

PROJET DE LOI

ENTITLED

Loi relative à la Probation de Délinquants *

[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. VIII, p. 363; as amended by the Theft (Bailiwick of Guernsey) Law, 1983 (Ordres en Conseil Vol. XXVIII, p. 5); the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 (No. VI of 2009). See also the Reform (Guernsey) Law, 1948 (Ordres en Conseil Vol. XIII, p. 288); the Magistrate's Court (Guernsey) Law, 1954 (Ordres en Conseil Vol. XVI, p. 103); the Social Insurance (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 292); the Criminal Justice (Attendance Centre) (Guernsey) Law, 1982 (Ordres en Conseil Vol. XXVII, p. 409); the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002 (No. XIV of 2002, Ordres en Conseil Vol. XLII, p. 389); the Bail (Bailiwick of Guernsey) Law, 2003 (No. XVII of 2003, Ordres en Conseil Vol. XLIII(1), p. 485); the Children (Guernsey and Alderney) Law, 2008 (No. XIV of 2009). This Law has been repealed by the Probation (Bailiwick of Guernsey) Law, 2018 (No. IX of 2019).

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Préambule.

ATTENDU QU'IL est expédient de faire des règlements semblables aux dispositions des Actes du Parlement relatifs à la Probation de Délinquants; est et demeure rappelée la Loi relative aux personnes accusées de crime pour la première fois, confirmée par un Ordre de Sa Majesté en Conseil en date du 1er août 1896, et les règlements qui ensuivent rédigés en anglais auront force de loi en cette Île.

Probation of offenders. Damages for injury or compensation for loss. Restoring stolen property.

1. (1) Where any person is charged before the Police Court with an offence punishable by such Court and the Court thinks that the charge is proved but is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may without proceeding to conviction, make an order, either –

- (i) dismissing the charge, or
- (ii) discharging the offender conditionally on his taking an oath or finding bail with or without sureties in such sum as the Court shall think fit, to be of good behaviour and to appear for

conviction and sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(2) Where any person has been convicted on indictment of any offence punishable with imprisonment, and the Court is of opinion that, having regard to the character, antecedents, age, health, or mental condition of the person charged, or to the trivial nature of the offence, or to the extenuating circumstances under which the offence was committed, it is inexpedient to inflict any punishment or any other than a nominal punishment, or that it is expedient to release the offender on probation, the Court may, in lieu of imposing a sentence of imprisonment, make an order discharging the offender conditionally on his taking an oath or finding bail with or without sureties in such sum as the Court shall think fit, to be of good behaviour and to appear for sentence when called on at any time during such period, not exceeding three years, as may be specified in the order.

(3) ...

[(4) Where an order under this Article is made by the Police Court, the order shall for the purpose of enabling the Court to make any order under section thirty-three of the Theft (Bailiwick of Guernsey) Law, 1983, have the like effect as a conviction.]

NOTES

In Article 1,

paragraph (3) was repealed by the Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008, section 23, Schedule 2, Part II, paragraph 1, with effect from 4th January, 2010, subject to the transitional provisions in Part III of Schedule 2 to the 2008 Law;

paragraph (4) was substituted by the Theft (Bailiwick of Guernsey) Law, 1983, section 41(2), Schedule, with effect from 1st July, 1984, subject to the transitional provisions in section 43 of the 1983 Law.

In accordance with the provisions of the Magistrate's Court (Guernsey) Law, 1954, section 10(3) (as originally enacted), with effect from 17th January, 1955, the expression "Police Court" in this Article shall be deemed to refer to the Magistrate's Court.

In accordance with the provisions of the Social Insurance (Guernsey) Law, 1978, section 108(1), with effect from 1st January, 1979, where a person is convicted of an offence to which section 106(1) or (2)(a) of the 1978 Law applies and an order is made under this Law placing the offender on probation or discharging him absolutely or conditionally, sections 106 and 107 of the 1978 Law shall apply as if it were a conviction for all purposes.

In accordance with the provisions of the Rehabilitation of Offenders (Bailiwick of Guernsey) Law, 2002, section 13(3), with effect from 1st July, 2006 and notwithstanding anything in this Article, a finding in respect of which an order is made placing the person convicted on probation or discharging him conditionally shall be treated as a conviction for the purposes of the 2002 Law and, accordingly, the person in question may become a rehabilitated person in respect of that conviction and the conviction a spent conviction.

In accordance with the provisions of the Children (Guernsey and Alderney) Law, 2008, section 123, Schedule, paragraph 11, with effect from 4th January, 2010, this Law is one of those specific enactments that the States may repeal, amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, by Ordinance made under the said section 123.

Supervision of offenders. Probation order.

2. (1) In addition to taking an oath or finding bail as provided by the preceding Article the Court may order that the offender be under the supervision of such person as may be named in the order during the period specified in the order and may make such conditions for securing such supervision as the Court thinks fit. Such order in this law is referred to as a probation order.

(2) A probation order may contain such additional conditions with respect to residence, abstention from intoxicating liquor and any other matters as the Court may, having regard to the particular circumstances of the case, consider necessary for preventing a repetition of the same offence or the commission of other offences.

Royal Court shall appoint a Probation Officer. Probation Officer's salary or remuneration.

3. (1) The Royal Court shall appoint a person or persons of either sex to be probation officers and a probation officer when acting under a probation order shall be subject to the control of the Court which made the order.

(2) A probation officer may be paid such salary or remuneration as the Royal Court may determine, and if not so paid by salary may receive such out of pocket expenses as the Royal Court may from time to time determine.

(3) A person named as a probation officer may at any time be relieved of his duties by the Royal Court and in such case or in the case of the death of a probation officer another person may be substituted by the Royal Court.

Duties of Probation Officer.

4. It shall be the duty of a probation officer, subject to the directions of the Court –

- (a) to visit or receive reports from the person under supervision at such reasonable intervals as may be specified in the probation order, or subject thereto, as the probation officer may think fit,
- (b) to see that he obeys the conditions of the probation order,
- (c) to report to the Court as to his behaviour,
- (d) to advise, assist, and befriend him, and, when necessary, to endeavour to find him suitable

employment.

Variation of Order of the Royal Court.

5. The Court may –

- (a) at any time if it appears to it, upon the application of the probation officer, that it is expedient that the terms or conditions of the order should be varied, cause the person in respect of whom the order was made, to appear before it and if he fails to show cause why such variation should not be made, vary the terms of the order by extending or diminishing the duration thereof (so however that it shall not exceed three years from the date of the original order), or by altering the conditions thereof, or by inserting additional conditions, or
- (b) on application being made by the probation officer, and on being satisfied that the conduct of the person in respect of whom the order was made has been such as to make it unnecessary that he any longer be under supervision, discharge the order.

Failure of offender to observe order of the Court.

6. If the Court is satisfied by information on oath, that the offender has failed to observe any of the conditions of the order, it may order that he be apprehended or be warned to appear before the Court and the Court on being satisfied that he has failed to observe any conditions of the order, may without further proof of his guilt, convict and sentence him for the original offence.

NOTES

In accordance with the provisions of the Criminal Justice (Attendance Centre) (Guernsey) Law, 1982, section 2, with effect from 1st January, 1984 and subject to the proviso in subsection (1) thereof, where a Court has power under this Article to deal with a person to which that section applies for failure to comply with any of the requirements of a Probation Order, the Court may, if it has been notified by the States Committee for Home Affairs that an attendance centre is available for the reception from that Court of persons of his class or description, order him to attend at such an attendance centre, to be specified in the Order, for such number of hours as may be so specified.

In accordance with the provisions of the Bail (Bailiwick of Guernsey) Law, 2003, section 2(4)(b), with effect from 5th April, 2004, section 2 of that Law ("The right to bail") applies to a person who, having been convicted of an offence, appears or is brought before a court to be dealt with under this Article.

Royal Court authorised to pass Ordinances.

7. The Royal Court is authorised to pass all and such Ordinances for carrying this Law into effect and in particular for prescribing such matters incidental to the appointment, resignation and removal of probation officers, and the performance of their duties and the reports to be made by them, as may appear necessary.

NOTES

The Law received Royal Sanction on 5th November, 1929 and was registered on the Records of the Island of Guernsey and came into force on 23rd November, 1929.

In accordance with the provisions of the Reform (Guernsey) Law, 1948, Article 63, with effect from 17th January, 1949, the powers and functions of a legislative nature previously exercised by the Royal Court (save for the making, variation, modification and revocation of Rules of Procedure) were transferred to and vested in the States of Deliberation, and thenceforth any enactment conferring power on the Royal Court to exercise any such powers and functions by way of Ordinance shall be construed as having conferred the like power on the States of Deliberation or on the States Legislation Select Committee, as the case may be.
