to subsection (2) of that section).

(7) Subsection (6) applies to references in any enactment or document except those in section 1 of this Law and in Part II of the Criminal Justice (Attempts, Conspiracy and Jurisdiction) (Bailiwick of Guernsey) Law, 2006<sup>c</sup>.

*Jurisdiction*

**Extension of jurisdiction.**

3. ...

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<sup>c</sup> Order in Council No. XII of 2006.

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**NOTE**

*Section 3 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**PART II**

**SEXUAL OFFENCES AND PROTECTED MATERIAL**

*Meaning of protected material, etc*

**Meaning of "protected material".**

4. ...

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**NOTE**

*Part II, and section 4 thereof, were repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Meaning of other expressions.**

5. ...

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**NOTE**

*Section 5 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Regulation of disclosure by Her Majesty's Procureur.**

6. ...

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**NOTE**

*Section 6 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Disclosure to defendant's Advocate.**

7. ...

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**NOTE**

*Section 7 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Disclosure to unrepresented defendant.**

8. ...

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**NOTE**

*Section 8 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Further disclosure by Her Majesty's Procureur.**

9. ...

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**NOTE**

*Section 9 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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Supplementary

**Offences.**

10. ...

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**NOTE**

*Section 10 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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**Application of Part II.**

11. ...

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**NOTE**

*Section 11 was repealed by the Criminal Justice (Sex Offenders and Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2013, section 53, with effect from 18th May, 2015.*

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PART III

INTERPRETATION, AMENDMENT AND CITATION

*Interpretation*

**Interpretation.**

12. (1) In this Law –

**"Bailiwick"** means the Bailiwick of Guernsey,

**"defendant"**, in Part II, and in relation to any proceedings for a sexual offence, means any person charged with that offence, whether or not he has

been convicted,

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"Her Majesty's Procureur"** includes Her Majesty's Comptroller and any person acting as prosecutor (and see section 5(3)),

**"inform"** means inform in writing,

**"photograph"** and **"pseudo-photograph"** shall be construed in accordance with section 9 of the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>d</sup>,

**"proceedings"** and **"relevant proceedings"**: see section 5,

**"protected material"**: see section 4,

**"sexual offence"** means an offence listed in the Schedule,

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any enactment and having legislative effect,

**"uniform scale"** means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989<sup>e</sup>.

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<sup>d</sup> Ordres en Conseil Vol. XXIX, p. 103; amended by No. I of 2003.

<sup>e</sup> Ordres en Conseil Vol. XXXI, p. 278.

(2) The Interpretation (Guernsey) Law, 1948<sup>f</sup> applies to the interpretation of this Law throughout the Bailiwick.

(3) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

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**NOTES**

*The Protection of Children (Bailiwick of Guernsey) Law, 1985 has since been repealed by the Sexual Offences (Bailiwick of Guernsey) Law, 2020, section 111, Schedule 2, paragraph 7 ("Repeals"), with effect from 1st March, 2022, subject to the savings in section 2 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (Commencement) Ordinance, 2022.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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*Amendment and citation*

**Power to amend certain provisions of Law by Ordinance.**

13. (1) The States may by Ordinance amend –
- (a) section 3 so as to amend the meaning of the expression "protected material",
  - (b) section 12(1) so as to amend the meaning of any expression defined therein or to define any other expression, and
  - (c) the Schedule so as to amend the list of offences that are

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<sup>f</sup> Ordres en Conseil Vol. XIII, p. 355.

sexual offences,

where they consider it necessary or expedient to do so for the purpose of –

- (i) enhancing or protecting the reputation of the Bailiwick and its criminal justice system,
- (ii) improving or enhancing the investigation, prevention or detection of crime,
- (iii) facilitating the instigation of, or otherwise for the purposes of, criminal proceedings,
- (iv) discharging any international obligation to which the Bailiwick is subject, or
- (v) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions of Her Majesty's Procureur or the police under or by virtue of this Law.

(2) An Ordinance under this Law –

- (a) may be amended or repealed by a subsequent Ordinance hereunder, and
- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including,

without limitation, provision making consequential amendments to this Law and any other enactment).

(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.**

14. This Law may be cited as the Sexual Offences (Incitement, Jurisdiction and Protected Material) (Bailiwick of Guernsey) Law, 2009.

**NOTE**

*The Law received Royal Sanction on 10th July, 2014 and was registered on the Records of the Island of Guernsey and came into force on 18th May, 2015.*

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SCHEDULE

Section [11](1)

SEXUAL OFFENCES FOR THE PURPOSES OF THIS LAW

The offences that are "**sexual offences**" for the purposes of this Law are –

- (a) rape,
- (b) indecent assault,
- (c) an offence under the Law entitled "Loi pour la Puniton d'Inceste, 1909"<sup>g</sup>,
- (d) an offence under the Law entitled "Loi relative à la Protection des Femmes et des Filles Mineures, 1914"<sup>h</sup>,
- (e) an offence under Articles 11 and 12 of the Law entitled "Loi ayant rapport à la Protection des Enfants et des Jeunes Personnes, 1917"<sup>i</sup>,
- (f) an offence under the Law entitled "Loi relative à la Sodomie, 1929"<sup>j</sup>,
- (g) an offence under the Protection of Children (Bailiwick of Guernsey) Law, 1985<sup>k</sup>,
- (h) an offence of conspiracy to commit any of the offences in paragraphs

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<sup>g</sup> Ordres en Conseil Vol. IV, p. 288.

<sup>h</sup> Ordres en Conseil Vol. V, p. 74.

<sup>i</sup> Ordres en Conseil Vol. V, p 342.

<sup>j</sup> Ordres en Conseil Vol. VIII, p. 273.

<sup>k</sup> Ordres en Conseil Vol. XXIX, p. 103.

- (a) to (g),
- (i) an offence of attempting to commit any of those offences,
- (j) an offence of inciting another to commit any of those offences, and
- (k) an offence of aiding, abetting, counselling or procuring any of those offences.

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**NOTES**

*The Loi pour la punition d'inceste, 1909, the Loi relative à la Protection des Femmes et des Filles Mineures, 1914, the Loi Relative à la Sodomie, 1929 and the Protection of Children (Bailiwick of Guernsey) Law, 1985 have all since been repealed by the Sexual Offences (Bailiwick of Guernsey) Law, 2020, section 111, Schedule 2, respectively paragraph 1, paragraph 2, paragraph 4 and paragraph 7 ("Repeals"), with effect from 1st March, 2022, subject to the savings in section 2 of the Sexual Offences (Bailiwick of Guernsey) Law, 2020 (Commencement) Ordinance, 2022.*

*The figures in square brackets shown, incorrectly, in the printed version of this Schedule as "11" should read "12".*

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