

# GUERNSEY LAW JOURNAL

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GUERNSEY LAW JOURNAL

SIXTH ISSUE

Introduction

This edition covers an eighteen month period from 1st July, 1987 to 31st December, 1988. It is hoped to revert to six-monthly publication in the future. The 7th issue covering the first half of 1989 should be available before the end of the year.

The Editorial Committee still welcomes comments on this publication and contributions for future issues.

The original texts of legislation and judgments that are digested are available at the Greffe.

Whilst care has been taken in recording the material published herein no responsibility is accepted in law for the contents of this issue or its accuracy.

Citation:

References to this issue in future issues will be cited using the figure and letter 6.GLJ followed by the paragraph number.

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Compiled by members of the Editorial Committee and the Legislative Draftsmen at St. James Chambers from sources including all Orders in Council, Ordinances, Projets de Loi and subordinate legislation and selected cases and other relevant material which became available during the months July 1987 to December 1988.

20th September, 1989.

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## AGRICULTURE AND ANIMALS

### Animal diseases

1. Ordinance: The Foot and Mouth and Other Animal Diseases (Amendment) Ordinance, 1988. - Adds bovine spongiform encephalopathy ("B.S.E.") to the list of notifiable diseases under the Animal Diseases Ordinances.

In force 14.7.88. (No. XXI of 1988).

### Breeding of livestock

2. Statutory Instrument: The Bovine Semen (Importation) Order, 1988. - Adds Belgian Blue to the breeds of cattle whose semen the Agricultural and Milk Marketing Board may import notwithstanding the general restriction in the Bovine Semen and Artificial Insemination Ordinance, 1957, as amended. The breeds now on the list are Aberdeen Angus, Belgian Blue, Charollais, Guernsey, Hereford and Limousin.

In force 1.9.88. (S.I. No. 22 of 1988).

### Dogs

3. Ordinance: The Dog Tax (Guernsey) Ordinance, 1987. - Increases to £4 the annual dog tax payable under the Dog Licences (Guernsey) Law, 1969.
4. Ordinance: The Stray Dogs (Amendment) Ordinance, 1988. - Increases fees chargeable by the Island Police Committee for the detention and destruction of stray dogs.

In force 1.1.88. (No. XLII of 1987).

In force 1.1.89. (No. XLVII of 1988).

### Feeding of livestock and poultry

5. Ordinance: The Waste Food Ordinance, 1987. - Prohibits feeding of waste food, as defined, to livestock and poultry.

In force 1.1.88. (No. XVIII of 1987).

### Import and export

6. Ordinance: The Importation of Hay, Straw and Litter (Amendment) Ordinance, 1988. - Makes minor alterations to the formalities required for the importation of hay, straw or litter.

In force 17.3.88. (No. XIII of 1988).

7. Statutory Instrument: The Animal and Animal Products (Import and Export) Order, 1988. - Prohibits the import of feedstuffs containing most protein material derived from ruminants and intended to be fed to ruminants.

In force 1.8.88. (S.I. No. 14 of 1988.)

States Agricultural and Milk Marketing Board - transfer of functions to

8. See paragraphs 44 and 45.

ANCIENT MONUMENTS

Protection of architectural heritage

9. Convention: The Convention for the Protection of the Architectural Heritage of Europe. - Ratified on behalf of the Island of Guernsey 12.11.87. In force 1.3.88.

Protection of military remains

10. United Kingdom Statutory Instrument: The Protection of Military Remains Act 1986 (Guernsey) Order, 1987. - Extends to the Bailiwick of Guernsey, subject to certain exceptions, adaptations and modifications, the Protection of Military Remains Act, 1986 which makes provision for the protection from unauthorised interference of the remains of military aircraft and vessels that have crashed, sunk or been stranded and of associated human remains.

In force 21.8.87. (U.K. S.I. 1987 No. 1281).

ASSOCIATIONS

Incorporation

11. Order in Council: The Friends of St. James Association (Incorporation) (Guernsey) Law, 1987. - Incorporates and confers legal personality upon the association called "The Friends of St. James Association". The Association's object is the preservation and maintenance of the former church of St. James the Less for the benefit of the people of Guernsey.

Approved by the States 30.9.87. Royal Sanction 18.12.87. Registered and in force 16.2.88. (No. XXIII of 1988).

12. Projet de Loi: The Guernsey Southern Agricultural and Horticultural Society (Incorporation) (Guernsey) Law, 1988. - Incorporates the Society.

Approved by the States 26.10.88. Awaiting Royal Sanction.

13. Projet de Loi: The Northern Agricultural and Horticultural Society (Incorporation) (Guernsey) Law, 1988. - Incorporates the Society.

Approved by the States 26.10.88. Awaiting Royal Sanction.

14. Projet de Loi: The West United Agricultural and Horticultural Society (Incorporation) (Guernsey) Law, 1988. - Incorporates the Society.

Approved by the States 26.10.88. Awaiting Royal Sanction.

## BANKING, INSURANCE AND FINANCE INDUSTRIES

### Bank holidays

15. Ordinance: The Bank Holidays (Amendment) (Guernsey) Ordinance, 1987. - Provides that 28.12.87 shall be a bank holiday in place of 26.12.87.

In force 9.12.87. (No. XXXIX of 1987).

### Exchange control

16. Projet de Loi: The Exchange Control (Special Provisions) (Repeal) (Bailiwick of Guernsey) Law, 1987. - Repeals the Exchange Control (Special Provisions) Law, 1947 which Law applied the Exchange Control Act 1947, and orders made thereunder by the Treasury, to the Channel Islands.

Approved by the States of Guernsey 30.9.87, the States of Alderney 11.12.87 and the Chief Pleas of Sark 20.1.88. Awaiting Royal Sanction.

### Financial Services Commission

17. Order in Council: The Financial Services Commission (Bailiwick of Guernsey) Law, 1987. - Establishes the Guernsey Financial Services Commission which is to supervise, and assist the development of, finance business in the Bailiwick.

The Commission, which is a body corporate, is independent of the States in its day to day work but must report annually to the States, must furnish information to the Advisory and Finance Committee when required, and must take into account any written guidance, and act in accordance with any written directions, given to it by that Committee. In addition its Chairman is the President of the Advisory and Finance Committee, ex officio, and its four other members are elected by the States on the nomination of that Committee.

The Commission is responsible for the development and effective supervision of finance business in the Bailiwick, and must provide advice, and make recommendations for legislation, to the Advisory and Finance Committee and to Alderney's Finance Committee, having regard to the protection of the public against financial loss due to dishonesty, incompetence or malpractice and to the protection and enhancement of the Bailiwick's reputation as a financial centre. "Finance business" includes banking, insurance, investment, and asset management or administration. The Commission will also have a number of statutory functions: those initially assigned to it consist of functions previously exercisable by the Advisory and Finance Committee under the Protection of Depositors, Companies and Prevention of Fraud (Bailiwick of Guernsey) Law, 1969 and its subordinate legislation, the Insurance Business (Guernsey) Law, 1986 (see 3.GLJ.7), the legislation relating to compulsory third-party insurance and the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5). The Advisory and Finance Committee retains its powers to make orders and regulations, but rules under the Protection of Investors Law will be made by the Commission.

The Commission is given broad general powers, and the Law deals specifically with its powers in relation to contracts, property and staff. The Commission's funds consist of any annual grant which the Advisory and Finance Committee may make out of the States general revenue account; any loan from that account approved by the States (it may not borrow from other sources); any fees specified by or under the enactments conferring its statutory functions (and some of these are amended by the Law in relation to fees); any fees and charges which the Advisory and Finance Committee may specify by order in connection with its general functions; and any charges set by the Commission for services which it provides. Any surplus funds may be invested. The Commission's income is not subject to income tax.

The Commission's members and staff (to whom most of its functions can be delegated) are subject to duties of confidentiality but are not personally liable in civil proceedings for acts or omissions in good faith. The States are empowered by Ordinance to exclude prospectively any liability of the States or the Commission for things done or omitted in good faith.

Members of the Commission hold office for three years (unless previously removed for one of a number of specified reasons), must take an oath of office and disclose any interest, and may be paid expenses (but not remuneration unless the Advisory and Finance Committee so determines). The Law makes provision for the appointment of a Chairman's alternate and a Vice-Chairman, for quorum, presidency and voting at meetings, the appointment of advisory committees, transaction of business by circulation of papers and the keeping of minutes and accounts, which must be audited and laid before the States.

Approved by the States of Guernsey on 29.7.87, the Chief Pleas of Sark on 30.9.87 and the States of Alderney on 7.10.87. Royal Sanction 18.12.87. Registered 18.1.88. For commencement see paragraph 18. (No. XIX of 1987).

18. Ordinance: The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (Commencement) Ordinance, 1988. - Appoints 1st February, 1988 for the commencement of the majority of the provisions of the Law, the remaining provisions (dealing mainly with annual reports and accounts) coming into force on 1st January, 1989. (No. VIII of 1988).
19. Statutory Instrument: The Financial Services Commission (Fees) Regulations, 1988. - Specifies the periodic fees payable by registered deposit-takers; the application and periodic fees payable in respect of registered insurers; and the application and periodic fees payable in connection with licences to carry on controlled investment business and declarations of authorisation for collective investment schemes. The Regulations contain a transitional provision for the purposes of the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5). All fees are payable to the Guernsey Financial Services Commission (see paragraph 17).

In force 8.8.88. (S.I. No. 18 of 1988).

20. Order of the Royal Court: The Financial Services Commission (Form of Oath) Order, 1988. - Prescribes the form of oath to be taken by members of the Commission before discharging any function under the Law.

In force 18.1.88. (Order No. 1 of 1988).

### Insurance business

21. United Kingdom Statutory Instrument: The Financial Services (Designated Countries and Territories) (Overseas Insurance Companies) Order, 1988. - Designates Guernsey for the purposes of section 130 of the Financial Services Act, 1986 as a territory where the law under which insurance companies are authorised and supervised (mainly the Insurance Business (Guernsey) Law, 1986 - see 3.GLJ.7) affords, to the satisfaction of the Secretary of State, adequate protection to policyholders and potential policyholders against the risk of insolvency. The effect is to take contracts effected by Guernsey registered insurers out of the prohibition imposed by that section on the promotion of certain insurance contracts the rights under which constitute investments under that Act.

In force 5.4.88. (U.K. S.I. 1988 No. 439).

22. Resolution of the States of 28.9.88: Directing the preparation of legislation enabling offshore insurers registered under the Insurance Business (Guernsey) Law, 1986 (see 4.GLJ.6) to elect exemption from income tax on income arising from insurance underwriting activities, and computation of tax on other income after £250,000 by reference to a sliding scale.

### Investment business

23. Order in Council: The Protection of Investors (Bailiwick of Guernsey) Law, 1987. - See 5.GLJ.5.

Approved by the States of Alderney 2.9.87 and by the Chief Pleas of Sark 30.9.87. Royal Sanction 18.12.87. Registered 18.1.88. For commencement see paragraph 24. (No. XX of 1987).

24. Ordinance: The Protection of Investors (Bailiwick of Guernsey) Law, 1987 (Commencement) Ordinance, 1988. - Appoints 1st February, 1988 for the commencement of most provisions of the Law with the exception of certain provisions which came into force on 1st April, 1988. (No. VII of 1988).

25. Ordinance: The Protection of Investors (Amendment) Ordinance, 1988. - Modifies Schedules 1 and 2 to the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5) so as to -

- (a) define a collective investment scheme by reference to management "as a whole" rather than "as if belonging to the manager";
- (b) exclude from that definition;
  - (i) closed-ended unit trusts;
  - (ii) all occupational pension schemes;
  - (iii) arrangements where each investor retains ownership of his part of the property and may withdraw freely;
  - (iv) a wider range of single-issue investments; and

- (c) remove the necessity for a collective investment scheme to be authorised merely because a restricted activity other than management or custody is carried on by a licensee who is not a party to its constitutive documents.

In force 25.5.88. (No. XVII of 1988).

26. United Kingdom Statutory Instrument: The Financial Services (Designated Countries and Territories) (Overseas Collective Investment Schemes) (Guernsey) Order, 1988. - Designates Guernsey, for the purposes of s.87 of the Financial Services Act, 1986, as a territory where the law under which A1 and A2 class collective investment schemes are authorised and supervised (mainly the Protection of Investors (Bailiwick of Guernsey) Law, 1987 - see 5.GLJ.5 and rules made thereunder - see paragraphs 27 to 29) affords, to the satisfaction of the Secretary of State, protection at least equivalent to that provided by Chapter VIII of Part I of the Financial Services Act in the case of United Kingdom authorised unit trusts. The effect is to permit class A1 and A2 schemes authorised and managed in Guernsey to become recognised schemes, and accordingly marketable in the United Kingdom, under the Financial Services Act.

In force 30.12.88. (U.K. S.I. 1988 No. 2148).

27. Statutory Instrument: The Collective Investment Schemes Rules 1988. - Regulate the authorisation of collective investment schemes under the Protection of Investors (Bailiwick of Guernsey) Law, 1987 (see 5.GLJ.5) and the conduct of such schemes.

Schemes may be authorised as class A1, class A2 or class B. The Rules apply in their entirety to class A1 schemes and an applicant for an A1 declaration must provide a certificate from an approved law firm that the scheme's principal documents comply with all of the rules relating to their contents. A Class A2 scheme need not comply with certain specified rules if the Commission is satisfied, after receiving an approved law firm's certificate of the reasons, that it affords equivalent investor protection overall. Certain fundamental rules apply to all class B schemes but, apart from these, the Rules apply only to the extent that they are incorporated by the scheme's principal documents or if the Commission requires compliance with a rule as a condition of authorisation. Amongst the transitional provisions governing the authorisation of existing schemes is a rule overriding the principal documents of a Guernsey scheme to the extent of any inconsistency between those documents and such of the rules as apply to the scheme; and requiring (as a condition in the case of A1 and A2 authorisations) compliance with an undertaking by the parties to a non-Guernsey scheme to operate it as if its principal documents were similarly overridden. Only Class A1 and A2 schemes are covered by the compensation scheme (see paragraph 28) and are "recognised schemes" for the purposes of the Financial Services Act, 1986.

The rules contain detailed provisions about what must (and what may) be contained in a scheme's principal documents; as to a scheme's property, the required accounts and charges permitted on it; as to the nature of units in a scheme, their registration, certification and transfer, and dealings in them (including dealings by managers and trustees/custodians); as to the management and custody of scheme property and the investment and borrowing powers and general functions of managers and trustees; as to distribution of

income; scheme particulars and prospectuses; periodic reports and meetings; and the termination of schemes. In certain respects, special rules apply to money market funds and to umbrella funds, funds of funds and feeder funds.

In force 15.11.88. (S.I. No. 32 of 1988).

28. Statutory Instrument: The Collective Investment Schemes (Compensation of Investors) Rules, 1988. - Require the Financial Services Commission, as part of its statutory duties under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 (see paragraph 17), to establish a fund for the compensation of investors whenever it is satisfied that the designated manager, trustee or custodian, or the principal manager, of a class A1 or A2 authorised collective investment scheme (a "participant") is unable to meet its liabilities in specified circumstances. In such an event, investors (other than professional and business investors, and any investor sharing responsibility for the participant's difficulties or applying unreasonably late) are entitled to compensation from the fund in a sum determined by the Commission having regard to specified factors and subject to a maximum of 90% of their first £50,000 loss and 30% of the next £50,000 (an overall maximum in any case of £60,000 per investor). Interest is also payable, but there is a limit of £5,000,000 on the amount the Commission can determine to pay in any year.

The Rules require the Commission, having sought information as to investors' losses, to levy an equal contribution on each participant and contain provisions as to the payment of interest when a participant is late in paying a contribution, revised estimates and additional levies, the balancing of contributions and costs, co-operation by participants with the Commission and subrogation of the Commission to the rights of investors who apply for compensation.

In force 15.11.88. (S.I. No. 31 of 1988).

29. Statutory Instrument: The Collective Investment Schemes (Designated Persons) Rules, 1988. - Impose financial, notification and conduct of business requirements on the designated managers and trustees of class A1 and class A2 authorised collective investment schemes. The Commission may also, however, require compliance with some or all of the rules as a condition of authorisation of a class B scheme. The rules require a designated person to maintain specified financial resources (£4,000,000 for a trustee/custodian; an expenditure-based figure of at least £100,000 for a manager), to prepare financial records and statements, to retain a qualified auditor and to notify the Commission of matters of financial concern. Designated managers (and trustees of money market funds) are to ensure best execution of transactions on account of their schemes. Managers must not accept or confer benefits which might lead to a conflict of duty, must not induce product bias and must disclose any arrangement to pay for services by placing business. The Rules make detailed provision as to the maintenance of transaction records (which the affected investor must be able to inspect); contract notes; the handling of clients' money; and allocations in respect of multi-party transactions. Designated managers and trustees/custodians are required to institute, and give written details to the Commission of, procedures for monitoring compliance and dealing with significant complaints (which must be notified annually to the Commission).

Designated managers must also notify the Commission annually of changes in the information in the Scheme's application form and, in advance, of any proposed change in (or in ownership of) any of the Scheme's principal parties or personnel.

In force 15.11.88. (S.I. No. 33 of 1988).

### Protection of depositors

30. Ordinance: The Protection of Depositors (Bailiwick of Guernsey) (Amendment) Ordinance, 1988. - Amends the Protection of Depositors Ordinances in consequence of the transfer of functions formerly vested in the Advisory and Finance Committee to the Financial Services Commission.

In force 1.2.88. (No. IX of 1988).

31. Ordinance: The Protection of Depositors (Bailiwick of Guernsey) (Amendment No. 2) Ordinance, 1988. - Requires registered deposit-takers, as a condition of continued registration, to pay a periodic fee of an amount and at the times specified in regulations made by the Advisory and Finance Committee.

In force 25.5.88. (No. XVIII of 1988).

### BROADCASTING

32. United Kingdom Statutory Instrument: The Broadcasting Act 1981 (Channel Islands) Order, 1987. - Extends to the Channel Islands, with certain adaptation and modifications, the Broadcasting Act 1981, as amended.

In force 1.2.88. (U.K. S.I. No. 2205 of 1987).

### CHILDREN AND YOUNG PERSONS

#### Administration of minors' property

33. Order in Council: The Law Reform (Miscellaneous Provisions (Guernsey) Law, 1987. - See paragraphs 173 and 174.

#### Court reports - distribution - Practice Direction

34. See paragraph 81.

35. COMPANIES

#### Company name - application to change - confusion between similar names

Two companies, namely St. Peters Trust Company Limited and St. Peters Trust (Insurance Managers) Limited, applied to the Court under Article 14 of the Companies Law of 1908 for orders that a company called St. Peter Insurance Company Limited be required to change its name on the ground that its designation was of such nature as to induce the public to confound the defendant with the plaintiffs. The Deputy Bailiff, in his direction to the Jurats, distinguished the case from Bugatti Fashions Limited v. Bugatti Ltd. (1985) (see 2.GLJ.12) in that neither plaintiff alleged that the defendant

company would benefit by the association with the existing company's name therefore that was no real passing off, but directed that there was no need for there to be an element of passing off for an order to be made under Article 14. The question was simply whether, on the facts before the court, there was a possible confusion between the names of the companies. The action by the first plaintiff was dismissed. In respect of the second plaintiff, the court ordered the defendant to change its name within six weeks subject to a penalty of £25 for each day that it remained unchanged thereafter.

[St. Peters Trust Company Limited and St. Peters Trust (Insurance Managers) Limited v. St. Peter Insurance Company Limited - Plaids de Meubles 8.9.88].

## CONSTITUTIONAL LAW

### Election expenses

36. Ordinance: The Electoral Expenditure (People's Deputies) Ordinance, 1988. - Prescribes the maximum permissible expenditure to be incurred by any candidate in relation to an election for the office of People's Deputy.

In force 27.1.88. (No. 1 of 1988).

37. Ordinance: The Electoral Expenditure (Constables and Douzeniers) Ordinance, 1988. - Prescribes the maximum permissible expenditure to be incurred by any candidate in relation to an election for the office of Constable or Douzenier.

In force 27.1.88. (No. II of 1988).

### Election of people's deputies

38. Ordinance: The People's Deputies (General Election) Ordinance, 1987. - Prescribes the date for the general election of people's deputies to be Wednesday 23.3.88.

In force 29.7.87. (No. XIX of 1987).

39. Ordinance: The People's Deputy (Vale) Election Ordinance, 1987. - Prescribes the date for an election for the office of people's deputy for the parish of the Vale to be 4.11.87.

In force 30.9.87. (No. XXIX of 1987).

40. Ordinance: The People's Deputy (Saint Peter Port) Election Ordinance, 1987. - Prescribes the date for an election for the office of people's deputy for the parish of Saint Peter Port to be 29.6.88.

In force 25.5.88. (No. XIX of 1988).

### Fort George Development Committee

41. Order in Council: The States Fort George Development Committee (Transfer of Functions) (Guernsey) Law, 1987. - See 5.GLJ.14.

Royal Sanction 21.10.87. Registered and in force 15.12.87. (No. XV of 1987).

Government of Alderney

42. Order in Council: The Government of Alderney (Miscellaneous and Consequential Provisions) (Guernsey and Alderney) Law, 1987. - See 5.GLJ.6.

Royal Sanction 21.10.87. Registered and in force 15.12.87. (No. XVII of 1987).

Polling station

43. Resolution of the States of 30.9.87: Prescribing a polling station for the parish of Torteval to be established at La Chambre de la Douzaine.

States Agricultural and Milk Marketing Board

44. Order in Council: The States Committee for Agriculture (Transfer of Functions) (Guernsey) Law, 1988. - See 5.GLJ.10.

Royal Sanction 17.2.88. Registered and in force 3.5.88. (No. II of 1988).

45. Order in Council: The States Dairy Committee (Transfer of Functions) (Guernsey) Law, 1988. - See 5.GLJ.11.

Royal Sanction 17.2.88. Registered and in force 3.5.88. (No. III of 1988).

States of Deliberation

46. Order in Council: The Reform (Amendment) (No. 2) (Guernsey) Law, 1987. - See 5.GLJ.15.

Royal Sanction 17.2.88. Registered and in force 21.6.88. (No. VII of 1988).

47. Order in Council: The Reform (Amendment No. 2) (Guernsey) Law, 1988. - Amends the principal Law of 1948 so as to reduce the number of additional Douzaine representatives elected to the States of Deliberation from Saint Peter Port to nine and to increase the numbers elected from the Parishes of Saint Sampson and Castel to four each; and empowers the States by resolution to vary the allocation of additional representatives as between the ten parishes in accordance with their respective populations provided that the total number of additional representative shall remain twenty-four.

Approved by the States 27.7.88. Royal Sanction 26.10.88. Awaiting registration.

48. Rules of Procedure: Amendment to section 12(9) of the Rules of Procedure of the States of Deliberation so as to provide that Members must give at least five clear days' notice before moving an amendment to a Projet de Loi or draft Ordinance, to certain proposals relating to expenditure or to the Annual Budget. (Amendment of 28.9.88).

49. Resolution of the States of 27.1.88: Directing the preparation of legislation to amend the Reform (Guernsey) Law, 1948 and the Rules of

Procedure in connection with the President's power to declare a Resolution ineffective in certain circumstances; the preliminary consideration by the States of general principles only of detailed policy letters; closure motions; and communication by Members with persons in the public gallery.

50. Resolution of the States of 28.4.88: Directing the preparation of legislation empowering the States by Ordinance to vary the functions of Committees of the States.

#### CONTEMPT OF COURT

51. Contempt in the face of the Court - summary trial

A person who committed a contempt of court by shouting derogatory remarks about the Deputy Bailiff from the public gallery during a sitting of the Royal Court Ordinary Division was sentenced during the same sitting of the Court to pay a fine of £100 with the alternative of 20 days' imprisonment.

[In re Kirk - Crime 314 (5.5.87)].

52. Publication likely to prejudice proceedings - correct test to apply

The British Broadcasting Corporation was charged with an offence of contempt of court arising from a Radio Guernsey broadcast concerning the pending distribution of the proceeds of sale of a motor vessel, the Kirsten Eva, whose Master had fled the Island leaving various creditors to seek their redress by way of désastre proceedings. After a Commissioner had been appointed by the Royal Court, but before the Commissioner's meeting, a report of the opinion of an English Magistrate described as an authority in such matters which stated (inter alia) that priority was to be given to the claims of the crew, was broadcast by the B.B.C. The B.B.C. was convicted by the Royal Court; the Deputy Bailiff having directed the Jurats:

- (a) that in deciding whether the broadcast was in contempt or not they must ask themselves whether it created a real risk that the course of justice in the proceedings in question would be impeded or prejudiced; and
- (b) that the Jurats should ask themselves whether when they heard the broadcast they were put to anxiety as to whether they had done enough to advance the case of the crew: if they had then they might find the case proved but if the broadcast had no effect on them then they might acquit.

The B.B.C. appealed to the Court of Appeal on the ground, inter alia, that the Deputy Bailiff had misdirected the Jurats as to the proper test to apply.

The Court of Appeal HELD, allowing the appeal and quashing the conviction, that the Deputy Bailiff's approach in having regard to the terms of section 2(2) of the United Kingdom Contempt of Court Act 1981 was correct because that Act was passed to bring the United Kingdom into line with its treaty obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms which extends to Guernsey. In the absence of authority binding upon it, it must be right for a Court in this Island to formulate non-statutory law in a way which is consistent with treaty

obligations to which the Island is subject rather than to insist on following the development of the common law in England which had been held to be inconsistent with those same treaty obligations and which was then abrogated by legislation. However, in his direction the Deputy Bailiff had deliberately omitted the word "seriously" as governing the word "prejudiced", on the ground that in the United Kingdom it was rare for civil actions to be determined by jurymen and so it was easier to ensure that there was less likelihood of prejudice than it was in Guernsey. In the opinion of the Court of Appeal, following the House of Lords in Attorney General v. English (1983) 1 A.C. 116, at p.142, and the United Kingdom Court of Appeal in Attorney General v. News Group Newspapers (1987) Q.B. 1, at p.15, section 2 applied a double test: first there had to be some risk that the proceedings would be affected at all; second, there had to be a prospect that, if affected, the effect would be serious. The second part of that double test posed the more substantial hurdle for the prosecution to overcome and the fact that the trial here was by Jurats in a civil matter as distinct from trial before a Judge alone in England went to the extent of the "risk" and not to the extent of the prejudice which was to be proved. Further, the Deputy Bailiff's additional words "If you were put to that anxiety, you may find the case proved." might reasonably have been understood as a watering down of the test already given.

Although the above was sufficient to justify the quashing of the conviction, the Court of Appeal also stated, inter alia:

- (i) that as the Jurats had heard the original application before the Court and had also heard the broadcast itself any distinction between a subjective and an objective approach was unreal and impractical; and
- (ii) that analogies of Jurats with Magistrates or juries in England were not helpful and the test is simply as to whether a Jurat qua Jurat would be affected in the manner required by the law. The Deputy Bailiff's direction to the Jurats to have in mind "an ordinary person, but a responsible ordinary person" would not be criticised.

[British Broadcasting Corporation v. Law Officers of the Crown - Court of Appeal 18.11.88].

### CORPORATION TAX

53. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1988 - see paragraph 137.
54. Resolution of the States of 15.12.88: Directing the preparation of legislation abolishing corporation tax and creating a new class of "exempt" company which would be taxed only on sources of income arising in Guernsey.

### COURTS

#### Court of Appeal

55. Rules: The Court of Appeal (Housing Appeals) Rules, 1987. - Apply the Court of Appeal (Civil Division) (Guernsey) Rules, 1964 and the Court of Appeal

(Civil Division) (Costs and Fees) (Guernsey) Rules, 1964, subject to modifications, to appeals to the Court of Appeal under the Housing (Control of Occupation) (Guernsey) Law, 1982.

In force 3.11.87. (Order of the Royal Court No. II of 1987).

56. Court of Appeal - jurisdiction - whether power to intervene in Magistrate's Court action

See in re Kirk's Application - paragraph 166.

Juvenile Court

57. Order in Council: The Juvenile Court (Guernsey) Law, 1988. - Establishes a Juvenile Court for persons aged under 17 years charged with offences, in need of care or control or brought before the court for non-attendance at school. The residual jurisdiction of the Magistrate's Court for juveniles jointly charged etc. and in respect of sentencing juveniles by way of fines, compensation, parental recognisance or driving suspension is retained. The Juvenile Court will be chaired by the Magistrate or Acting Magistrate, who may sit alone for adjournments, interim orders or generally if expedient in the interests of justice. A panel is set up for members of the Juvenile Court, who must be aged under 60 and will be appointed by the Full Court. Provision is made for regulating the venue of Juvenile Courts and who may be present and for the Chairman to be the sole judge of law and procedure. Various consequential amendments are made to the Children and Young Persons (Guernsey) Law, 1967 and a power to remand juveniles in custody to the States Prison or Children Board is given.

Approved by the States 27.7.88. Royal Sanction 21.12.88. Awaiting registration.

Magistrate's Court - Costs

58. Rules: The Magistrate's Court Fees (Amendment) Rules, 1987 - see paragraph 168.

Magistrate's Court - criminal appeals

59. Order in Council: The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988. - Replaces the Police Court Appeals Laws, 1939 and 1982 and Part III of the Court of Alderney (Appeals) Law, 1969. The principal differences are:
- (i) no right of appeal against sentence will exist when the penalty imposed did not exceed £75;
  - (ii) in exceptional cases the Royal Court may grant leave to appeal against conviction notwithstanding the fact that the appellant pleaded guilty;
  - (iii) whereas bail pending appeal was previously granted unless the Magistrate's Court otherwise directed, release is now entirely at the discretion of the Magistrate;
  - (iv) where bail is refused by the Magistrate, further application may be made to the Royal Court;

- (v) procedural matters will be governed by Rules of Court;
- (vi) where an appeal is abandoned or dismissed the appellant may be ordered to pay the costs of the respondent up to £75 (or such sum as the States may by Ordinance specify) and the cost of obtaining a transcript;
- (vii) an unsuccessful appellant may further appeal to the Court of Appeal on a question of law or pursuant to a certificate granted by the Bailiff with leave of the Court of Appeal;
- (viii) criminal appeals from the Court of Alderney and from the Court of the Seneschal are also governed by this Law.

Approved by the States of Guernsey 9.12.87, the Chief Pleas of Sark 20.1.88 and the States of Alderney 10.2.88. Royal Sanction 26.7.88. Registered 18.10.88. In force on a day to be appointed. (No. XI of 1988).

### CRIMINAL LAW AND PROCEDURE

#### Appeals from the Magistrate's Court

- 60. Order in Council: The Magistrate's Court (Criminal Appeals) (Guernsey) Law, 1988 - see paragraph 59.

#### Costs - Magistrate's Court

- 61. Rules: The Magistrate's Court Fees (Amendment) Rules, 1987 - see paragraph 168.

#### Day training centre

- 62. Projet de Loi: The Criminal Justice (Day Training Centre) (Guernsey) Law, 1988. Empowers the States Prison Board to establish a day training centre at the prison for offenders aged 17 and over to receive appropriate training and instruction and prison-style discipline. This sentence will be available for persons convicted of an imprisonable offence or who fail to comply with the requirements of a probation order. The aggregate number of days of attendance will be not less than 12 nor more than 48 during a period of 12 months (exceptionally 15 months) for 6 to 12 hours per day as the Prison Governor may require. There is power to deal with breaches and to make ordinances. The attendance must not interfere with the work or education of the offender.

Approved by the States 16.10.88. Awaiting Royal Sanction.

#### Firearms

- 63. Ordinance: The Firearms (Guernsey) Laws, 1983 and 1984 (Commencement) Ordinance, 1987. - Brings into force the Firearms (Guernsey) Law, 1983 and the Firearms (Amendment) (Guernsey) Law, 1984 on 1.10.87. (No. XXVII of 1987).
- 64. Ordinance: The Firearms Ordinance, 1987. - Contains the detailed provisions required to implement a number of aspects of the Firearms (Guernsey) Law, 1983. The bulk of the Ordinance concerns approved ranges for the lawful

firing of firearms in accordance with section 19 of the Law. Five ranges are so approved subject to general conditions concerning the firing, loading and carrying of firearms and the responsibilities of range officers as well as special conditions governing the use of the individual ranges for that purpose. To use a range without complying with these conditions is an offence, as is the obstruction of a lawful inspection by or with the authority of the Police Committee.

The Ordinance also -

- (i) prescribes certain air weapons as being specially dangerous (and therefore as being firearms for the purposes of the Law);
- (ii) prescribes forms and specifies fees for the purposes of the Law;
- (iii) brings together and clarifies the general rules relating to Fort Le Marchant.

In force 1.10.87. (No. XXVIII of 1987).

65. Ordinance: The Fort Le Marchant Rifle Range (Firing on Sunday 15th May 1988) Ordinance, 1988. - Allowed the Recreation Committee by way of an exception to the general rule in Schedule 1 Part III condition (a)1 of the Firearms Ordinance, 1987, to permit firing on 15th May 1988.

In force 27.4.88. (No. XIV of 1988).

66. Housing - control of occupation - offences

See HOUSING - paragraphs 124 to 126.

67. Indictment - application to amend - introduction of new offence sought after close of defence case

'A' pleaded not guilty to three counts alleging (1) the furnishing of false information, contrary to section 19(1)(b) of the Theft (Bailiwick of Guernsey) Law, 1983; (2) larceny, contrary to section 2 of the Larceny (Guernsey) Law, 1958; and (3) theft, contrary to section 1 of the 1983 Law. At the conclusion of the defence evidence the prosecution sought to amend the indictment, pursuant to section 4 of the Indictments (Guernsey) Law, 1950, so as to add another count, alternative to the second count, alleging theft contrary to section 1 of the 1983 Law (which, it transpired from the evidence before the Court, had superseded the 1958 Law at the time the alleged offence was committed). The prosecution had, in formulating the indictment, relied upon 'A's earlier statement that he had made certain payments in late 1983, before the 1983 Law came into force. The Deputy Bailiff granted the application to amend the indictment and 'A' appealed to the Court of Appeal against his conviction on the added count. HELD, that section 4(1) of the Indictments (Guernsey) Law, 1950 provides that the Court shall, where the indictment is defective, order its amendment "unless, having regard to the merits of the case, the required amendments cannot be made without injustice". The larger the interval between amendment and arraignment, the less likely it was that the amendment could be made without injustice and it would be in exceptional cases that an amendment could be made as late as after the conclusion of the defence evidence without injustice. The fact that the amendment introduced an entirely new offence meant that the defendant had come to court prepared to answer a different

charge from that of which he had been convicted. 'A' had not, by his statement, deliberately misled the prosecution and in all the circumstances the appeal should be allowed.

[Law Officers of the Crown v. Whittaker - Court of Appeal 9.5.87]. (See also paragraph 77).

### Insider dealing

68. **Projet de Loi: The Company Securities (Insider Dealing) (Bailiwick of Guernsey) Law, 1988.** - Prohibits dealing in a company's securities by individuals connected with the company ("insiders") who hold unpublished price-sensitive information. The prohibition also extends to those who obtain such information from insiders and to public servants who hold such information by virtue of their office. Wide powers are conferred on inspectors to investigate suspected offences.

Approved by States 30.11.88. Awaiting Royal Sanction.

### Interception of communications

69. **Projet de Loi: The Interception of Communications (Bailiwick of Guernsey) Law, 1987.** - Prohibits the interception of communications (such as telephone-tapping) except under warrant. Warrants can be issued in the interests of national security, to prevent or detect serious crime or to safeguard the economic well-being of the Bailiwick. A tribunal is established to investigate complaints of unlawful interception.

Approved by the States of Guernsey 30.9.87, the States of Alderney 11.12.87 and the Chief Pleas of Sark 20.1.88. Awaiting Royal Sanction.

### Juvenile Court

70. **Order in Council: The Juvenile Court (Guernsey) Law, 1988** - see paragraph 57.

### Misuse of drugs

71. **Order in Council: The Misuse of Drugs (Amendment) (Bailiwick of Guernsey) Law, 1988.** - See 4.GLJ.19.

Approved by the States of Guernsey 24.6.87, the States of Alderney 2.9.87 and the Chief Pleas of Sark 30.9.87. Royal Sanction 27.4.88. Registered and in force 21.6.88. (No. VI of 1988).

72. **Order in Council: The Drug Trafficking Offences (Bailiwick of Guernsey) Law, 1988.** - Strengthens the Royal Court's powers over drug trafficking by enabling the proceeds of such offences to be traced, frozen and confiscated; contains new provisions to facilitate the investigation of drug trafficking and the enforcement in the Bailiwick of orders in this field made elsewhere; and creates an offence of assisting in the retention of drug trafficking proceeds. When sentencing for a drug trafficking offence (which is widely defined) the Royal Court may assume unless the contrary is shown that any property passing through the defendant's hands in the previous six years represents the proceeds of drug trafficking and must make a confiscation order for the whole amount which the Court considers capable of being realised. The defendant can be imprisoned (up to a maximum of ten years) until the amount of the order is paid.

The Royal Court (or in an emergency a Jurat of the Court of Alderney or the Seneschal of Sark) can restrain or charge realisable property (including, in certain circumstances, property transferred by him at a significant under-value) of any defendant or proposed defendant. A restraint order prohibits the transfer or disposal of such property. A charging order on Bailiwick realty has effect once registered as a preliminary vesting order in favour of the Crown with priority from its date of registration. A charging order on certain specified types of personalty has effect as an absolute assignment to the Crown. Her Majesty's Sheriff may be appointed as receiver to realise an offender's property and the Law makes provision as to the manner of dealing with it, notably in cases of désastre and winding-up. Compensation may be ordered in certain circumstances.

It is an offence to assist in the retention of drug trafficking proceeds and the Law specifically provides that disclosure to the police of a suspicion that funds are related to drug trafficking cannot constitute a breach of contract.

The Law empowers the Bailiff to make orders for the production of material relevant to drug trafficking investigations and to grant search warrants; and the States are empowered to apply the Law's provisions to proceedings in Courts elsewhere in which orders similar to confiscation orders have been, or may be, made.

Approved by the States of Guernsey 28.7.88, by the Chief Pleas of Sark 5.10.88 and by the States of Alderney 2.11.88. Royal Sanction 21.12.88. Awaiting registration.

73. Ordinance: The Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 (Modification) Ordinance, 1988. - Makes certain amendments to the First Schedule to the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, and to the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, as amended.

In force 15.12.88. (No. XXXVI of 1988).

#### Obscene publications

74. Resolution of the States of 25.11.87. - Directing the preparation of legislation to amend the Obscene Publications (Bailiwick of Guernsey) Law, 1985 (see 2.GLJ.22) so as to provide that it shall be a defence for any person charged with an offence under that Law to show (1) that he was licensed to supply video works in accordance with the Video Licensing (Guernsey) Law, 1985, or any Ordinance made thereunder (see 2.GLJ.87 and 5.GLJ.83 and 84); and (2) that the article alleged to be obscene was a video work which he had been authorised to supply in accordance with the terms of a licence granted by the Broadcasting Committee under that Law or Ordinance.

#### Police - related offences

75. Resolution of the States of 29.8.88. - Directing the preparation of legislation to create offences of wasting police time and impersonating a police officer.

76. Sentence - buggery and indecent assault on three year old girl - reduction of sentence to facilitate allocation to Youth Treatment Centre

'A' was convicted in the Royal Court of two counts of buggery and two counts of indecent assault on a three year old girl and was sentenced to ten years' imprisonment on each of the counts of buggery and three years' imprisonment on each of the counts of indecent assault, all to be served concurrently. The ten year sentences were reduced to six years concurrent by the Court of Appeal in the light of 'A's background and age (sixteen years) and of an expert assessment by the Gardner Unit in Manchester which recommended allocation to a Youth Treatment Centre. A sentence exceeding six years would have excluded the possibility of treatment in such a Centre, the alternative being placement in a special hospital.

[Law Officers of the Crown v. A Juvenile - Court of Appeal 21.9.87].

77. Sentence - dishonesty - custodial sentence - deportation - factors to be taken into consideration

'A' appealed to the Court of Appeal against his sentence of two years' imprisonment on two counts of theft, each sentence to run concurrently, and against the Court's recommendation for his deportation. One of the convictions was quashed on appeal (see paragraph 67). In relation to the remaining conviction:-

HELD

- (1) that the Island was rightly jealous of its commercial reputation and persons who came to the Island to participate in the finance sector could expect to receive an immediate custodial sentence for offences of dishonesty. 'A' had breached a position of trust and the appropriate sentence, also having regard to the sum of money involved (£8,500), was one of eighteen months' imprisonment;
- (2) that where a Court was considering recommending the deportation of a convicted person, the matter should be raised with Counsel for that person and clear reasons for the recommendation should be given. In this case Counsel had not been called upon nor had reasons been given. Further the Court should have regard to the fact that deportation from Guernsey also means deportation from the United Kingdom and other Islands and may have implications for the deported person's ability to enter other European countries. 'A' had carried on business without complaint in Europe, his wife was a German national and circumstances may arise in which he would wish to enter Germany for family reasons; he was a man of good character prior to this offence; it was unlikely, due to the fact that he had been declared "en désastre", that he would carry on business in the Island in the foreseeable future; and it could not be said that his continued presence in Guernsey or the United Kingdom would be to their detriment. The recommendation would be discharged.

[Law Officers of the Crown v. Whittaker - Court of Appeal 9.4.87].

78. Sentence - suspended sentence - activation - breach of domestic violence injunction

'D' was found guilty of breach of a matrimonial injunction and sentenced to one month's imprisonment. Two suspended sentences, for driving while unfit

and for theft, were activated. On appeal, HELD, the breach of the matrimonial injunction was a civil matter rather than a criminal one, akin to contempt of court, and the activation of suspended sentences imposed for earlier criminal sentences was not appropriate. The appeal would be allowed.

[In re Guilmoto's Appeal - Appeals from the Magistrate's Court 3.11.87].

79. Sentence - unlawful wounding

'A' was convicted in the Royal Court of unlawful wounding, having pleaded guilty. He accepted that the blow was unprovoked and aimed at the complainant. Twelve stitches below the victim's right eye were necessitated. 'A' had numerous previous convictions for assault and disorderly conduct and one previous conviction, two years earlier, of unlawful wounding. He appealed against his sentence of fifteen months' imprisonment. HELD by the Court of Appeal, dismissing the appeal, that it was important that law and order should be preserved in places of entertainment and that the Courts, by their sentencing policy, should support those who go to such places and those who have the task of controlling them. Although the sentence of fifteen months was "on the high side" in the light of sentences imposed by the Royal Court in similar circumstances some of those sentences had been surprisingly lenient. Nor could the sentence imposed in the present case be said to be manifestly excessive for three reasons:

- (a) the blow was a heavy one;
- (b) there was no evidence of remorse or regret; and
- (c) 'A' had previous convictions for unlawful wounding.

(Law Officers of the Crown v. De Carteret - Court of Appeal 11.4.88].

80. Sentence - unlawful wounding

'A' was convicted of unlawful wounding by plunging a broken glass into the face and neck of the complainant. In upholding the sentence of one year's imprisonment the Court of Appeal HELD, notwithstanding "some degree of provocation", that the sentence was on the low scale for such an offence: any person who chooses in a public place or in private to use a glass as a weapon of offence deserves to go to prison.

[Law Officers of the Crown v. Le Page - Court of Appeal 9.12.88].

81. Social enquiry, psychiatric reports etc. - distribution - Practice Direction

1. Counsel are reminded that social enquiry reports etc. are drawn up for the guidance of the Court; all such reports are confidential.
2. A copy of each relevant report will normally be provided in advance to Counsel by the Greffe. Each such copy will be numbered. Counsel may discuss the contents of the report with their clients. Photocopying of the report is forbidden and Counsel shall either retain the original copy on their file or return it to the Greffe.

3. In certain instances, such as psychiatric reports, the Court may direct that a copy be furnished to Counsel, but that all or part of its contents be not divulged to the client. Photocopying of such reports is, of course, also forbidden. Counsel may retain the original copy on their file or return it to the Greffe.

[Practice Direction of 20.5.88].

#### Uniform scale of fines

82. Projet de Loi: The Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1988. - Establishes a uniform scale of fines at five levels, initially set at £50, £100, £200, £500 and £1,000 but capable of being varied by Ordinance, so that the real value of available pecuniary penalties can be more simply and comprehensively maintained. Future legislation will be able to refer to a given level on the uniform scale and penalty provisions in all existing Laws, Ordinances and Statutory Instruments are modified so as to refer to an appropriate level on that scale. The general limitations on the Magistrate's Court's fining powers will similarly be expressed by reference to the uniform scale.

Approved by the States of Guernsey 16.3.88, by the States of Alderney 4.5.88 and by the Chief Pleas of Sark 2.8.88. Awaiting Royal Sanction.

83. Using a motor vehicle on a public highway without third-party insurance - vehicle left in car park - whether special reasons

'A' pleaded guilty to an offence of using a motor vehicle on a public highway without third-party insurance. He had left his motor scooter in a public car park where it was discovered five or six days after the insurance ceased to be valid. He was fined £125 and his licence was suspended for one year. On appeal to the Royal Court, HELD, applying the principles laid down in R. v. Wickens (1958) 42 Cr. App. R. 236, that to amount to a "special reason" upon which the court could refrain from imposing the mandatory licence disqualification of one year a matter must:

- (a) be a mitigating or extenuating circumstance;
- (b) not amount in law to a defence to the charge;
- (c) be directly connected with the commission of the offence; and
- (d) be one which the court ought properly to take into consideration when imposing sentence.

The appeal would be allowed, the suspension of the licence revoked and a fine of £50 substituted for the original fine of £125.

[In re Cox's Appeal - Criminal Appeals from the Magistrate's Court 20.10.87].

#### CUSTOMS

##### Import control

See also AGRICULTURE AND ANIMALS and HORTICULTURE

84. Statutory Instrument: The Import and Export of Goods (Control) (Guernsey) (Amendment No. 7) Order, 1988. - Prohibits importation of specified firearms and ammunition from the British Islands without a licence.

In force 4.10.88. (S.I. No. 29 of 1988).

## DIVORCE AND MATRIMONIAL CAUSES

### Assisted persons

85. Ordinance: The Matrimonial Causes (Assisted Persons) (Amendment) Ordinance, 1987. - Redefines "poor persons" as "assisted persons". Increases the limit on assets below which persons qualify for assistance. Assistance no longer to be available for "consent" divorces unless both parties qualify for assistance. Increases maximum fees payable to Advocates by assisted persons.

In force 29.7.87. (No. XX of 1987).

86. Divorce - financial provision - division of real property - powers of the Court

In an appeal against an order of the Deputy Bailiff vesting the matrimonial home in the wife subject to deferred payment of a lump sum to the husband, the Court of Appeal considered whether it was possible, consistently with the law of Guernsey, to make an order such as that exemplified in Mesher v. Mesher (1980) 1 All ER 126, that is to say, an order imposing on the matrimonial home a trust for sale to give effect to proportionate interests in the property declared in favour of each of the husband and the wife and to provide that the sale shall not be executed until the children have reached a specified age. HELD, that there is no power under Article 46 or any other provision of the Matrimonial Causes Law (Guernsey), 1939 either to impose a trust for sale on the property or to make an order to the effect that the property be not sold for a limited time. The Court's powers are limited to deciding when the payment should be made having regard to the ages of the children involved and to the need to preserve a home for the children balanced with the interests of the party without care and control in not having his entitlement locked up for a lengthy period; and how much that payment should be, having regard to the likely increase in value of the property before the date of payment. The amount of the payment would be secured by a bond against the property. It was not possible to direct the payment of a proportion of the value of the property at a future date.

[Price v. Price - Court of Appeal 6.7.88].

87. Domestic violence injunction - breach - activation of suspended sentence - whether appropriate

See in re Guilmoto's Appeal - paragraph 78.

### Magistrate's Court proceedings

88. Order in Council: The Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1987. - Confers wide powers on the Magistrate to make orders for financial provision between the parties to a marriage; to make separation orders (thereby replacing the Separation Laws, 1930 to 1984); to

make orders as to the custody, supervision, care and maintenance of children and as to access; to make orders in cases of domestic violence including orders forbidding entry into the matrimonial home; and to prohibit the removal of children from the Bailiwick. Wide ancillary powers are also conferred (e.g. to make interim orders, to vary orders, to refer complex cases to the Royal Court, to remit arrears of maintenance and to issue summonses). Disobedience of the Magistrate's orders can result in committal to prison.

Approved by the States 30.9.87. Royal Sanction 21.12.88. Awaiting registration.

## ECCLESIASTICAL LAW

### Methodist Church

89. Order in Council: The Methodist Church (Bailiwick of Guernsey) Law, 1987. - See 4.GLJ.32.

Approved by the States of Alderney 5.11.86 and by the Chief Pleas of Sark 21.1.87. Royal Sanction 21.7.87. Registered and in force 5.10.87. (No. IX of 1987).

90. United Kingdom Statutory Instrument: The Methodist Church Act 1976 (Guernsey) Order, 1987. - Extends to the Bailiwick of Guernsey, with certain exceptions, adaptations and modifications, the Methodist Church Act, 1976 which (inter alia) makes provision for the constitution, purposes and doctrinal standards of the Methodist Church and vests church property in the Trustees for Methodist Church Purposes (in Guernsey, the Trustees for the Bailiwick of Guernsey Methodist Church Purposes - see 4.GLJ.32).

Registered and in force 5.10.87 (U.K. S.I. 1987 No. 1279).

### United Reformed Church

91. United Kingdom Statutory Instrument: The United Reformed Church Act 1981 (Guernsey) Order, 1987. - Extends to the Bailiwick of Guernsey certain provisions of the United Reformed Church Act, 1981, with modifications, the effect of which is to amend the United Reformed Church Act 1972 which itself extends to Guernsey.

In force 26.12.87. (U.K. S.I. 1987 No. 2051).

## EDUCATION

### Medical examinations and treatment

92. Order in Council: The Education (Amendment) (Guernsey) Law, 1988. - Transfers functions under the Education (Guernsey) Law, 1970 relating to medical examinations and treatment of pupils from the Education Council to the Board of Health.

Approved by the States 27.7.88. Royal Sanction 21.12.88. Awaiting registration.

### Special Education

93. Order in Council: The Education (Amendment) (Guernsey) Law, 1987. - See 5.GLJ.27 and 28.

Royal Sanction 21.10.87. Registered 1.12.87. In force on a day or days to be appointed. (No. XIII of 1987).

### EVIDENCE

94. Criminal conviction - whether admissible in subsequent civil action

The defendant in a civil claim for damages arising from an assault raised an Exception de Forme alleging that the plaintiff's cause improperly pleaded evidence in that details of the defendant's convictions arising from the same assault were set out therein. HELD by the Bailiff, dismissing the Exception (following Gallienne v. Mauger (10.4.81)), that previous convictions could be pleaded but it was open to the other party to argue as to their relevance.

[Bown v. Sharp - 35 Plaids de Meubles 487 (3.11.87)].

### FIRE SERVICES

95. Resolution of the States of 28.9.88: Directing the preparation of legislation in respect of fire services and fire precautions.

### FISHING

96. Order: The Fishing (Restrictions on Use of Trot Line and Set Net) Order, 1987. - Prescribes the parts of the foreshore and sea adjacent thereto in respect of which the provisions of section 8B(1) of the Fishing Ordinance, 1969, as amended (which restricts the use of trot lines and set nets) do not apply.

In force 29.5.87. (S.I. No. 18 of 1987).

97. Ordinance: The Fishing (Amendment) Ordinance, 1988. - Amends the Fishing Ordinance, 1969, as amended, to empower the States Sea Fisheries Committee to control the landing of fish for the purpose of compliance with conservation regulations. (See further paragraph 98).

In force 27.1.88. (No. III of 1988).

98. Ordinance: The Fishing Ordinance, 1988. - Repeals and re-enacts the provisions of the Fishing Ordinance, 1969, as amended.

In force 27.7.88. (No. XXVI of 1988).

99. Ordinance: The Fishing (Amendment) (No. 2) Ordinance, 1988. - Regulates access to fishing in controlled waters, as defined.

In force 24.10.88. (No. XXXVII of 1988).

## FOOD

### Food hazard emergencies

100. Order in Council: The Emergency Powers (Amendment) (Bailiwick of Guernsey) Law, 1988. - See 5.GLJ.38. Royal Sanction 21.12.88. Awaiting registration.

## GAMBLING

### Betting

101. Ordinance: The Gambling (Betting) (Amendment) Ordinance, 1988. - Amends the Gambling (Betting) Ordinance, 1973 by permitting sound and visual broadcasts of sporting events to licensed betting offices subject to various conditions.

In force 25.5.88. (No. XVI of 1988).

### Cinema racing

102. Ordinance: The Gambling (Cinema Racing) Ordinance, 1988. - Permits "cinema racing" (as defined) to be carried out in accordance with the conditions in the Schedule by a society organised wholly or mainly for charitable, sporting or non-commercial purposes. The States Gambling Control Committee is empowered to grant permits.

In force 28.9.88. (No. XXVIII of 1988).

### Gaming and lotteries

103. Ordinance: The Gambling (Gaming and Lotteries) (Amendment) Ordinance, 1987. - Amends the Gambling (Gaming and Lotteries) Ordinance, 1971, as amended, so as to increase certain prize limits and fees payable in respect of lotteries and amusements with prizes.

In force 9.12.87. (No. XLI of 1987).

## GUARDIANSHIP

104. Appointment of additional joint guardian - necessity for medical evidence to be heard - necessity for original guardian to be re-sworn

Upon an application by a person to be sworn as guardian to an "incapable" jointly with an existing guardian, jointly and with power for the survivor to act, HELD, such an application constituted a de novo application necessitating the hearing of medical evidence and the swearing of the two guardians jointly.

[In re Carré (under guardianship) (8.10.87.)].

## HARBOURS

105. Ordinance: The Harbours Ordinance, 1988. - Consolidates and updates the legislation governing the navigation and use of vessels in the harbours,

their berthing, mooring and anchoring, charges for the use of harbour facilities, control of vehicular traffic and the general conditions on which use of the harbours is permitted.

In the provisions dealing with the navigation and use of vessels, as well as controls over dangerous and careless navigation, speed, entry and exit, obstructions to navigation, noise, aircraft, fire and emergencies, there is a duty to report collisions and dangers and the Harbourmaster is empowered to order the removal of a vessel or to prohibit a vessel from entering a specified place. Breach of such a direction or prohibition can lead on conviction to the imposition on the person in breach and on the vessel's owner of a fine up to £50,000 and £5,000 per day whilst the breach continues.

The Ordinance covers the allocation of moorings, berths and anchorages for both local and visiting boats, deals with the removal and inspection of mooring equipment; and prescribes requirements as to the manner of mooring and as to lighting, crew, gangways, access, fenders, ropes, use of engines whilst berthed, and careening. Charges may be imposed by States' resolution for use of harbour facilities, which now include use of standing areas. The Board of Administration is empowered to control traffic by means of signs and signals in accordance with a modified version of the Traffic Signs and Traffic Light Signals Ordinance, 1988 (see paragraph 203) and the fixed penalty procedure is available to deal with contraventions. The parking and removal of vessels and trailers, vehicle loads and accidents, cargo handling and obstruction are also addressed, as are refuelling, littering, noise, trading and various activities which require the Harbourmaster's consent. Finally, the Board is empowered to make regulations as to the navigation and use of vessels and as to the conduct of people in the harbours.

In force 5.8.88. (No. XXVII of 1988).

106. Ordinance: The Harbours (Amendment) Ordinance, 1988. - Amends the Harbours Ordinance, 1988 (see paragraph 105) so as to exclude from the definition of "harbour land" administered by the Board of Administration those areas of land regulated by the Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988 (see paragraph 187).

In force 26.10.88. (No. XXXIX of 1988).

## HEALTH AND MEDICINE

### Health service (pharmaceutical)

107. Statutory Instrument: The Health Service (Pharmaceutical) (General) (Amendment) (Guernsey) Regulations, 1987. - Amend the principal Regulations of 1972 by prescribing revised forms of medical prescriptions for use by medical practitioners and dentists.

In force 1.9.87. (S.I. No. 22 of 1987).

108. Statutory Instrument: The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment) (Guernsey) Regulations, 1987. - Amend the principal Regulations of 1977 so as to include disposable syringes for use by diabetics in the list of prescribed appliances.

In force 1.9.87. (S.I. No. 23 of 1987).

109. Statutory Instrument: The Health Service (Pharmaceutical) (Prescribed Appliances) (Amendment) (Guernsey) Regulations, 1988. - Amend the principal Regulations of 1977 so as to adjust the payments due in respect of the supply of prescribed appliances by different classes of approved appliance suppliers.

In force 1.9.88. (S.I. No. 20 of 1988).

110. Statutory Instrument: The Health Service (Pharmaceutical) (Payment of Approved Suppliers) (Amendment) (Guernsey) Regulations, 1987. - Amend the principal Regulations of 1983 so as to provide for an adjustment to the payments due in respect of the supply of pharmaceutical benefit by different classes of approved suppliers.

In force 1.9.87. (S.I. No. 24 of 1987). Repealed and replaced - see paragraph 111.

111. Statutory Instrument: The Health Service (Pharmaceutical) (Payment of Approved Suppliers) (Amendment) (Guernsey) Regulations, 1988. - Replace the (Amendment) Regulations of 1987 (see paragraph 110).

In force 1.9.88. (S.I. No. 21 of 1988).

#### Medical and related professions

112. Ordinance: The Nurses, Midwives and Health Visitors Ordinance, 1987. - Repeals and replaces the Midwives Ordinances, 1950 to 1968 and the Nurses (Use of Title) Ordinance, 1973 and amends the Doctors, Dentists and Pharmacists Ordinance, 1987 (see 5.GLJ.42) so as to regulate nursing, midwifery and health visiting in Guernsey.

In force 26.11.87. (No. XXXIV of 1987).

#### Medical benefits

113. States Resolution of 14.12.88. - Directing the preparation of legislation to provide a new medical benefit and to incorporate therein the existing benefits of the Pharmaceutical Service and to apply the same to Alderney.

#### HEALTH AND SAFETY AT WORK

114. Ordinance: The Health and Safety at Work (General) (Guernsey) Ordinance, 1987. - Imposes duties on employers, the self-employed, persons in control of certain premises, manufacturers and employees to take reasonably practicable steps to ensure health and safety at work, the safe conduct of undertakings, the safety of premises and the safe handling of certain substances.

Part I imposes these general duties together with an obligation to notify and to keep records of accidents, dangerous occurrences and prescribed diseases. The Labour and Welfare Committee can direct investigations.

Part II enables the preparation by the Committee of codes of practice providing practical guidance in respect of the above duties.

Part III provides for the appointment of inspectors. They may enter premises, conduct investigations and render harmless any cause of imminent danger. Improvement and prohibition notices may be served where there is a breach of duty or risk of serious injury. The Committee has wide powers to obtain information (subject to restrictions on disclosure).

Part IV prescribes offences. Part V contains general provisions including one imposing civil liability.

In force 1.12.87. (No. XXXI of 1987).

115. Statutory Instrument: The Health and Safety at Work (Dangerous Substances) (Guernsey) Regulations, 1987. - Prescribe dangerous substances for the purposes of the 1987 Ordinance. Consequently a traffic accident involving a vehicle carrying them must be notified.

In force 1.1.88. (S.I. No. 37 of 1987).

116. Statutory Instrument: The Health and Safety at Work (Prescribed Diseases) (Guernsey) Regulations, 1987. - Prescribe diseases which, when suffered by persons at work, must be reported under the 1987 Ordinance.

In force 1.1.88. (S.I. No. 38 of 1987).

117. Statutory Instrument: The Health and Safety at Work (Highly Flammable Liquids) (Guernsey) Regulations, 1987. - Prescribe tests for determining whether any matter is a "highly flammable liquid" for the purposes of the 1987 Ordinance. Escapes of such liquids are "dangerous occurrences" and must be notified.

In force 25.5.88. (S.I. No. 10 of 1988).

## HORTICULTURE

### Plant health

118. Statutory Instrument: The Iris (Control of Importation from Jersey) (Repeal) Order, 1988. - Lifts controls on importation of iris bulbs from Jersey.

In force 21.11.88. (S.I. No. 37 of 1988).

## HOUSING

### Appeals to Court of Appeal

119. Rules: The Court of Appeal (Housing Appeals) Rules, 1987 - see paragraph 55.

### Control of occupation

120. Order in Council: The Housing (Control of Occupation) (Amendment) (Guernsey) Law, 1988. - See 2.GLJ.38.

Royal Sanction 27.4.88. Registered 21.6.88. In force 21.7.88. (No. V of 1988).

121. Ordinance: The Housing (Control of Occupation) (Variation of Schedules) Ordinance, 1987. - Transfers one dwelling from the list in the Second Schedule to the Housing (Control of Occupation) (Guernsey) Law, 1982 to the list in the First Schedule and adds another to the list in the First Schedule.

In force 30.9.87. (No. XXVI of 1987).

122. Ordinance: The Housing (Control of Occupation) (Variation of Schedules) Ordinance, 1988. - Removes one dwelling from the list in the Second Schedule to the Housing (Control of Occupation) (Guernsey) Law, 1982, adds two hotels and two annexes to that list and adds one dwelling to the list in the First Schedule to the Law.

In force 26.10.88. (No. XLIII of 1988).

Control of occupation - amendment of Law

123. Resolution of the States - see paragraph 152.

124. Control of occupation - application for status declaration - ordinary residence

In dismissing an appeal from the Royal Court's decision upholding the Housing Authority's decision not to treat 'A' as a qualified resident under section 9(2)(g)(iv) of the Housing (Control of Occupation) (Guernsey) Law, 1982, the Court of Appeal HELD that before the Authority could exercise its discretion under subsection (iv) it must first be satisfied that the applicant has been ordinarily resident in the Island during at least fifteen consecutive years; as 'A' had not been so resident then his application was bound to fail.

[Gelsthorpe v. States of Guernsey Housing Authority - Court of Appeal 11.4.88].

125. Control of occupation - permitting another person to occupy a dwelling - definition of "occupy"

On an appeal against conviction of permitting a person to occupy a dwelling in contravention of section 1 of the Housing (Control of Occupation) (Guernsey) Law, 1982, it was HELD by the Deputy Bailiff that the word "occupy" in that Law included transitory staying at premises and was not restricted to the establishment of a home at premises.

[In re Pipet's Appeal - Criminal Appeals from the Magistrate's Court (18.10.88)].

126. Control of occupation - refusal of Authority to recommend addition of dwelling to First Schedule - whether appeal lies to the Royal Court

An hotel owned by 'A' which was inscribed on Part B of the Register ceased to be used as an hotel and therefore had to be deleted from Part B. The

Housing Authority were precluded from transferring the property to Part A of the Register under the provisions of the Housing (Control of Occupation) (Guernsey) Law, 1982 because the property had not been inscribed in the Register of 1975 immediately prior to the commencement of the 1982 Law nor named in the First Schedule and consequently section 31(2) did not apply.

The Housing Authority considered whether to recommend the States to add the dwelling to the First Schedule of the Law by Ordinance, pursuant to their powers under section 35(b) of the Law, but resolved that such a recommendation could not be justified.

Upon 'A's appeal to the Royal Court, the Bailiff ruled that section 40 of the 1982 Law did not confer a right to appeal against the refusal of the Housing Authority to recommend an addition to the Schedule pursuant to section 35(b). 'A' appealed further to the Court of Appeal.

HELD in giving an opinion as to whether or not a dwelling should be added to the First or Second Schedules to the Law - upon which the States could act pursuant to section 35(b) of the Law - the Authority was acting in accordance with its mandate to advise the States on and take responsibility for the operation of the Housing Control Laws, independently of the Law. Therefore, the decisions of the Authority in exercising that function were not within section 40(1) of the Law and no appeal lay to the Royal Court against them.

The appeal would be dismissed.

[Bon Port Limited (formerly Byron Investments Limited) v. States of Guernsey Housing Authority - Court of Appeal 7.7.88].

## HUMAN RIGHTS

### Data protection

127. Ordinance: The Data Protection (Subject Access Exemptions and Modifications) Ordinance, 1987. - Exempts from the subject access provisions of the Data Protection (Bailiwick of Guernsey) Law, 1986 (see 4.GLJ.49):
1. subject to qualifications, certain data about a person's health, if its disclosure would be likely to cause serious harm to a person's health or to reveal an individual's identity;
  2. subject to qualifications, data held by the Housing Authority or the Insurance Authority in connection with certain of their functions, if disclosure of the data would be likely to prejudice social work by causing serious physical, mental or emotional harm or revealing an individual's identity;
  3. data held by the Advisory and Finance Committee for the purpose of discharging certain statutory functions relating to the regulation of financial services (see also paragraph 128).

In force 11.11.87. (No. XXXIII of 1987).

128. Ordinance: The Data Protection (Subject Access Exemptions and Modifications) (Amendment) Ordinance, 1988. - Amends the principal Ordinance of 1987 (see paragraph 127) in consequence of the transfer of certain relevant functions from the Advisory and Finance Committee to the Financial Services Commission.

In force 1.2.89. (No. X of 1988).

129. Statutory Instrument: The Data Protection (Fees) Regulations, 1987. - Prescribe the registration fee, the fee payable for a certified copy of register entry particulars and the maximum fee which may be charged for subject access under the Data Protection (Bailiwick of Guernsey) Law, 1986 (see 4.GLJ.49).

In force 11.11.87. (S.I. No. 34 of 1987).

130. Convention: The Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data.

Ratified on behalf of the Bailiwick, subject to modifications, on 26.8.87.  
In force 1.12.87.

#### European Convention for Human Rights

131. Protocol No. 1 applied to the Bailiwick of Guernsey by Declaration of Her Majesty's Government registered on 3.5.88.

#### IMMIGRATION

132. Statutory Instrument: The Immigration (Work Permit Fee) (Guernsey) Order, 1988. - Prescribes a fee of £5 for applications for work permits.

In force 11.1.88. (S.I. No. 1 of 1988).

133. Statutory Instrument: The Immigration (Guernsey) (Amendment) Rules, 1988. - Reduce the maximum permitted stay for a visitor from 12 months to 6 months.

In force 28.9.88. (S.I. No. 25 of 1988).

#### INCOME TAX

##### Retirement annuity schemes

134. Statutory Instrument: The Income Tax (Guernsey) (Retirement Annuity Schemes and Retirement Annuity Trust Schemes) Regulations, 1987. - Increase to £4,800 the maximum permitted annual contribution which may be made by an individual to a Retirement Annuity Scheme or Retirement Annuity Trust Scheme under section 157A of the Income Tax Law, 1975. See also paragraph 135.

In force 1.1.88. (S.I. No. 35 of 1987).

135. Statutory Instrument: The Income Tax (Retirement Annuity Schemes and Retirement Annuity Trust Schemes) Regulations, 1988. - Increase to £5,200 the maximum annual contribution permitted under section 157A of the Income Tax Law, 1975.

In force 1.1.89. (S.I. No. 39 of 1988).

## INDIRECT TAXATION

136. Statutory Instrument: The Impôts (Temporary Increase of Rates) Order, 1988. - Temporarily increased rates of duty chargeable in respect of certain goods pursuant to the Budget proposals. See also paragraph 137.

In force 28.11.88. (S.I. No. 38 of 1988).

137. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1988. - Implements the budget proposals (inter alia) to increase the impôt on tobaccos, wines and spirits and petrol, to increase the annual rate of tax chargeable under the Loi relative aux Automobiles of 1926 and the rate of Corporation Tax payable under the Corporation Tax (Guernsey) Law, 1950.

In force as to part on 14.12.88 and as to the remainder on 1.1.89. (No. XLVIII of 1988).

## ISLAND DEVELOPMENT

138. Order in Council: The Island Development (Amendment) (Guernsey) Law, 1988. - See 5.GLJ.48.

Approved by the States on 25.11.87. Royal Sanction 23.3.88. Registered 21.6.88. In force on a day to be appointed. (No. VIII of 1988).

## LAND LAW

### Conveyancing procedure

139. Order in Council: The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987. - See paragraphs 173 and 174.

### Flats

140. Ordinance: The Real Property (Reform) (Guernsey) Law, 1987 (Commencement) Ordinance, 1987. - Appoints 28.10.87 for the commencement of the Real Property (Reform) (Guernsey) Law, 1987 - see 5.GLJ.49. (No. XXXII of 1987).

141. Servitude - party wall - denial of access onto co-owner's land to rebuild - appropriate course of action

A party wall situate between 'P's building site and 'D's land collapsed. 'D' refused to allow 'P' access onto her land to rebuild the wall. 'P' claimed damages for loss suffered as a result of the disruption to its building programme which could not continue until the wall was rebuilt, alleging that such a refusal of access, if loss ensued, amounted to a tort. 'D' filed an Exception de Fonds that the Cause disclosed no cause of action. HELD, by the Bailiff, upholding the Exception de Fonds, that before an action for damages resulting from failure to permit the rebuilding of a party wall (if such an action exists) could be instituted the remedies set out in the coutume must be exhausted. The proper course of action would be for the party intending to rebuild to give formal notice to the other party of his intention to enable that other party to oppose the rebuilding or to

take precautions against any inconvenience which would result. In default of agreement that party could then undertake the necessary work alone and recover the appropriate portion of the costs from the other. The Bailiff also commented that the word "titre" in the maxim "nul servitude sans titre" may not necessarily mean "a document of title" and that certain servitudes, such as the right to rebuild a party wall, must of necessity require access onto the co-owner's land and thus depend rather on the operation of the law.

[Kingsway Ltd. v. Bell 1987 35 Plaids de Meubles 112 (13.8.87)].

#### LANDLORD AND TENANT

##### 142. Agricultural tenancy - eviction - stay of execution

In an action for eviction of the tenant of a number of fields the Bailiff held that as the Stay of Eviction Laws, 1946 and 1954 did not apply to agricultural tenancies the Court did not have the power to grant a stay of execution of the eviction order.

[Marshall v. Camp - 35 Plaids de Meubles 772 (14.1.88)].

##### 143. Eviction proceedings - notice to be effected through Her Majesty's Sergeant

A tenancy agreement stated that vacant possession would be given at the expiration of six months' notice. The plaintiff purported to give the defendant such notice by letter and thereafter commenced eviction proceedings. HELD by the Deputy Bailiff that under the law of this Island notice must be effected through Her Majesty's Sergeant, unless otherwise agreed between the parties, and that as there was no evidence of such agreement the notice by letter was not sufficient and the proceedings would be dismissed.

[Berry v. Crabb - Plaids de Meubles 8.9.88].

#### Rent control

##### 144. Statutory Instrument: The Rent Control (Variation) Order, 1988. - Increases the variable items of recoverable rents of controlled dwellings by 9%.

In force 1.7.88. (S.I. No. 9 of 1988).

#### MILK

##### Prices

##### 145. Statutory Instrument: The Milk (Retail Prices) (No. 2) (Guernsey) Order, 1987. - Increases the price to be charged on the sale by retail of milk for the period 1.11.87 to 30.6.88.

In force 1.11.87. (S.I. No. 29 of 1987).

##### 146. Statutory Instrument: The Milk (Retail Prices) (Guernsey) Order, 1988. - Increases the retail sale price of milk during the period 29.5.88 to 30.6.89.

In force 29.5.88. (S.I. No. 12 of 1988).

147. Statutory Instrument: The Milk (Wholesale Prices) (No. 2) (Guernsey) Order, 1987. - Increases the prices payable by the Agricultural and Milk Marketing Board for milk during the period 1.7.87 to 30.6.88.

In force 1.7.87. (S.I. No. 28 of 1987).

148. Statutory Instrument: The Milk (Wholesale Prices) (Guernsey) Order, 1988. - Increases the prices payable by the Agricultural and Milk Marketing Board for milk during the period 1.7.88 to 30.6.89.

In force 1.7.88. (S.I. No. 13 of 1988).

#### States Agricultural and Milk Marketing Board

149. Order in Council: The States Dairy Committee (Transfer of Functions) (Guernsey) Law, 1988 - see paragraph 45.

#### MOTOR TAXATION

150. Order in Council: The Motor Taxation and Licensing (Guernsey) Law, 1987 (see 1.GLJ.38 and 5.GLJ.53). - Consolidates existing legislation.

Royal Sanction 18.12.87. Registered on 16.2.88. In force on a day or days to be appointed.

151. Ordinance: The Indirect Taxes, Duties and Impôts (Increase of Rates) (Budget) Ordinance, 1988 - see paragraph 137.

#### POPULATION AND MIGRATION

152. Resolution of the States of 29.6.88: Directing the preparation of legislation

- (i) to set up an Island Register of all residents to monitor changes in the size of the population;
- (ii) to introduce a requirement that any person entering employment must be the holder of a document evidencing the fact that he is lawfully housed and to make it an offence to employ a person who does not hold such a document; and
- (iii) to amend the Housing (Control of Occupation) (Guernsey) Law, 1982 to provide for the Authority to issue short term housing licences.

#### POST OFFICE

##### Amendment of Law

153. Order in Council: The Post Office (Amendment) (Bailiwick of Guernsey) Law, 1988. - Widens the States' Ordinance-making power under section 24 of the Post Office (Guernsey) Law, 1969.

Approved by the States of Guernsey 26.11.87, by the States of Alderney 13.1.88 and by the Chief Pleas of Sark 20.1.88. Royal Sanction 25.5.88. Registered and in force 23.8.88. (No. X of 1988).

Increase in fees

154. Statutory Instrument: The Post Office (Inland Post) (Amendment) (No. 2) Order 1987. - Increases the postage rates and compensation fees for parcels to the United Kingdom.  
  
In force 2.11.87. (S.I. No. 27 of 1987).
155. Statutory Instrument: The Post Office (Inland Post) (Amendment) (No. 3) Order 1987. - Increases the fees for Private Boxes.  
  
In force 1.1.88. (S.I. No. 33 of 1987).
156. Statutory Instrument: The Post Office (Inland Post) (Amendment) (No. 4) Order, 1987. - Increases the Flower Box posting fees.  
  
In force 1.1.88. (S.I. No. 36 of 1987).
157. Statutory Instrument: The Post Office (Inland Post) (Amendment) Order 1988. - Increases the rate of the inland letter post, including Jersey and the Isle of Man.  
  
In force 28.3.88. (S.I. No. 4 of 1988).
158. Statutory Instrument: The Post Office (Inland Post) (Amendment) (No. 2) Order 1988. - Increases the fees for Express Delivery and Registration, for collection from private post boxes and in respect of various miscellaneous services.  
  
In force 5.9.88. (S.I. No. 17 of 1988).
159. Statutory Instrument: The Post Office (Inland Post) (Amendment) (No. 3) Order 1988. - Increases the postage rates for parcels to the United Kingdom in conjunction with the British Post Office.  
  
In force 5.9.88. (S.I. No. 19 of 1988).
160. Statutory Instrument: The Post Office (Postal Order) (Amendment) Order 1988. - Increases the fees for postal orders.  
  
In force 1.5.88. (S.I. No. 6 of 1988).
161. Statutory Instrument: The Post Office (Overseas Parcel Post) (Amendment) Order 1988. - Increases the postal rate of the Overseas Parcel Post in conjunction with the British Post Office.  
  
In force 6.6.88. (S.I. No. 7 of 1988).
162. Statutory Instrument: The Post Office (Overseas Letter Post) Amendment Order 1988. - Increases the rate for overseas letters, newspapers and small packets and the compensation fees in respect of insured letters.  
  
In force 5.9.88. (S.I. No. 16 of 1988).

Interception of communications

163. Projet de Loi: The Interception of Communications (Bailiwick of Guernsey) Law, 1987. - See paragraph 69.

PRACTICE AND PROCEDURE (CIVIL)

164. Appeals - appeal to Royal Court - appeal against finding of fact - proper approach

In the course of an appeal from a civil action in the Magistrate's Court to the Royal Court the Bailiff directed the Jurats that the proper approach for the Royal Court when sitting as an appellate court in such circumstances was that adopted by the Court of Appeal, that is to say, not to interfere with a finding of fact made by the Magistrate unless it was satisfied that there was no evidence before it upon which he could reasonably have arrived at those findings or that for any other reason the finding of fact of the Magistrate was perverse.

[Domaille v. Harris - Requête 14.1.88].

165. Appeals - direction on point of law not affecting verdict - whether appeal lies

In his summing up in a civil action brought against the Water Board under Article 6 of the "Loi ayant rapport à la Fourniture d'Eau par les Etats de cette Ile aux habitants de la dite Ile" of 1927 the Deputy Bailiff directed the Jurats that that provision imposed strict liability on the defendant. The Jurats found that the defendant had been negligent (see 3.GLJ.50). The defendant appealed to the Court of Appeal against so much of the judgment as given by the Royal Court as adjudged that Article 6 of the 1927 Law imposed strict liability on the defendant for damage caused by escapes of water from mains belonging to it whether or not the damage was caused by its negligence. HELD that, as the Deputy Bailiff's finding of law did not affect the verdict of the Jurats, who had found that the defendant had been negligent and consequently was liable, it was not a ruling of the Court against which an appeal could lie. The appeal was withdrawn.

[States of Guernsey Water Board v. King's Mills Hotel Limited and Boyer - Court of Appeal 9.7.87].

166. Civil action in Magistrate's Court - application to Court of Appeal to intervene - whether jurisdiction

The defendant in a petty debt action in the Magistrate's Court which had not yet been determined applied to the Court of Appeal "to intervene" in the action. HELD, that under the provisions of the Magistrate's Court (Guernsey) Law, 1954, there was no right of appeal from the Magistrate's Court until there had been a hearing and a determination by that Court. The Court of Appeal, the jurisdiction of which was delimited by the Court of Appeal (Guernsey) Law, 1961, had no jurisdiction to hear the application for intervention.

[In re Kirk's Application - Court of Appeal 30.9.88].

167. Commission Rogatoire - application under section 5 of the Extradition Act, 1873 - disclosure of banking records - evidence unnecessary to prove criminal offence

A person accused of fraud in the United States of America had transmitted funds to Guernsey. The Home Secretary issued an order pursuant to section 5 of the Extradition Act, 1873, requiring the production of certain banking records which, it was alleged, were "necessary to establish the identity of other potential defendants who might have been involved in this scheme ...." HELD, by the Deputy Bailiff, finding as a matter of fact that the evidence proving the commission of the offence by the accused had already been obtained from Jersey, that as there was no criminal matter pending against the "other potential defendants" this was a "fishing expedition" and the application would be refused.

[Re Boulbain - Divers 3.2.88].

Costs

168. Rules: The Magistrate's Court Fees (Amendment) Rules, 1987. - Amend the Magistrate's Court (Fees) Rules, 1981 so as to increase the allowance to witnesses from £10 per half day to £20 per half day and to provide that witness fees be recoverable as a civil debt.

In force 3.11.87. (Order of the Royal Court No. 1 of 1987).

169. Election de domicile - whether defendant obliged to make election

When an action was placed on the pleading list the plaintiff asked for an "election de domicile". The defendant's advocate asked for an adjournment to take instructions. HELD by the Deputy Bailiff that a plaintiff is entitled to an election de domicile if he so requests.

[Gardner v. Balderson - 35 Plaids de Meubles 582 (19.11.87)].

170. Exceptions de Forme - Practice Direction

As from 1st January, 1988 all hearings relating to Exceptions de Forme will be heard in Chambers. There will be no recording of the proceedings. If the presiding judge deems it necessary, a reasoned judgment will be delivered in open court.

[Practice Direction of 23.12.87].

171. Filing of documents and exchange of authorities - Practice Direction

All pleadings, authorities and documents to be produced by either party at the trial of any civil action (together with a list indicating whether or not each document is agreed) must be lodged at the Greffe by the 15th day of the month preceding that in which the trial is due to be held.

Non-compliance may lead to the action being adjourned and the Court awarding costs against the party or Counsel in default.

[Practice Direction of 12.10.87].

172. Jurisdiction - agreement between parties to submit to jurisdiction of Guernsey Courts - corporation tax companies - substantial connections with Isle of Man - stay of Guernsey proceedings

An agreement between two companies, 'P' and 'D', stated that the proper law of the agreement should be that of the Island of Guernsey. Notwithstanding that agreement, 'D' applied by way of Exception de Fonds to have proceedings instituted by 'P' stayed pending proceedings in the Isle of Man. HELD by the Deputy Bailiff that as the companies were both corporation tax companies having only a nominal presence in Guernsey; as the subject matter of the claim was in respect of funds situate in the Isle of Man under a Scheme of Arrangement set up by the High Court of Justice of the Isle of Man as a result of allegations of default by an Isle of Man company allegedly in the same beneficial ownership as 'P'; and as the Court had satisfied itself that 'P' would not be prejudiced by the transfer of proceedings from Guernsey to the Isle of Man; the proceedings would be stayed.

[Continental and Overseas Securities (Guernsey) Ltd. v. Hong Kong and Shanghai Trustees Co. Ltd. - 35 Plaids de Meubles 548 (12.11.87)].

Law reform

173. Order in Council: The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987. - See 5.GLJ.63.

Approved by the States 29.4.87. Royal Sanction 21.7.87. Registered 5.10.87. For commencement see paragraph 174. (No. X of 1987).

174. Ordinance: The Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987 (Commencement) Ordinance, 1988. - Appoints 18.3.88 for the commencement of the Law except Part IV (procedures to facilitate conveyancing - in force on a day to be appointed). (No. XII of 1988).

Non-contentious applications

175. Order of the Royal Court: The Royal Court (Non-contentious Applications) Rules, 1988. - Provide that certain applications previously made to the Royal Court sitting as an Ordinary Court may henceforth be made in the prescribed manner to the Bailiff in Chambers.

In force 1.3.88. (Order of the Royal Court No. II of 1988).

176. Reciprocal enforcement of judgments - application to set aside registered judgment - jurisdiction of original court - whether judgment debtor had sufficient notice of proceedings in original court

A judgment obtained in the Queen's Bench Division of the High Court was registered pursuant to section 4(1) of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957. The judgment debtor applied for the registration to be set aside pursuant to section 6(1) on the grounds that the High Court had no jurisdiction to award the judgment and that the judgment debtor did not receive notice of the proceedings in the original court in sufficient time to enable him to defend the proceedings and consequently did not appear. HELD by the Deputy Bailiff, refusing the application to set aside:

- (a) that following Mike Trading and Transport v. R. Pagnen and Fratelli, the fact that there was agreement to submit to English arbitration in the dealings between the parties was sufficient to entitle the High Court of England to exercise its jurisdiction pursuant to section 6(2)(a) of the Law; and
- (b) that there was no conclusive evidence in the affidavit of the applicant that notice of the proceedings had not been served on its registered office.

[Vekaplast Windows (C.I.) Limited v. Mila Hardware and Machinery (U.K.) Limited - Reciprocal Judgments 28.7.88].

### PRISONS

177. Projet de Loi: The Parole Review Committee (Guernsey) Law, 1988. - Establishes a Committee empowered to release on licence serving prisoners, recall them and attach conditions to such licences. Power is given to the States to lay down practice and procedure, including disclosure of information, ancillary provisions, conferment of powers and limitation of civil liability of the Committee in the discharge of its duties.

Approved by States 28.7.88. Awaiting Royal Sanction.

178. Ordinance: The Prison Administration (Amendment) (Guernsey) Ordinance, 1988. - Adds "officer of police" and "States Revenue officer" to the classes of person who may visit a prisoner under section 71(2) of the Prison Administration Ordinance, 1959. Section 93 of that Ordinance, which permits unconvicted prisoners to receive outside meals, is repealed.

In force 30.11.88. (No. XLV of 1988).

### PUBLIC ASSISTANCE

179. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1987. - Approves the (Amendment) Regulations (S.I. No. 26 of 1987), made by the Central Outdoor Assistance Board on 9.9.87 pursuant to the Public Assistance Law, 1937, which increase the limit of weekly income to £83.

In force 27.11.87. (No. XXXVI of 1987). Repealed and replaced with effect from 30.11.88 - see paragraph 180.

180. Ordinance: The Central Outdoor Assistance Board Regulations (Amendment) Ordinance, 1988. - Approves the (Amendment) Regulations (S.I. No. 24 of 1988), made by the Central Outdoor Assistance Board on 13.9.88 pursuant to the Public Assistance Law, 1937, which increase the limit of weekly income to £90.

In force 30.11.88. (No. XLVI of 1988).

## RATING

181. Ordinance: The Tax on Rateable Values (Amendment) (Guernsey) Ordinance, 1988. - Amends the principal Ordinance of 1976 so as to increase the rate at which tax is to be assessed to seventy pence per pound.

In force 14.12.88. (No. XLIX of 1988).

## ROAD TRAFFIC AND PUBLIC TRANSPORT

### Construction and use

182. Ordinance: The Road Traffic (Construction and Use of Motor Vehicles) (Amendment) Ordinance, 1988. - Allows the Police Committee to permit the use on public highways of vehicles not complying with the normal construction and use requirements as to brakes.

In force 8.2.88. (No. XI of 1988).

183. Resolution of the States of 28.9.88: Directing the preparation of legislation to transfer certain functions of the Chief Officer of Police under the Road Traffic (Construction and Use of Motor Vehicles) Ordinance, 1970 and the Road Traffic (Speed Limits and Trailers) Ordinance, 1959 to the Island Traffic Committee.

### Lighting

184. Ordinance: The Lighting of Vehicles and Skips Ordinance, 1988. - Specifies

- (a) with the object of ensuring that vehicles on public highways at night or in poor visibility conditions carry sufficient illumination for their drivers to see the road and for other road users to identify them and see their movements and whether they are braking, when and how certain lamps and reflectors must be carried and illuminated on motor vehicles ("obligatory lamps and reflectors");
- (b) with the object of restricting the use of lamps which may cause dazzle, danger or confusion, the lamps which may be carried and illuminated on motor vehicles ("permitted lamps");
- (c) the responsibilities of skip owners to light skips left on public highways at night.

In force 1.8.88. (No. XXV of 1988).

Offences - see CRIMINAL LAW

### Parking

185. Ordinance: The Vehicular Traffic (Parking on St. Peter Port Harbour) (Prohibition) (Amendment) Ordinance, 1987. - Amends the principal Ordinance of 1965, as amended, so as to prohibit parking on any area reclaimed under the North Beach Reclamation Scheme (including the Salerie).

In force 29.12.87. (No. XXXVII of 1987). Repealed and replaced (together with the principal Ordinance) with effect from 5.8.88 by the Harbours Ordinance, 1988 (see paragraphs 105 and 106).

186. Ordinance: The Road Traffic (Parking Places) (Amendment) Ordinance, 1988. - Amends the Road Traffic (Parking Places) Ordinance, 1963, as amended, so as (inter alia) to transfer the functions of the Island Police Committee under the principal Ordinance to the States Island Traffic Committee; to require notice of proposed orders relating to parking places to be published in La Gazette Officielle; to prohibit trading from a vehicle in a disc parking place or approved parking place; and to empower the Committee temporarily to close parking places.

In force 26.10.88. (No. XXXVIII of 1988).

187. Ordinance: The Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988. - Controls vehicular traffic and parking at Monument Gardens, South Quay and North Quay and Mignot Plateau, St. Peter Port.

In force 26.10.88. (No. XL of 1988).

188. Statutory Instrument: The Parking Places (Amendment) (No. 2) Order, 1987. - Alters parking arrangements in Pollet Street, St. Peter Port.

In force 28.8.87. (S.I. No. 25 of 1987). Repealed and replaced - see paragraph 189.

189. Statutory Instrument: The Parking Places (Amendment) Order, 1988. - Alters parking arrangements in various disc parking places, including Pollet Street, La Tourgand, Belmont Road, Avenue Germaine and Ruelle Braye, Les Canichers and La Rue Maurepas.

In force 4.2.88. (S.I. No. 2 of 1988).

190. Statutory Instrument: The Parking Places (Amendment) (No. 2) Order, 1988. - Removes the approved parking place for motor bicycles in Saint Julian's Avenue.

In force 3.8.88. (S.I. No. 15 of 1988).

### Penalties

191. Ordinance: The Road Traffic Offences (Increase in Fines) Ordinance, 1988. - Increases the maximum fine which may be imposed on conviction of failure to stop after or report accidents, carrying passengers on bicycles and construction and use offences.

In force 1.8.88. (No. XXIV of 1988).

192. Resolution of the States of 16.3.88: Directing the preparation of legislation amending the Traffic (Fixed Penalties) Ordinance, 1975 so as to increase the amount of the fixed penalty, modify the procedure for collection of fixed penalties and extend the scope of the Ordinance to include additional offences which may be dealt with by way of fixed penalty.

### Prohibited and one-way streets

193. Ordinance: The Prohibited and One-Way Streets (Amendment) Ordinance, 1987. - Makes La Rue Traversée, Castel, a one-way street from south-west to north-east.
- In force 30.9.87. (No. XXX of 1987).
194. Ordinance: The Prohibited and One-Way Streets (Amendment) (No. 2) Ordinance, 1987. - Makes La Rue Flêre, Vale, a one-way street from west to east.
- In force 26.11.87. (No. XXXV of 1987).
195. Ordinance: The Prohibited and One-Way Streets (Amendment) Ordinance, 1988. - Changes the maximum laden weight limit in Bouillon Lane, St. Andrew's from five tons to two tons.
- In force 30.11.88. (No. XLIV of 1988).
196. Statutory Instrument: The Road Traffic (Prohibited and One-Way Streets) Regulations 1988. Temporarily alters the maximum laden weight limit in Bouillon Lane, St. Andrew's from five tons to two tons.
- In force 10.6.88. (S.I. No. 11 of 1988). Superseded by Ordinance - see paragraph 195.
197. Statutory Instrument: The Road Traffic (Prohibited and One-Way Streets) (No. 2) Regulations, 1988. - Experimental regulations making part of the Sausmarez Mill estate road one way from east to west.
- In force 27.10.88. (S.I. No. 30 of 1988).

### Public service vehicles

198. Ordinance: The Public Transport (Amendment) Ordinance, 1987. - Provides that taxi signs shall be of a type approved by the Public Transport Licensing Authority.
- In force 30.9.87. (No. XXV of 1987).
199. Ordinance: The Public Transport (Amendment) Ordinance, 1988. - Amends the principal Ordinance of 1986 (see 3.GLJ.65) so as (inter alia) to transfer responsibility for certain functions under that Ordinance from the Island Police Committee to the Passenger Transport Licensing Authority.
- In force 27.1.88. (No. VI of 1988).
200. Ordinance: The Road Traffic (Permits to Drive Public Service Vehicles) (Amendment) Ordinance, 1988. - Amends the principal Ordinance of 1986 (see 3.GLJ.66) by transferring to the Passenger Transport Licensing Authority the functions of the Island Police Committee under that Ordinance.
- In force 27.1.88. (No. V of 1988).

### Seat belts

201. Ordinance: The Seat Belts Ordinance, 1988. - Requires, subject to exemptions in each case, that seat belts be fitted for the front seats of motor vehicles; and that drivers and front seat passengers must wear seat belts. Seat belts must meet prescribed standards and must be installed, anchored and maintained in the prescribed manner. An adult (over 14 for this purpose) must not travel in any forward facing front seat which is, or should be, fitted with a seat belt, unless he wears one; and an offence is committed by anyone who allows a child or young person to travel in such a seat without wearing a seat belt or, in the case of a child under 6, a child restraint of a prescribed standard. There are special requirements as to seat belts for disabled people. The exemptions from the requirement to wear a seat belt include exemption by a medical certificate, the procedure for obtaining which is set out in the Ordinance.

In force 1.7.88. (No. XX of 1988).

202. Statutory Instrument: The Seat Belts (Exemptions for Firemen) Order, 1988. - Exempts on-duty firemen (who were already exempt whilst donning operational clothing or equipment) from the requirement to wear a seat belt whilst driving vehicles of over 1525 kg unladen weight.

In force 12.12.88. (S.I. No. 40 of 1988).

### Signs and signals

203. Ordinance: The Traffic Signs and Traffic Light Signals Ordinance, 1988. - Consolidates and updates the legislation conferring powers to place or mark traffic signs and traffic lights on and near public highways; and illustrates the mandatory and prohibitive signs and signals in common usage and defines their meanings.

Besides those conveying warnings or information, signs are divided into those which give orders or directions in their own right and those which indicate the existence of some legal prohibition, restriction or requirement imposed by other legislation. The Ordinance sets out rules as to their positioning and dimensions and specifies the extent of their application. Traffic lights give orders in their own right and are similarly subject to rules about such matters. Special provision is made as to temporary signs and signals.

In force 1.6.88. (No. XV of 1988). Modified in relation to signs and signals on harbour land with effect from 5.8.88 by the Harbours Ordinance, 1988 (see paragraph 105 ).

### SAISIE

204. Final vesting order - sale of realty by creditor - whether balance of debt in excess of proceeds of sale recoverable from guarantor

'D' obtained judgment and a final vesting order against the principal debtor and subsequently sold the realty acquired in the saisie. The sale did not

realise sufficient funds to satisfy the debt. 'PP', liquidators of a company which had guaranteed the principal debtor's liabilities, sought a direction pursuant to Article 75(b) of the "Loi relative aux Sociétés Anonymes ou à la Responsabilité Limitée (1908)" that the balance of the debt was not recoverable from the company, 'D's claim having been satisfied in full.

HELD by the Deputy Bailiff, dismissing the application,

- (a) a guarantee should be construed strictly against the party executing it;
- (b) that, upon the true construction of the guarantee, the fact that 'D' had failed to join the guarantor company in the saisie proceedings to "counsel" 'D' did not forfeit 'D's rights against the guarantor; and
- (c) also upon the construction of the guarantee, the saisie proceedings did not extinguish any further claim against the principal debtor

therefore it was open to 'D' to seek its remedy against the guarantor company for the balance.

[The Late Shopper Limited (in liquidation) Barclays Bank PLC - 35 Plaids de Meubles 835 (2.2.88)].

## SHIPPING

### Masters and seamen

205. United Kingdom Statutory Instrument: The Merchant Shipping (Certification of Deck Officers and Marine Engineer Officers) (Guernsey) Order, 1988. - Updates the law as to the certification of deck officers and marine engineer officers by replacing previous legislation with adapted versions of the United Kingdom Merchant Shipping (Certification of Deck Officers) Regulations 1985 and the Merchant Shipping (Certification of Marine Engineer Officers and Licensing of Marine Engine Operators) Regulations, 1986.

In force 1.1.89. (U.K. S.I. 1988 No. 1991).

### Passenger boats and hired boats

206. Projet de Loi: The Hired Boats and Passenger Boats (Guernsey) Law, 1988. - Updates the legislation controlling the hiring out of, and the carriage of passengers for reward on, small boats. Licences will still be required by their operators and crew members, and the Board of Administration will continue to make regulations in this field. But the Projet specifies matters with which regulations and licence conditions may deal; sets out the respective duties of licensed operators and boatmen; deals specifically with the action to be taken following a collision or accident; permits the imposition of additional third-party insurance requirements; and generally allows for safety requirements to reflect advances in marine technology. Larger passenger boats - those carrying more than 12 passengers - are controlled under other legislation and fall outside the Projet's ambit.

Approved by the States 27.4.88. Awaiting Royal Sanction.

207. Statutory Instrument: The Boats (Guernsey) Regulations, 1988. - Re-enact previous regulations with minor modifications. Unlike the regulations for previous years, these regulations will remain in force (unless previously modified or repealed) until the introduction of a new régime under the Hired Boats and Passenger Boats (Guernsey) Law, 1988 (see paragraph 206),

In force 1.2.88. (S.I. No. 3 of 1988).

#### Registration

208. Order in Council: The Merchant Shipping (Registration) (Bailiwick of Guernsey) Law, 1987. - See 5.GLJ.78.

Royal Sanction 21.7.87. Registered and in force 5.10.87. (No. XI of 1987).

#### State immunity

209. Convention: The International Convention for the Unification of Certain Rules concerning the Immunity of State-owned Ships (Brussels, 10th April 1926) and Protocol thereto (Brussels, 24th May 1934). - Subjects sea-going ships owned or operated by contracting States (except ships exclusively employed on Government and non-commercial service, ships of war, State-owned yachts, patrol vessels, hospital ships, fleet auxiliaries and supply ships) to the same rules of liability and procedure as regards claims in respect of their operation as privately-owned ships. Acceded to separately in the name of the Bailiwick, subject to reservations, on 19.11.87.

In force 19.5.88.

#### Third-party insurance

210. Order in Council: The Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Amendment) (Guernsey) Law, 1987. - Cures a defect in the 1972 Law which did not make it an offence to fail to comply with the compulsory third-party insurance provisions.

Approved by the States 28.10.87. Royal Sanction 27.4.88. Registered and in force 7.6.88. (No. IV of 1988).

#### Tonnage measurement

211. Statutory Instrument: The Merchant Shipping (Deck Cargo Tonnage) (Guernsey) Regulations 1988. - Provide for the ascertainment of deck cargo tonnage, and for the completion and production by the master or his agent of a declaration of deck cargo tonnage, for the purpose of assessing dues payable on a ship's tonnage.

In force 1.1.89. (S.I. No. 34 of 1988).

212. Statutory Instrument: The Merchant Shipping (Tonnage) (Guernsey) Regulations 1988. - Prescribe the manner in which the tonnage of a ship is to be ascertained and certified, as required for a variety of purposes. Until 18.7.94 (when they will become applicable to all ships) the new rules will in general apply only to ships whose keels were laid, or where

alterations have led to substantial changes in gross tonnage, since 18.7.82. Older ships may in general continue to have their tonnage ascertained in accordance with the regulations previously in force subject to modifications as respects upper deck space in relation to ships (other than fishing boats) of 24 metres or more in length. The Regulations provide for acceptance of certain foreign tonnage certificates and for ascertaining and certifying the tonnage of certain foreign ships.

In force 1.1.89. (S.I. No. 35 of 1988).

213. United Kingdom Statutory Instruments: The Merchant Shipping Act 1965 (Guernsey) Order 1988 and the Merchant Shipping Act 1979 (Guernsey) Order 1988. - The effect of these Orders is to extend to the Bailiwick amendments made to the Merchant Shipping Act 1965 (concerning tonnage regulations) since that Act was originally extended, and amendments made to section 85 of the Merchant Shipping Act 1894 (concerning dues for space occupied by deck cargo) by the Merchant Shipping Act 1979.

In force 1.1.89. (U.K. S.I. 1988 Nos. 1850 and 1851).

## SOCIAL SECURITY

### Attendance and invalid care allowances

214. Ordinance: The Attendance and Invalid Care Allowances (Guernsey) Ordinance, 1987. - Increases benefits payable under the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, as amended.

In force 9.11.87. (No. XXIII of 1987).

215. Ordinance: The Attendance and Invalid Care Allowances (Guernsey) Ordinance, 1988. - Further increases benefits payable under the Attendance and Invalid Care Allowances (Guernsey) Law, 1984, as amended.

In force 7.11.88. (No. XXX of 1988).

216. Attendance and invalid care allowances - meaning of "regularly and substantially engaged" in care

The appellant claimed invalid care allowance under the Attendance and Invalid Care Allowances (Guernsey) Law, 1984 in respect of her son who, it was accepted, satisfied the conditions specified in section 1(1) of the Law relating to the need for attendance. The son spent most of the week living in a hostel for the physically handicapped maintained by the States, but normally went home on Friday afternoon and stayed there until being returned to the hostel at 5.00 p.m. the following Sunday. The Administrator rejected the appellant's claim for invalid care allowance because in his view she was not regularly and substantially engaged in caring for her son for at least thirty-five hours a week within the meaning of section 3(1) of the Invalid Care Allowance (Guernsey) Regulations, 1986. The Tribunal upheld the Administrator's adjudication saying that the words "at least 35 hours a week" meant throughout the week and not over a weekend as claimed by the appellant. On appeal to the Ordinary Court the Deputy Bailiff HELD that the Administrator must first decide how many hours of caring are established.

The mere fact that the appellant is in the same house as an invalid does not in itself establish a caring situation. To succeed a person has to show that the caring is exclusively by him or her and that some activity, skill or supervision is exercised during the hours claimed amounting to such as would fairly entitle a person to remuneration if he or she were in employment as "a carer". The approach of the Administrator was consistent with these conclusions and the appeal would be dismissed.

(Roussel v. Administrator, States Insurance Authority - Requête 30.12.87].

#### 217. Family allowances

Ordinance: The Family Allowances (Guernsey) Ordinance, 1988. - Amends the Family Allowances (Guernsey) Law, 1950 so as to increase the weekly amount payable in respect of each child to £4.50 (see further paragraph 218).

In force 8.11.88. (No. XXIII of 1988).

218. Ordinance: The Family Allowances (No. 2) (Guernsey) Ordinance, 1988. - Further amends the Law to increase the weekly payments to £6.50 per child.

In force 14.3.89. (No. L of 1988).

#### Social insurance

219. Ordinance: The Social Insurance (Reciprocal Agreement with Sweden) (Guernsey) Ordinance, 1988. - Provides for reciprocal social insurance benefits between Sweden and the Bailiwick of Guernsey.

In force 1.5.88. (No. XXII of 1988).

220. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) (Guernsey) Ordinance, 1987. - Increases the rates of social insurance contributions and benefits under the Social Insurance (Guernsey) Law, 1978.

Certain provisions in force 9.11.87, remaining provisions in force 1.1.88. (No. XXIV of 1987).

221. Ordinance: The Social Insurance (Rates of Contributions and Benefits, etc.) (Guernsey) Ordinance, 1988. - Further increases the rates of social insurance contributions and benefits under the Social Insurance (Guernsey) Law, 1978.

In force 7.11.88 (except sections 2 and 3, in force 1.1.89). (No. XXIX of 1988).

222. Statutory Instrument: The Social Insurance (Classification) (Amendment) (Guernsey) Regulations, 1987. - Increase the earnings limits under which a person shall be treated as non-employed for the purpose of the principal Regulations.

In force 1.1.88. (S.I. No. 30 of 1987). Repealed and replaced - see paragraph 223.

223. Statutory Instrument: The Social Insurance (Classification) (Amendment) (Guernsey) Regulations, 1988. - Provide that casual labourers without a

contract of service may be treated as employed persons for the purpose of the principal Regulations and further increase the earnings limits under which a person shall be treated as non-employed.

In force 1.1.89. (S.I. No. 27 of 1988).

224. Statutory Instrument: The Social Insurance (Contributions) (Amendment) (Guernsey) Regulations, 1987. - Increase the earnings limits under which a person shall be treated as non-employed for the purpose of the principal Regulations.

In force 1.1.88. (S.I. No. 31 of 1988).

225. Statutory Instrument: The Social Insurance (Contributions) (Amendment) (Guernsey) Regulations, 1988. - Correct an error in the principal Regulations so as to provide for each contribution quarter to comprise 13 contribution weeks.

In force 3.5.88. (S.I. No. 8 of 1988).

226. Statutory Instrument: The Social Insurance (Contributions) (Amendment) (No. 2) (Guernsey) Regulations, 1988. - Amend the principal Regulations so as to increase the lower weekly earnings limit and the lower monthly earnings limit.

In force 1.1.89. (S.I. No. 26 of 1988).

227. Statutory Instrument: The Social Insurance (Increase of Benefit) (Guernsey) Regulations, 1987. - Increase the reduced rates of widow's benefits, old age pension, unemployment benefit, sickness benefit, invalidity benefit and maternity allowance payable under the Social Insurance (Guernsey) Law, 1978; increase the reduced amounts of death grant payable under that Law; and revise the rates of industrial disablement benefit where constant attendance is required.

In force 9.11.87. (S.I. No. 32 of 1987). (See also paragraph 228).

228. Statutory Instrument: The Social Insurance (Increase of Benefits) (Guernsey) Regulations 1988. - Increase the reduced rates of widow's benefits, old age pension, unemployment benefit, sickness benefit, invalidity benefit and maternity allowance payable under the Social Insurance (Guernsey) Law, 1978; increase the reduced amounts of death grant payable; and revise the rates of increase of industrial disablement benefit when constant attendance is required.

In force 7.11.88. (S.I. No. 28 of 1988).

#### Supplementary benefit

229. Ordinance: The Supplementary Benefit (Classes of persons to whom the Law applies) Ordinance, 1988. - Varies the classes of persons to whom the Law of 1971 applies. The following additional persons are now included:

- men over 60 years of age;
- single men supporting a family alone;
- a wife who has deserted her husband;
- a prisoner's wife supporting a family;

- certain sick persons not previously included;
- a husband, or cohabitee, supporting children in place of a woman who is detained in legal custody;
- a man who has given up his employment to care for his children because his wife is in hospital or unable to care for them;
- a husband, or cohabitee, who has given up his employment to care for his incapacitated wife or cohabitee.

In force 11.11.88. (No. XXXI of 1988).

230. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1987. - Amends the principal Ordinance so as to increase the benefits payable under the Supplementary Benefit (Guernsey) Law, 1971. (See also paragraph 231).

In force 13.11.87. (No. XXI of 1987).

231. Ordinance: The Supplementary Benefit (Implementation) (Amendment) Ordinance, 1988. - Further amends the principal Ordinance (inter alia) by providing for the adjustment in payments of supplementary benefit so that amounts under £1 are disregarded and benefit over £1 is payable only in multiples of of 25p; and by amending the normal requirements provisions.

In force 11.11.88. (No. XXXIII of 1988).

232. Ordinance: The Supplementary Benefit (Implementation) (Amendment) (No. 2) Ordinance, 1988. - Further amends the principal Ordinance of 1971 so as to increase the limit of the weekly income for the purposes of paragraph 3 of Part 1 of the First Schedule to that Ordinance (in respect of a person who is residing in a hospital or nursing home or in a residential home) to £200.

In force 18.11.88. (No. XLI of 1988).

## TELECOMMUNICATIONS

### Interception of communications

233. Projet de Loi: The Interception of Communications (Bailiwick of Guernsey) Law, 1987 - see paragraph 69.

## TOURISM

### Boarding permits - fees

234. Ordinance: The Tourist Law (Fees) (Amendment) Ordinance, 1987. - Increases the fees payable for boarding permits under the Tourist Law, 1948.

In force 1.1.88. (No. XXXVIII of 1987).

## TRADE AND INDUSTRY

### Hawkers and non-resident traders

235. Resolution of the States of 14.12.88: Directing the amendment of the Hawkery and Non-Resident Traders (Guernsey) Law, 1980. Functions relating

to approval of trade fairs are to be transferred from the Advisory and Finance Committee to the Board of Trade and Industry; licence fees and fines are to be increased; and all offences are to be triable summarily.

### TRUSTS

236. Projet de Loi: The Trusts (Guernsey) Law, 1988. - States the circumstances in which a trust of personalty is considered to exist. Defines the proper law and the jurisdiction of the court. Makes provision as to the creation, validity and duration of Guernsey trusts; the appointment, retirement and discharge of trustees; the duties and powers of trustees and their liability for breach of trust; the failure, lapse and termination of trusts; the powers of the court; and the variation of trusts (including the "cy-près" doctrine). Makes incidental provision (e.g. as to the "tracing" of trust property; bankruptcy of trustees; protection of bona fide purchasers; liability of directors of corporate trustees; and limitation of actions).

Approved by States 28.7.88. Awaiting Royal Sanction.

237. Projet de Loi: The Saint Peter's Church Hall (Trust) (Guernsey) Law, 1988. - Provides that the proceeds of sale of the Saint Peter's church hall are henceforth to be held on trust for the needs of the parish church of St. Pierre du Bois and for charitable purposes generally.

Approved by the States 26.10.88. Awaiting Royal Sanction.

### Deed of Appointment - non-compliance with provisions of settlement - validation by court

238. Pursuant to an application by consent to the Royal Court by the beneficiaries, settlor and newly-appointed trustees of a settlement, the Court declared

- (1) that the appointment of the trustees was not invalid by reason only of non-compliance with certain requirements relating to residence in Guernsey of one of the trustees contained in the settlement, and
- (2) that, notwithstanding the terms of the trust instrument to the contrary, the power of appointment of additional trustees vested in the trustees for the time being of the settlement.

[Re Whitmore's Settlement Trusts - 33 Plaids de Meubles 280 (26.9.85)].

### VIDEO LICENSING

#### Obscene publications - defence to charge

239. Resolution of the States - see paragraph 74.

### WATER

240. Order in Council: The States Water Supply (Amendment) (No. 2) (Guernsey) Law, 1987. - See 5.GLJ.86.

Royal Sanction 21.10.87. Registered and in force 15.12.87. (No. XVI of 1987.

241. Ordinance: The Water Charges (Amendment) Ordinance, 1987. - Increases charges for the supply of water and quarterly meter rents.

In force 1.1.88. (No. XL of 1987).

242. Ordinance: The Watercourses Ordinance, 1988. - Applies the provisions of the Loi relative aux Douits, 1936 to the watercourse draining to, and discharging at, the Richmond end of Vazon.

In force 28.9.88. (No. XXXV of 1988).

243. Statutory Instrument: The States Water Supply (Fees) Order, 1988. - Prescribes a fee of £16 for the testing by the Water Board of the accuracy of a water meter.

In force 11.3.88. (S.I. No. 5 of 1988).

244. Resolution of the States of 10.12.87: Directing the re-enactment, with modifications, of the States Water Supply Laws, 1927 to 1987, and the States Water Supply (Prevention of Pollution) (Guernsey) Law, 1965.

## ALDERNEY

### AGRICULTURE AND ANIMALS

#### Dog Tax

245. Ordinance: The Alderney (Application of Legislation) (Dog Tax) Ordinance, 1987. - Provides that the Dog Tax (Guernsey) Ordinance, 1987 (see paragraph 3) shall have effect in the Island of Alderney.

In force 1.1.88. (No. XLIII of 1987).

### 246. BANKING, INSURANCE AND FINANCE INDUSTRIES

Ordinance: The Bank Holidays (Alderney) Ordinance, 1988. - Prescribes the annual bank holidays in Alderney. (Ordinance of the States of Alderney of 2.3.88).

### CONSTITUTIONAL LAW

247. Order in Council: The Government of Alderney (Miscellaneous and Consequential Provisions) (Guernsey and Alderney) Law, 1987. - see paragraph 42.

248. Ordinance: The Government of Alderney Law, 1987 (Commencement) Ordinance, 1987. - Brings into force on 1.8.87 the Government of Alderney Law, 1987 (see 5.GLJ.88). (Ordinance of the States of Alderney of 8.7.87).

249. Ordinance: The States of Alderney Election Procedure Ordinance, 1987. - Replaces the States of Alderney (Election Procedure) Ordinance, 1979 in consequence of the Government of Alderney Law, 1987 (see 5.GLJ.88). The Ordinance prescribes the form of the register of electors (which must be available for public inspection), of applications for inscription and of nominations; provides for the making of objections; limits alterations to the register immediately before elections; and makes detailed provision as to polling and the counting and validity of votes.

In force 1.8.87. (Ordinance of the States of Alderney of 8.7.87).

250. Ordinance: The Public Vehicles (Transfer of Functions) Ordinance, 1988. - Transfers, subject to detailed savings and transitional provisions, the functions previously vested in the Alderney Public Works Committee under Part III of the Alderney Road Traffic and Public Highways Ordinance, 1966 to the Alderney Public Transport Committee.

In force 1.4.88. (Ordinance of the States of Alderney of 2.3.88).

### CRIMINAL LAW

#### Uniform scale of fines

251. Projet de Loi: The Uniform Scale of Fines (Alderney) Law, 1988. - Establishes a uniform scale of fines on a similar basis to that established

by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1988 (see paragraph 82) but referable purely to offences arising under legislation whose applicability is confined to the Island of Alderney. The levels are initially the same as those on the Bailiwick scale and, though the States of Alderney are empowered to vary these by Ordinance, they may not exceed those set for the time being by the Bailiwick scale. The general limitations on the Court of Alderney's fining powers will also be expressed by reference to the Alderney uniform scale.

Approved by the State of Alderney on 6.6.88. Awaiting Royal Sanction.

## FISHING

252. Ordinance: The Fishing (Amendment) (Alderney) Ordinance, 1988. - Amends the Fishing (Alderney) (Amendment) Ordinance, 1980 to restrict access to, and fishing in, territorial waters by foreign fishing boats, as defined.

In force 16.12.88. (Ordinance of the States of Alderney of 16.12.88).

## HARBOURS

### Fees, dues and charges

253. Order in Council: The Harbours, Moorings and Pilotage (Fees, Dues and Miscellaneous Provisions) (Alderney) Law, 1987. - See 5.GLJ.89.

Royal Sanction 21.10.87. Registered 1.12.87. (No. XII of 1987). Sections 4 to 7 (definition of Braye Harbour and ancillary provisions) in force 1.12.87. For commencement of remaining provisions, see paragraph .

254. Ordinance: The Harbours, Moorings and Pilotage (Fees, Dues and Miscellaneous Provisions) (Alderney) Law, 1987 (Commencement) Ordinance, 1988. - Brings into force sections 2 and 3 (on 2.3.88) and section 1 (on 1.1.89) of the Law. (Ordinance of the States of Alderney of 2.3.88).
255. Ordinance: The Harbour Dues and Mooring Charges (Repeals) Ordinance, 1988. - Repeals Alderney's Harbour Dues (Amendment) Ordinances, 1980 and 1987 with effect from 2.3.88, and Alderney's Mooring Charges Ordinances 1980, 1982 and 1986 with effect from 1.1.89. (Ordinance of the States of Alderney of 2.3.88).

## HEALTH AND MEDICINE

### Medical and related professions

256. Ordinance: The Alderney (Application of Legislation) (Doctors, Dentists and Pharmacists) Ordinance, 1988. - Applies the Doctors, Dentists and Pharmacists Ordinance, 1987 (see 5.GLJ.42), with modifications, to Alderney.

In force 1.3.88. (No. IV of 1988).

### Medical benefits

257. Resolution of the States of Guernsey: see paragraph 113.

## Nursing and residential homes

258. Order in Council: The Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987. - See 4.GLJ.95.

Royal Sanction 26.11.87. Registered 16.2.88. (No. XXII of 1987).

259. Ordinance: The Nursing and Residential Homes (Registration and Occupation) (Alderney) Law, 1987 (Commencement) Ordinance, 1988. - Appoints 6.4.88 for the Commencement of the Law. (Ordinance of the States of Alderney of 6.4.88).

260. Ordinance: The Residential Homes Ordinance, 1988. - Imposes duties on the managers of residential homes registered under the 1987 Law (see paragraph 258) as to the employment of suitably qualified staff; maintenance and safety of the home; provision for residents of adequate accommodation, equipment, food, facilities and medical and other services; and maintenance of records. Empowers the Alderney Health and Welfare Committee to limit the number of residents of any registered home. Sets the application fee at £100. Provides a system of enforcement by notices, failure to comply with which involves the commission of an offence.

In force 6.4.88. (Ordinance of the States of Alderney of 6.4.88).

261. Ordinance: The Nursing Homes Ordinance, 1988. - Imposes duties on the managers of nursing homes registered under the 1987 Law (see paragraph 258) as to the provision of efficient nursing care and appropriate medical and nursing equipment and treatment facilities in addition to duties similar to those under the Residential Homes Ordinance (see paragraph 260). More detailed case records are required than for residential homes and special record provisions apply to maternity homes. As in the case of residential homes, the Alderney Health and Welfare Committee can limit the numbers of residents; the application fee is £100; and enforcement is by way of notices with failure to comply being an offence.

In force 6.4.88. (Ordinance of the States of Alderney of 6.4.88).

## HOUSING

### Control of Occupation

262. Ordinance: The Self-Catering Tourist Accommodation Ordinance, 1988. - Controls the occupation of all buildings for the erection or use of which permission has been granted and which have been designated as self-catering tourist accommodation, under section 13A of the Building and Development Control (Alderney) Law, 1975 as inserted by the 1987 Amendment Law (see 4.GLJ.94 and 5.GLJ.87). Provided that an accommodation permit is in force in respect of it, such a building may be occupied without further permission by a person who has not been in Alderney for more than 90 days during the preceding 12 months and who is there for a holiday, as a States of Alderney or Guernsey employee, or whilst undertaking scientific research. Such a person who stays for more than 90 days, a person in non-States employment for not more than 90 days or a person performing a contractual obligation to the States, may occupy a designated self-catering unit only with the written permission of the Committee, which permission may be granted to any other

person only in exceptional circumstances. Any lawful occupier may be accompanied by his spouse and/or children. Permissions may be conditional, and may be withdrawn or varied, subject to the giving of notice and a right of appeal, if a condition is breached or if circumstances change materially in a way or to an extent that the Committee could not reasonably have foreseen.

In force 2.3.88. (Ordinance of the States of Alderney of 2.3.88).

#### LAND AND PROPERTY

263. Projet de Loi: The Dwellings Profits Tax (Alderney) Law, 1988 - see paragraph 281.
264. United Kingdom Statutory Instrument: The Alderney (Transfer of Property, etc.) Order, 1987. - Made under the Alderney (Transfer of Property, etc.) Act 1923: Transfers remaining property owned by Her Majesty's Government in connection with the Alderney Breakwater to the Insular Authorities - the Breakwater itself to the States of Guernsey and the remainder including the railway line and Mannez Quarry to the States of Alderney. (This follows acceptance by the States of Guernsey of responsibility for the maintenance of the Alderney Breakwater as part of the discharge of its obligations to make a contribution towards defence costs).

Registered by the States of Guernsey 18.8.87 and by the States of Alderney 10.9.87. Deemed to have come into force 1.4.87. (U.K. S.I. 1987 No. 1273).

#### 265. Building and Development Control - powers of Committee

'A' appealed unsuccessfully to the Court of Alderney against a decision of the Building and Development Control Committee of the States of Alderney refusing permission to establish a fuel oil storage and distribution plant. 'A' appealed further to the Royal Court on the ground that two members of the Committee were also directors of a company which enjoyed a monopoly in the sale of fuel oils in Alderney. HELD by the Deputy Bailiff that section 7 of the Building and Development Control (Alderney) Law, 1975, as amended, did not extend, when determining development applications, to taking into account monopoly protection either for the States or for any private company: such a power would have to be conferred by Order in Council. Further, the Committee should not, without the consent of the applicant, have been constituted by persons having a direct financial interest in the proceedings even though the directors in question personally received no financial benefit from their directorships. The appeal would be allowed and the matter should be reconsidered by the Committee properly constituted and without taking into account the question of monopoly protection.

[Alderney Fuel Services Limited v. The States of Alderney Building and Development Control Committee - Requête 28.7.87].

#### MILK

266. Ordinance: The Milk (Retail Price) Ordinance, 1987. - Increases the ceiling price for retail sales of milk.

In force 11.10.87. (Ordinance of the States of Alderney of 7.10.87).

267. Ordinance: The Milk (Retail Price) Ordinance, 1988. - Further increases the ceiling price for retail sales of milk.

In force 12.9.88. (Ordinance of the States of Alderney of 7.9.88).

268. Ordinance: The Imported Milk Ordinance, 1988. - Bans the sale by way of business of any milk produced outside Alderney, except by the Alderney Agriculture and Fisheries Committee (now called the Agricultural Committee) or a duly authorised agent of that Committee.

In force 9.5.88. (Ordinance of the States of Alderney of 4.5.88).

#### RATING

269. Ordinance: The Occupier's Rate (Level for 1988) Ordinance, 1987. - Sets the Alderney occupier's rate for 1988 at 35 pence in the pound.

In force 1.1.88 (Ordinance of the States of Alderney of 7.10.87).

270. Ordinance: The Occupier's Rate (Level for 1989) Ordinance, 1988. - Sets the Alderney occupier's rate for 1989 at 39 pence in the pound.

In force 1.1.89. (Ordinance of the States of Alderney of 5.10.88).

#### ROAD TRAFFIC AND PUBLIC TRANSPORT

##### Driving under the influence of drink or drugs

271. Order in Council: The Road Traffic (Driving under the Influence of Drink or Drugs) (Alderney) Law, 1987. - Makes provision for Alderney in substantially the same terms as the (Guernsey) Law of 1986 (see 3.GLJ.70).

Approved by the States of Alderney 8.4.87. Royal Sanction 21.10.87.  
Registered and in force 1.12.87. (No. XIV of 1987).

##### Fixed penalties

272. Ordinance: The Traffic Offences (Fixed Penalties) (Amendment) (Alderney) Ordinance, 1987. - Brings the offence of parking at Alderney airport for longer than 72 hours within the fixed penalty system.

In force 8.7.87. (Ordinance of the States of Alderney of 8.7.87).

##### Importation of cars

273. Order: The Import of Cars (Alderney) Order, 1988. - Prohibits the import of cars over 184 inches long without the written permission of the Finance Committee, apart from the re-import of such cars first registered on or before 1.7.88.

In force 8.7.88. (Order of the States of Alderney Finance Committee).

##### Traffic regulations

274. Regulations: The Traffic (Amendment) Regulations 1987. - Make it an offence to use a motor vehicle on a public highway in such a manner as to cause avoidable excessive noise, as well as to use a motor vehicle (or cause or

permit its use) on a public highway in such circumstances as to cause excessive noise. To the latter charge there are certain statutory defences.

Approved by the States of Alderney and in force 13.1.88.

## SHIPPING

### Pilotage

275. Ordinance: The Pilotage (Alderney) Law, 1984 (Commencement) Ordinance, 1988. - Brings into force the Pilotage (Alderney) Law, 1984 on 2.3.88. (Ordinance of the States of Alderney of 2.3.88).
276. Ordinance: The Alderney Pilotage Ordinance, 1988. - Prohibits the pilotage of a vessel in any case where pilotage is compulsory within the compulsory pilotage zone (as defined), or for hire or reward anywhere in the territorial waters around Alderney, except in accordance with a pilotage licence. Such a licence may be a special pilotage licence (for pilotage within the compulsory pilotage zone of a vessel of which the pilot is master or mate) or a general pilotage licence (for pilotage of any vessel in the whole or any part of the territorial waters). An applicant for a licence must satisfy certain conditions including, in the case of a general pilot, passing an examination conducted by an Examination Committee, before being granted a licence by the Alderney Pilotage Board (for the establishment and constitution of both of which the Ordinance provides). Licences are renewable annually but may be revoked or suspended in certain circumstances and an appeal lies against any decision of the Board in all such cases.

The general pilots are responsible to the Alderney Pilotage Board for maintaining a regular and efficient service and must obey the Board's directions. Each may limit his liability by entering into a bond and is entitled to a share of the pilotage dues payable to the States of Alderney in accordance with the Ordinance and resolutions passed under it.

Certain vessels are exempted from compulsory pilotage and the Ordinance lays down detailed requirements as to the pilotage of those which are not exempted and as to the conduct of pilotage generally.

In force 2.3.88. (Ordinance of the States of Alderney of 2.3.88).

## SOCIAL SECURITY

### Supplementary benefit

277. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1987. - Provides that the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1987 (see paragraph 230) shall have effect in the Island of Alderney.
- In force 13.11.87. (No. XXII of 1987).
278. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) (Classes of Persons to whom the Law applies) Ordinance, 1988. - Provides that the Supplementary Benefit (Classes of Persons to whom the Law applies) Ordinance, 1988 (see paragraph 229) shall have effect in the Island of Alderney.

In force 11.11.88. (No. XXXII of 1988).

279. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) Ordinance, 1988. - Provides that the Supplementary Benefit (Implementation) (Amendment) Ordinance, 1988 (see paragraph 231) shall have effect in the Island of Alderney.

In force 11.11.88. (No. XXXIV of 1988).

280. Ordinance: The Alderney (Application of Legislation) (Supplementary Benefit) (No. 2) Ordinance, 1988. - Provides that the Supplementary Benefit (Implementation) (Amendment) (No. 2) Ordinance, 1988 (see paragraph 232) shall have effect in the Island of Alderney.

In force 18.11.88. (No. XLII of 1988).

## TAXATION

### Dwellings Profits Tax

281. Projet de Loi: The Dwellings Profits Tax (Alderney) Law, 1988. - Imposes a tax, at the rate of 100% of the net profit after making due allowance for inflation, on sales, leases and other transactions involving dwellings in Alderney taking place within a specified time after their acquisition. Care and management of the tax is vested in the Administrator of Income Tax, who is responsible for providing the necessary certificate to enable the Alderney Land Registrar to alter the Register so as to give effect to a transaction to which the Law applies. The detailed rules as to calculation and collection of the tax, as well as the exemptions, are similar to those of the Guernsey Law of 1975 as amended in 1983, apart from a few differences reflecting Alderney's special situation. Important among these are that

- a "dwelling" is defined so as to include not only a dwelling under construction but also any land on which there exists a currently valid permission to construct a dwelling;
- the twelve month owner-occupier exemption is not to apply in the case of a dwelling built under a permission granted after official publication of the proposals until 5 years after its completion (as to which, provision is made for obtaining a certificate, with a right of appeal against its refusal).

The Law is to apply with effect from 27.5.88, the date on which the proposals for it were officially published.

Approved by the States of Alderney on 7.9.88. Awaiting Royal Sanction.

## WATER

### Water rates

282. Ordinance: The States Water Supply (Rates of Charge) (Alderney) Ordinance, 1987. - Sets the water rates and charges with effect from 30.9.87.

In force 30.9.87 (Ordinance of the States of Alderney of 2.9.87).

## SARK

### CATERING

283. Order in Council: The Catering (Sark) Law, 1988. - Prohibits the provision for reward of food or drink for consumption on premises except under authority of a catering permit granted by the Tourism Committee. When considering applications for permits, the standard of hygiene of premises, washing facilities and the quality of the water supply will be taken into account. Provision is made for appeal to the Seneschal's Court if a permit is refused. Inspectors may be appointed by the Committee.

Approved by Chief Pleas 30.9.87. Royal Sanction 19.5.88. Registered 23.8.88. (No. IX of 1988).

284. Ordinance: The Catering (Sark) Law (Commencement) Ordinance, 1988. - Appoints 5.10.88 for the commencement of the Law. (Ordinance of the Chief Pleas of 5.10.88).

### CONSTITUTIONAL LAW

285. Ordinance: The Deputies of the People (General Election) Ordinance, 1987. - Prescribes 15.12.87 as the date for the General Election of Deputies of the People.

In force 30.8.87. (Ordinance of the Chief Pleas of 30.8.87).

### CRIMINAL LAW

#### Firearms

286. Resolution of Chief Pleas of 6.4.88: Directing the preparation of legislation for the regulation of the use of shotguns.

#### Uniform scale of fines

287. Projet de Loi: The Uniform Scale of Fines (Sark) Law, 1988. Establishes a uniform scale of fines, on a similar basis to that established by the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1988 (see paragraph 82) but referable purely to offences arising under legislation whose applicability is confined to the Island of Sark. The levels are initially the same as those on the Bailiwick scale and, though the Chief Pleas of Sark are empowered to vary these by Ordinance, they may not exceed those set for the time being by the Bailiwick scale. The general limitations on the Court of the Seneschal's fining powers will also be expressed by reference to the Sark uniform scale.

Approved by Chief Pleas on 2.8.88. Awaiting Royal Sanction.

## EMPLOYMENT PERMITS

288. Order in Council: The Employment Permits (Sark) Law, 1987. - Makes it an offence for certain classes of person to engage in gainful employment in Sark without an employment permit; makes provision for the grant of such permits, including the factors to be taken into account when the administering Committee decides whether to grant a permit; and empowers Chief Pleas to provide by Ordinance for exemptions to the Law. Appeal from the Committee's decision will be to a tribunal constituted by Ordinance on the ground that the decision was ultra vires or unreasonable and thence to the Royal Court.

Approved by Chief Pleas 22.4.81. Royal Sanction 21.10.87. Registered 15.12.87. In force on a day to be appointed. (No. XVIII of 1987).

## HARBOURS AND MOORINGS

289. Ordinance: The Harbours (Sark) Ordinance, 1987. - Consolidates existing legislation relating to berthing, mooring and anchoring of vessels in the Sark harbours and the licensing of passenger vessels; prescribes the maximum fine for offences thereunder as £200; and increases the licence fee for passenger vessels to £1 per passenger.

In force 1.2.88. (Ordinance of the Chief Pleas of 20.1.88).

## LAND LAW

### 290. Retrait lignager - recoverable expenses

'R' exercised her right of retraits to purchase property recently acquired by 'AA'. The Seneschal of Sark ruled that the only costs properly recoverable by 'AA' from 'R', in addition to the purchase price and the treizième, were 'AA's legal fees in connection with the purchase of the property and the insurance of the property pending the retraits. He disallowed travelling expenses incurred by 'AA' and their Advocates in connection with the conveyance, legal fees and travelling expenses incurred in connection with the retraits action and surveyor's fees incurred by 'AA' in connection with the conveyance. On appeal to the Ordinary Division of the Royal Court HELD by the Deputy Bailiff

- (1) that, as in principle a person is justified in engaging legal representation at any judicial hearing, the action was not instigated by 'AA' nor did they "lose" the action, the Seneschal should have exercised his discretion to allow their claim for legal costs, including their travelling expenses to attend the Sark Court;
- (2) that the surveyor's fees should also be recoverable from 'R'; and
- (3) that some travelling expenses incurred in connection with the conveyance should be recoverable and it would be reasonable to claim two return journeys, one for inspection, negotiation and meeting the Seigneur for congé purposes and one for the actual conveyance.

[Smith v. Rang - Appeals to the Royal Court 3.11.87].