

PROJET DE LOI

ENTITLED

The Court of Appeal (Guernsey) Law, 1961 *

[CONSOLIDATED TEXT]

NOTE

This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.

© States of Guernsey

* Ordres en Conseil Vol. XVIII, p. 315; as amended by the: States Supervisor and Treasurer of the States (Transfer of Functions) Law, 1971 (Ordres en Conseil Vol. XXIII, p. 188); Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011 (No. III of 2012); Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017 (No. XIII of 2017); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018 (Alderney Ordinance No. VIII of 2018); Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020 (Sark Ordinance No. II of 2020). See also the: Homicide (Guernsey) Law, 1965 (Ordres en Conseil Vol. XX, p. 59); Deputy Bailiff (Guernsey) Law, 1969 (Ordres en Conseil Vol. XXII, p. 122); Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); Court Proceedings (Mechanical Recording) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 462); Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002 (No. I of 2003, Ordres en Conseil Vol. XLIII(1), p. 3); Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006 (No. XIII of 2006); Fees, Charges and Penalties (Guernsey) Law, 2007 (No. VII of 2008); Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964 (Recueil d'Ordonnances Tome XIV, p. 32). This Law is disapplied, in part, by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021 (G.S.I. No. 12 of 2021).

PROJET DE LOI

ENTITLED

The Court of Appeal (Guernsey) Law, 1961

ARRANGEMENT OF SECTIONS

PART I

Constitution of the Court of Appeal

1. The Court of Appeal.
2. Judges of the Court.
3. Qualification for appointment as ordinary judge.
4. Tenure of office of ordinary judge.
5. Oath of office of judge.
6. Emoluments and expenses of judges.
7. Venue.
8. Convening and quorum.
9. Majority decision.
10. Presidency.
11. Officers of the Court.
12. Right of practise.

PART II

Appeals in Civil Matters

13. Transfer of appellate jurisdiction.
14. Jurisdiction.
15. Limitation on appeals.
16. Appeals from the Court.
17. Procedure and practice.
18. Costs.
19. Trial with assessors.
20. Reference to experts.
21. Powers of a single judge.
22. Rules of court.
23. Shorthand note and transcript of proceedings in court of first instance.

PART III

Appeals in Criminal Matters

24. Right of appeal.
25. Powers of the Court.
26. Powers of the Court in special cases.
27. Judgments of the Court.
28. General powers of the Court.
29. Re-vesting and restitution of property on conviction.
30. Time for appealing.
31. Judge's notes and report to be furnished on appeal.
32. Supplemental powers of the Court.
33. Legal aid.
34. Presence of appellant at hearing.
35. Duty of Law Officers.
36. Costs and expenses.
37. Admission to bail and computation of sentence.
38. Duties of Registrar.
39. Rules of court.
40. Powers of a single judge.
41. Shorthand note and transcript of proceedings at trial.
42. Prerogative of mercy.
43. Interpretation of Part III.

PART IV

General

44. Amendment and revocation of rules of court.
45. Saving.
46. Interpretation.
47. Repeals.
48. Citation.

FIRST SCHEDULE

Form of oath.

SECOND SCHEDULE

Enactments repealed.

PROJET DE LOI

ENTITLED

The Court of Appeal (Guernsey) Law, 1961

THE STATES, in pursuance of their Resolution of the sixteenth day of November, nineteen hundred and sixty, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

Constitution of the Court of Appeal

The Court of Appeal.

1. (1) There shall be a Court of Appeal in the Bailiwick of Guernsey with civil and criminal jurisdiction in accordance with the provisions of this Law and that Court of Appeal shall be entitled and is hereinafter referred to as "**the Court of Appeal**".

(2) The Court of Appeal may be distinguished by the addition of the words "(Civil Division)" or "(Criminal Division)" as shall be appropriate to the jurisdiction being exercised by it.

NOTES

This Law is disapplied, in part, by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021, regulation 33, with effect from 5th February, 2021.¹

The following cases have referred to this Law:

Guille v. MacKay (1967) (Unreported, Court of Appeal, 14th June) (Court of Appeal Judgments, 1964-89, p. 25);
In re Kirk (1985) (Unreported, Court of Appeal, 11th July) (Court of Appeal Judgments, 1964-89, p. 306);
Fewtrell v. Fewtrell (1985) 1.GLJ.44;
Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);
Law Officers of the Crown v. Kirk (1986) 4.GLJ.25 (see also Court of Appeal Judgments, 1964-89, p. 331);
Law Officers of the Crown v. Ogier and Le Noury (1989) 7.GLJ.17 (see also Court of Appeal Judgments, 1964-89, p. 446);
Law Officers of the Crown v. Collins (1989) 8.GLJ.16;
Taylor v. States Board of Health and Parsons (1990) 9.GLJ.54;
Havilland Estates Limited v. Channel Island Ceramics Limited (1990) 10.GLJ.67;
Barnes v. Cobo Building Services Ltd. and others (1993) 16.GLJ.46;
Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;
Havilland Estates Limited v. Channel Islands Ceramics Limited (No. 2) (1993) 15.GLJ.51;
Havilland Estates Limited et al. v. Channel Island Ceramics Limited et al. (No. 3) (1993) 15.GLJ.81;
Law Officers of the Crown v. Benford (1993) 15.GLJ.82;
Law Officers of the Crown v. Diment (1993) 16.GLJ.86;
Loyalty Brokers Ltd. v. Cockram (1993) 16.GLJ.89;
Law Officers of the Crown v. Blondel and Butcher (1994) 17.GLJ.60;
Law Officers of the Crown v. Renouf (1994) 18.GLJ.80;
Hugo v. Skillett (1994) 18.GLJ.82;
Main v Loughton (1995) 20.GLJ.92;
Vekaplast Windows v. Jehan & Jeehan (1997) 23.GLJ.86.
Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;
Smith v Helmot and Helmot (1998) 26.GLJ.80;
Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;
Law Officers of the Crown v. Blondel (1999) 27.GLJ.4;
Smith v Helmot and Helmot (1999) 27.GLJ.146;
De Carteret v. Surcouf (2000) 28.GLJ.27;
Churchill v. Law Officers of the Crown [2001] GLR 4;
Marsh v. Law Officers of the Crown (2002) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No. 10/2002);
Island Development Committee v. Portholme Properties Limited (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);
Stuart-Hutcheson v. Spread Trustee Co. Ltd. [2002] GLR N-9;
Guest v. Law Officers of the Crown (2003) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 8/2003); 2003-04 GLR Note 1;

Guernsey International Trustees Limited & Bennett v. Virani (2003) (Unreported, Court of Appeal, 18th March) (Guernsey Judgment No. 24/2003); 2003-04 GLR Note 4;

R. Durtnell and Sons Limited v. Kaduna Limited (2003) (Unreported, Court of Appeal, 9th June) (Guernsey Judgment No. 41/2003); 2003-04 GLR Note 9;

Barnes v. Law Officers of the Crown 2003-04 GLR 521;

Smith v. Slawther (2003) (Unreported, Court of Appeal, 25th September) (Guernsey Judgment No. 50/2003); 2003-04 GLR Note 11;

Pirito v. Curth 2005–2006 GLR 34;

Gilbert v. Law Officers of the Crown (2006) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No 44/2006); 2005–06 GLR Note 30;

E v. E 2007–2008 GLR 133;

Minister of the Environment Department v. Johns 2007–2008 GLR 174;

Taylor v. Law Officers of the Crown 2007–2008 GLR 207;

Law Officers of the Crown v. Rouget 2007–08 GLR 306;

Presland v. Law Officers of the Crown (2007) (Unreported, Court of Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007–2008 GLR Note 11;

Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2009–10 GLR 1;

E v. E (2009) (Unreported, Court of Appeal, 15th January & 8th June) (Guernsey Judgment No. 26/2009);

E v. E 2009-10 GLR Note 7;

E v. E 2009–10 GLR 236;

McNamara v. Gauson 2009-10 GLR 387;

Spread Trustee Company Limited v. Hutcheson and Others 2009-10 GLR 403;

Ferbrache v. C & R Homes (Guernsey) Limited 2009-10 GLR 455;

Cotterill v Ozanne 2011-12 GLR 1;

Kevin John Holland v Law Officers of the Crown (2013) (Unreported, Royal Court, 15th January) (Guernsey Judgment No. 2/2013);

Pinto, Loreto & Almeida v. Law Officers of the Crown 2013-14 GLR 83;

X v. Law Officers of the Crown (2013) (Unreported, Royal Court, 9th August) (Guernsey Judgment No. 25/2013);

Stephen Dale Risbridger v. Law Officers of the Crown (2013) (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 28/2013);

Emerald Bay Worldwide Limited v. Barclays Wealth Directors (Guernsey) Limited et al. (2014) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 2/2014);

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 39/2014);

Brouard v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 52/2014);

Fernandes v. Law Officers of the Crown (2014) (Unreported, Court

of Appeal, 11th December) (Guernsey Judgment No. 53/2014);
Broadhead v Spread Trustee Company Limited (2015) (Unreported, Court of Appeal, 4th February) (Guernsey Judgment No. 13/2015);
Shelton v. Barby (2015) (Unreported, Court of Appeal, 1st June) (Guernsey Judgment No. 26/2015);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2015) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 55/2015);
Neil Hastie v. Law Officers of the Crown (2015) (Unreported, Court of Appeal, 29th September) (Guernsey Judgment No 59/2015);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2016) (Unreported, Court of Appeal, 19th July) (Guernsey Judgment No. 31/2016);
Smith v. Atlantique Holdings Limited (2016) (Unreported, Court of Appeal, 26th September) (Guernsey Judgment No. 38/2016);
Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016);
Nordbø v. Baker (2017) (Unreported, Court of Appeal, 18th May) (Guernsey Judgment No. 26/2017);
Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017);
Tchenguiz and Rawlinson Hunter Trustees SA v. Ackers (Unreported, Court of Appeal, 5th October) (Guernsey Judgment No. 37/2018);
Lovering v. Atkinson Ferbrache and Richardson (Unreported, Court of Appeal, 10th October) (Guernsey Judgment No. 38/2018);
Hindle v. Kitching [2020]GCA002 (Unreported, Court of Appeal, 24th January);
ITG Ltd and Bayeux Ltd v. Glenalla Properties Ltd et al [2020]GCA043 (Unreported, Court of Appeal, 21st August).

In accordance with the provisions of the Fees, Charges and Penalties (Guernsey) Law, 2007, section 1, Schedule, with effect from 19th May, 2008, the power to prescribe by Ordinance the fees therein referred to and payable under this Law may be exercised by Regulation.

Judges of the Court of Appeal.

2. (1) The Bailiff shall be an ex-officio judge of the Court of Appeal.
- (2) The other judges of the Court of Appeal (hereinafter called "**the ordinary judges**") shall be such persons as may be appointed to that office by Her Majesty.

NOTES

The following case has referred to section 2:

Island Development Committee v. Portholme Properties Limited (2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Qualification for appointment as ordinary judge.

3. Any person –

- (a) who holds or has held judicial office in the British Commonwealth, or
- (b) who has been at least ten years in practice at the Bar in the Island of Guernsey or in the Island of Jersey, whether as a Law Officer of the Crown or otherwise, or
- (c) who has been at least ten years in practice at the Bar in England, Scotland or Northern Ireland,

shall be qualified for appointment as an ordinary judge of the Court of Appeal.

NOTE

The following case has referred to section 3:

Island Development Committee v. Portholme Properties Limited (2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Tenure of office of ordinary judge.

4. (1) An ordinary judge of the Court of Appeal shall hold office during good behaviour.

(2) A judge of the Court of Appeal shall not during his continuance in office practise at the Bar in the Island of Guernsey.

NOTE

The following case has referred to section 4:

Island Development Committee v. Portholme Properties Limited
(2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

Oath of office of judge.

5. Every judge of the Court of Appeal shall, upon taking office in that Court, subscribe in the Royal Court to the oath set out in the First Schedule to this Law.

Emoluments and expenses of judges.

6. (1) There shall be paid to the ordinary judges of the Court of Appeal such emoluments as may be prescribed from time to time by Resolution of the States.

(2) There shall be paid to the judges of the Court of Appeal travelling and other expenses incurred in connection with their functions under this Law.

(3) The emoluments and expenses payable to the judges of the Court of Appeal under this section shall be paid out of moneys provided by the

States.

Venue.

7. The Court of Appeal shall sit for the hearing of appeals in the Bailiwick of Guernsey:

PROVIDED that where, under this Law, the powers of the Court of Appeal may be exercised by a single judge of that Court, such powers may be exercised in any place whether within or without the Bailiwick of Guernsey.

NOTE

Section 7 is disapplied by the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2021, regulation 33, with effect from 5th February, 2021.²

Convening and quorum.

8. The Court of Appeal shall be convened by the Bailiff and shall be duly constituted if it consists of an uneven number of judges, but not less than three:

PROVIDED that a judge of the Court of Appeal shall not sit as a judge on the hearing of an appeal from a judgment, order, conviction or sentence, made or pronounced by any court of which he was a member, or on the hearing of any proceedings preliminary or incidental to any such appeal.

NOTES

The following case has referred to section 8:

Island Development Committee v. Portholme Properties Limited (2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002).

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law,

1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Majority decision.

9. The determination of any question before the Court of Appeal shall be according to the opinion of the majority of the judges hearing the case.

Presidency.

10. Subject to the provisions of section eight of this Law, the Bailiff shall be the President of the Court of Appeal but, if as respects any sitting of the Court of Appeal, the Bailiff is unable or declines to act as President, the judges attending shall decide which of them shall preside at that sitting.

NOTE

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the references herein to the Bailiff included a reference to the Deputy Bailiff.

Officers of the Court.

11. (1) Her Majesty's Greffier in the Island of Guernsey shall be the Registrar of the Court of Appeal.

(2) Her Majesty's Sheriff and Her Majesty's Sergeant in the Island of Guernsey shall, for all purposes of and incidental to the hearing of appeals in the

Bailiwick of Guernsey and the execution and enforcement of any judgment or order made thereon, discharge duties analogous to those discharged by them respectively in relation to proceedings in the Royal Court.

(3) Her Majesty's Greffier, Her Majesty's Sheriff and Her Majesty's Sergeant in the Island of Guernsey shall be assisted in the discharge of their duties under this section by the members of their respective departments and, if need be, by the Clerk of the Court of the Island of Alderney or by the Prévôt of the Island of Sark.

Right of practise.

12. (1) The members of the Guernsey Bar shall alone have the right to practise in the Court of Appeal.

(2) In the preceding subsection, the expression "**practise**" shall include the doing in any office which is connected with the Court of Appeal or in which any business connected with that Court is conducted and the transacting with any officer who is attached to that Court or with any judge of that Court of any act or thing required or necessary to be done in connexion with any appeal arising in the Bailiwick of Guernsey and any proceedings preliminary or incidental thereto.

NOTE

The following case has referred to section 12:

Law Officers of the Crown v. Kirk (1986) 4.GLJ.25 (see also Court of Appeal Judgments, 1964-89, p. 331).

PART II

Appeals in Civil Matters

Transfer of appellate jurisdiction.

13. (1) On such day as shall be appointed in that behalf by Ordinance of the States there shall be vested in the Court of Appeal the appellate jurisdiction in civil matters which immediately before that day was vested in the Royal Court, sitting as a "Cour des Jugements et Records".

(2) Any civil matter pending in the Royal Court, sitting as a "Cour des Jugements et Records", immediately before the day appointed under subsection (1) of this section shall on such day be transferred to the Court of Appeal and, subject to such directions as the Court of Appeal may think fit to give in relation thereto, proceedings thereon shall be continued as if the matter had originated in and the previous proceedings had been taken in the Court of Appeal.

NOTES

The following cases have referred to section 13:

Bordeaux Vineries Limited v. States of Guernsey (1993) 16.GLJ.85;
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;
Havilland Estates Limited v. Channel Islands Ceramics Limited (No. 2) (1993) 15.GLJ.51;
Hugo v. Skillett (1994) 18.GLJ.82;
Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;
Island Development Committee v. Portholme Properties Limited (2002) (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);
E v. E 2007-08 GLR 133;
Minister of the Environment Department v. Johns 2007–2008 GLR 174.

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of subsection (1) of this section is 4th June, 1964.

Jurisdiction.

14. For all the purposes of and incidental to the hearing and determination of any appeal and the amendment, execution and enforcement of any judgment or

order made thereon, the Court of Appeal shall have all the power, authority and jurisdiction which vested in the Royal Court sitting as a "Cour des Jugements et Records" and shall have power, if it appears to the Court of Appeal that a new trial ought to be had, to order, if it thinks fit, that the verdict and judgment be set aside and that a new trial be had.

NOTE

The following cases have referred to section 14:

Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;

Smith v Helmot and Helmot (1998) 26.GLJ.80;

Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;

Island Development Committee v. Portholme Properties Limited (2002) (Unreported, Court of Appeal, 20th September) (Guernsey Judgment No. 11/2002);

Minister of the Environment Department v. Johns 2007–2008 GLR 174;

Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 39/2014);

ITG Ltd and Bayeux Ltd v. Glenalla Properties Ltd et al [2020]GCA043 (Unreported, Court of Appeal, 21st August).

Limitation on appeals.

15. An appeal shall not lie to the Court of Appeal under this Part of this Law –

- (a) from any decision which it is provided, under any enactment, is to be final,
- (b) from a final order for the dissolution or nullity of marriage, by any party who, having had time and opportunity to appeal from the decree on which the final order was founded, has not appealed from that decree,

- (c) without the leave of the presiding judge of the court making the order, from any order made with the consent of the parties or as to costs,
- (d) without the leave of the presiding judge of the court whose decision is sought to be appealed from or of the Court of Appeal, where the value of the matter in dispute does not exceed the sum of two hundred pounds sterling, unless there was in contest in the suit a question of law,
- (e) without the leave of the presiding judge of the court whose decision is sought to be appealed from or of the Court of Appeal, from any interlocutory order or interlocutory judgment, except in the following cases –
 - (i) where the liberty of the subject or the custody of infants is concerned,
 - (ii) in the case of a decree in a matrimonial cause or a judgment or order in an admiralty action determining liability,
 - (iii) in such other cases, to be prescribed by rules of court, as are of the nature of final decisions.

NOTES

The following cases have referred to section 15:

Fewtrell v. Fewtrell (1985) 1.GLJ.44;

Barnes v. Cobo Building Services Ltd. and others (1993) 16.GLJ.46;
Smith v Helmot and Helmot (1999) 27.GLJ.146;
R. Durnell and Sons Limited v. Kaduna Limited (2003) (Unreported, Court of Appeal, 9th June) (Guernsey Judgment No. 41/2003); 2003-04 GLR Note 9;
McNamara v. Gauson 2009-10 GLR 387;
Ferbrache v. C & R Homes (Guernsey) Limited 2009-10 GLR 455;
Cotterill v Ozanne 2011-12 GLR 1;
Broadhead v Spread Trustee Company Limited (2015) (Unreported, Court of Appeal, 4th February) (Guernsey Judgment No. 13/2015);
Hindle v. Kitching [2020]GCA002 (Unreported, Court of Appeal, 24th January).

In accordance with the provisions of the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, the reference in this section to "infants" shall be construed as a reference to "minors", that is to say persons under the age of 18 years.

Appeals from the Court.

16. No appeal shall lie from a decision of the Court of Appeal under this Part of this Law without the special leave of Her Majesty in Council or the leave of the Court of Appeal except where the value of the matter in dispute is equal to, or exceeds, the sum of five hundred pounds sterling.

NOTE

The following cases have referred to section 16:

Taylor v. States Board of Health and Parsons (1990) 9.GLJ.54;
Havilland Estates Limited et al. v. Channel Island Ceramics Limited et al. (No. 3) (1993) 15.GLJ.81;
Vekaplast Windows v. Jehan & Jeehan (1997) 23.GLJ.86;
Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.88;
Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;
Guernsey International Trustees Limited & Bennett v. Virani (2003) (Unreported, Court of Appeal, 18th March) (Guernsey Judgment No. 24/2003); 2003-04 GLR Note 4;
Smith v. Slawther (2003) (Unreported, Court of Appeal, 25th September) (Guernsey Judgment No. 50/2003); 2003-04 GLR Note 11;
Pirito v. Curth 2005–2006 GLR 34;

Garnet Investments Limited v. BNP Paribas (Suisse) S.A. and Government of Republic of Indonesia 2009–10 GLR 1;
E v. E (2009) (Unreported, Court of Appeal, 15th January & 8th June) (Guernsey Judgment No. 26/2009);
E v. E 2009-10 GLR Note 7;
E v. E 2009–10 GLR 236;
Spread Trustee Company Limited v. Hutcheson and Others 2009-10 GLR 403;
Emerald Bay Worldwide Limited v. Barclays Wealth Directors (Guernsey) Limited et al. (2014) (Unreported, Court of Appeal, 9th January) (Guernsey Judgment No. 2/2014);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2015) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 55/2015);
Investec Trust (Guernsey) Limited et al v. Glenalla Properties Limited et al (2016) (Unreported, Court of Appeal, 19th July) (Guernsey Judgment No. 31/2016);
Smith v Atlantique Holdings Limited (2016) (Unreported, Court of Appeal, 26th September) (Guernsey Judgment No. 38/2016);
Nordbø v. Baker (2017) (Unreported, Court of Appeal, 18th May) (Guernsey Judgment No. 26/2017);
Tchenguz and Rawlinson Hunter Trustees SA v. Ackers (Unreported, Court of Appeal, 5th October, 2018) (Guernsey Judgment No. 37/2018);
Lovering v. Atkinson Ferbrache and Richardson (Unreported, Court of Appeal, 10th October) (Guernsey Judgment No. 38/2018).

Procedure and practice.

17. The jurisdiction vested in the Court of Appeal under this Part of this Law shall, so far as regards procedure and practice, be exercised in the manner provided by this Law or by rules of court, and, where no special provision is contained in this Law or in rules of court with reference thereto, any such jurisdiction shall be exercised as nearly as may be in the same manner as that in which it might have been exercised by the court to which it formerly appertained.

NOTE

The following cases have referred to section 17:

Guille v. MacKay (1967) (Unreported, Court of Appeal, 14th June) (Court of Appeal Judgments, 1964-89, p. 25);
Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80.

Costs.

18. (1) The costs of and incidental to all proceedings in the Court of Appeal under this Part of this Law shall be in the discretion of the Court, and the Court shall have power to determine by whom and to what extent the costs are to be paid.

(2) The Bailiff may, from time to time, by rules made under this subsection, prescribe the fees payable to that Court and to the officers of that Court in respect of proceedings in and in relation to that Court and the fees and expenses recoverable by a party in any case where costs are awarded to that party under subsection (1) of this section.

(3) All fees payable to the Court of Appeal and to the officers of that Court shall accrue to the States.

NOTES

The following Rules have been made under section 18:

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2012;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2015;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2016;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2018.

The following cases have referred to section 18:

Main v Loughton (1995) 20.GLJ.92;

Hulme v. Matheson Securities (Channel Islands) Limited (No. 2) (1997) 24.GLJ.80;

De Carteret v. Surcouf (2000) 28.GLJ.27;

Stuart-Hutcheson v. Spread Trustee Co. Ltd. [2002] GLR N-9;

E v. E 2007–2008 GLR 133;

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd

December) (Guernsey Judgment No. 52/2016).

In accordance with the provisions of the Deputy Bailiff (Guernsey) Law, 1969, section 5(4), with effect from 9th September, 1969, in the event of the Deputy Bailiff discharging any functions or exercising any powers appertaining to the office of Bailiff which he is authorised to discharge or exercise under or by virtue of the 1969 Law, the provisions contained herein relating to the discharge of such functions or the exercise of such powers shall have effect as if the reference herein to the Bailiff included a reference to the Deputy Bailiff.

Trial with assessors.

19. (1) In any proceedings in the Court of Appeal under this Part of this Law the Court may, if it thinks it expedient so to do, call in the aid of one or more assessors specially qualified and try and hear the proceedings wholly or partially with their assistance.

(2) The remuneration, if any, to be paid to an assessor shall be determined by the Court.

Reference to experts.

20. (1) Subject to rules of court, the Court of Appeal may refer to any person selected by the Court for inquiry and report any question arising in any appeal under this Part of this Law.

(2) In all cases of reference under subsection (1) of this section, the person selected by the Court as aforesaid shall be deemed to be an officer of the Court, and, subject to rules of court, shall have such authority and conduct the reference in such manner as the Court may direct.

(3) The remuneration to be paid to any person to whom any matter is referred under an order of the Court shall be determined by the Court and be recoverable costs of the proceedings.

Powers of a single judge.

21. (1) The powers of the Court of Appeal under this Part of this Law to give leave to appeal or to extend the time within which notice of an appeal or of an application for leave to appeal may be given may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court and subject to the same provisions and, in any appeal pending before the Court of Appeal under this Part of this Law, any matter incidental thereto not involving the decision of the appeal may be decided by a single judge of the Court and a single judge may at any time make any interim order to prevent prejudice to the claims of any parties pending an appeal, as he may think fit.

(2) If a single judge of the Court refuses an application for leave to appeal or to extend the time within which notice of an appeal or of an application for leave to appeal may be given, the applicant shall be entitled to have the application determined by the Court as duly constituted for the hearing of appeals under this Part of this Law and every order other than an order made on any such application as aforesaid by a single judge of the Court under the provisions of subsection (1) of this section may be discharged or varied by the Court of Appeal.

NOTE

The following cases have referred to section 21:

Havilland Estates Limited v. Channel Island Ceramics Limited (1990) 10.GLJ.67;

Shelton v. Barby (2015) (Unreported, Court of Appeal, 1st June) (Guernsey Judgment No. 26/2015);

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016).

Rules of court.

22. (1) Rules of court may be made by the Court of Appeal –

- (a) for regulating and prescribing the procedure (including the method of pleading) and the practice to be followed in the Court in all appeals under this Part of this Law (including the procedure and practice to be followed in the office of the Registrar of the Court) and any matters incidental to or relating to any such procedure or practice, including (but without prejudice to the generality of the foregoing provisions) the manner in which, and the time within which, any applications which under this Part of this Law or any enactment are to be made to the Court shall be made,
- (b) for regulating the sittings of the Court and of the judges thereof, whether sitting in court or elsewhere,
- (c) for repealing any enactments which relate to matters with respect to which rules are made under this section,
- (d) for regulating the means by which particular facts may be proved, and the mode in which evidence thereof may be given, in any proceedings or on any application in connexion with or at any stage of any proceedings,
- (e) for regulating or making provision with respect to any other matters which may require to be regulated or with respect to which provision may require to be made under this Part of this Law.

(2) The power to make rules of court under this section shall include power to make rules as to proceedings by and against the Crown.

NOTES

The following Rules have been made under section 22:

Court of Appeal (Civil Division) (Guernsey) Rules, 1964.

The following case has referred to section 22:

Nordbø v. Baker (2016) (Unreported, Court of Appeal, 22nd December) (Guernsey Judgment No. 52/2016).

Shorthand note and transcript of proceedings in court of first instance.

23. (1) In any proceedings in which an appeal lies to the Court of Appeal under this Part of this Law, a shorthand note of the proceedings shall be taken, and on any appeal or application to the Court of Appeal a transcript of the note or of so much thereof as the presiding judge of the court whose decision is appealed from or sought to be appealed from or the Court of Appeal shall direct shall be made for the use of the Court of Appeal.

(2) A transcript of the shorthand note taken in pursuance of this section shall be furnished to any party to the proceedings upon payment of the cost thereof for the time being prescribed by rules made under section eighteen of this Law (which relates to costs).

(3) Until rules of court are made under section twenty-two of this Law (which relates to rules of court) superseding any enactment concerning the taking of a shorthand note of proceedings in the Royal Court and the making and provision of transcripts thereof in the event of an appeal, such enactment shall, save in relation to the cost of such transcripts, have effect as respects appeals to the Court of Appeal.

NOTE

In accordance with the provisions of the Court Proceedings (Mechanical

Recording) (Guernsey) Law, 1978, section 1, any reference to a shorthand note or shorthand report of any proceedings of the Court shall be construed as including a reference to a record of the proceedings made by mechanical means or otherwise.

PART III

Appeals in Criminal Matters

Right of appeal.

24. (1) A person convicted on indictment or summarily convicted in the Royal Court sitting as a Full Court on or after such day as shall be appointed in that behalf by Ordinance of the States may appeal under this Part of this Law to the Court of Appeal –

- (a) against his conviction, on any ground of appeal which involves a question of law alone,
- (b) with the leave of the Court of Appeal or upon the certificate of the judge who presided at his trial that it is a fit case for appeal against his conviction, on any ground of appeal which involves a question of fact alone, or a question of mixed law and fact, or on any other ground which appears to the Court of Appeal to be a sufficient ground of appeal, and
- (c) with the leave of the Court of Appeal –
 - (i) against the sentence passed on his conviction, unless the sentence is one fixed by law, and
 - (ii) against the minimum term of imprisonment,

where he has been sentenced to life imprisonment.

(2) For the purposes of subsection (1)(c)(ii), "**life imprisonment**" shall include any sentence of youth detention for life and detention at Her Majesty's pleasure.]

NOTES

Section 24 was substituted by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011, section 20, Schedule, paragraph 4, with effect from 27th June, 2012.

The following case has referred to Part III:

Law Officers of the Crown v. Diment (1993) 16.GLJ.86.

The following cases have referred to section 24:

In re Kirk (1985) (Unreported, Court of Appeal, 11th July) (Court of Appeal Judgments, 1964-89, p. 306);

Century Holdings Limited v. Her Majesty's Procureur (1997) 23.GLJ.32;

Bassington Limited et al. v. H.M. Procureur (1998) 26.GLJ.86;

Barnes v. Law Officers of the Crown 2003-04 GLR 521;

Law Officers of the Crown v. Diment (1993) 16.GLJ.86;

Law Officers of the Crown v. Guille (1986) 4.GLJ.24 (see also Court of Appeal Judgments, 1964-89, p. 315);

Gilbert v. Law Officers of the Crown (2006) (Unreported, Court of Appeal, 19th September) (Guernsey Judgment No 44/2006); 2005-06 GLR Note 30;

Taylor v. Law Officers of the Crown 2007-08 GLR 207;

Stephen Dale Risbridger v. Law Officers of the Crown (2013) (Unreported, Court of Appeal, 11th September) (Guernsey Judgment No. 28/2013);

Daniel De Kock v. The Law Officers of the Crown (2017) (Unreported, Court of Appeal, 21st July) (Guernsey Judgment No. 33/2017).

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of this section is 4th June, 1964.

Powers of the Court.

25. (1) The Court of Appeal on any such appeal against conviction shall allow the appeal if it thinks that the verdict should be set aside on the ground that it is unreasonable or cannot be supported having regard to the evidence, or that the judgment of the court before whom the appellant was convicted should be set aside on the ground of a wrong decision of any question of law or that on any ground there was a miscarriage of justice, and in any other case shall dismiss the appeal:

PROVIDED that the Court of Appeal may, notwithstanding that it is of opinion that the point raised in the appeal might be decided in favour of the appellant, dismiss the appeal if it considers that no substantial miscarriage of justice has actually occurred.

(2) Subject to the special provisions of this Part of this Law, the Court of Appeal shall, if it allows an appeal against conviction, quash the conviction and direct a judgment and verdict of acquittal to be entered.

(3) On an appeal against sentence, the Court of Appeal shall, if it thinks that a different sentence should have been passed, quash the sentence passed at the trial, and pass such other sentence warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.

[(4) On an appeal against a minimum term of imprisonment, the Court of Appeal shall if it thinks that a different minimum term should have been set, quash the minimum term set at the trial, and set such other minimum term warranted in law by the verdict (whether more or less severe) in substitution therefor as it thinks ought to have been passed, and in any other case shall dismiss the appeal.]

NOTES

In section 25, subsection (4) was inserted by the Criminal Justice (Minimum Terms for Sentences of Life Imprisonment) (Bailiwick of Guernsey) Law, 2011, section 20, Schedule, paragraph 5, with effect from 27th June, 2012.

The following cases have referred to section 25:

Law Officers of the Crown v. Ogier and Le Noury (1989) 7.GLJ.17
(see also Court of Appeal Judgments, 1964-89, p. 446);
Law Officers of the Crown v. Benford (1993) 15.GLJ.82;
Law Officers of the Crown v. Diment (1993) 16.GLJ.86;
Law Officers of the Crown v. Blondel and Butcher (1994)
17.GLJ.60;
Law Officers of the Crown v. Renouf (1994) 18.GLJ.80;
Law Officers of the Crown v. Blondel (1999) 27.GLJ.4;
Churchill v. Law Officers of the Crown [2001] GLR 4;
Marsh v. Law Officers of the Crown (2002) (Unreported, Court of
Appeal, 19th September) (Guernsey Judgment No. 10/2002);
Guest v. Law Officers of the Crown (2003) (Unreported, Court of
Appeal, 9th January) (Guernsey Judgment No. 8/2003); 2003-04 GLR Note
1;
Barnes v. Law Officers of the Crown 2003-04 GLR 521;
Taylor v. Law Officers of the Crown 2007-2008 GLR 207;
Law Officers of the Crown v. Rouget 2007-08 GLR 306;
Presland v. Law Officers of the Crown (2007) (Unreported, Court of
Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007-2008 GLR Note
11;
William Anthony Collins v. Law Officers of the Crown (2011)
(Unreported, Court of Appeal, 14th December) (Guernsey Judgment No.
37/2011);
Kevin John Holland v Law Officers of the Crown (2013)
(Unreported, Royal Court, 15th January) (Guernsey Judgment No. 2/2013);
Pinto, Loreto & Almeida v. Law Officers of the Crown 2013-14 GLR
83;
X v. Law Officers of the Crown (2013) (Unreported, Royal Court,
9th August) (Guernsey Judgment No. 25/2013);
Brouard v. Law Officers of the Crown (2014) (Unreported, Court of
Appeal, 11th December) (Guernsey Judgment No. 52/2014);
Neil Hastie v. Law Officers of the Crown (2015) (Unreported, Court
of Appeal, 29th September) (Guernsey Judgment No 59/2015).

Powers of the Court in special cases.

26. (1) If it appears to the Court of Appeal that an appellant, though not properly convicted on some part of the indictment or of the summons, has been properly convicted on some other part thereof, the Court may either affirm the sentence passed on the appellant at the trial, or pass such sentence in substitution therefor as it thinks proper and as may be warranted in law by the verdict on the part of the indictment or summons on which the Court considers that the appellant has

been properly convicted.

(2) Where an appellant has been convicted of an offence and the court could on the indictment or summons have found him guilty of some other offence, and on the finding of the court it appears to the Court of Appeal that the court must have been satisfied of facts which proved him guilty of that other offence, the Court of Appeal may, instead of allowing or dismissing the appeal, substitute for the verdict found by the court a verdict of guilty of that other offence, and pass such sentence in substitution for the sentence passed at the trial as may be warranted in law for that other offence, not being a sentence of greater severity.

(3) If on any appeal it appears to the Court of Appeal that the appellant was not guilty by reason of insanity of the offence charged against him, the Court may quash the sentence passed at the trial and order the appellant to be detained during Her Majesty's pleasure.

NOTE

The following case has referred to section 26:

Law Officers of the Crown v. Rouget 2007–08 GLR 306.

Judgments of the Court.

27. Unless the Court of Appeal directs to the contrary in cases where, in the opinion of the Court, the question before the Court is a question of law on which it would be convenient that separate judgments should be pronounced by the members of the Court, the judgment of the Court under this Part of this Law shall be pronounced by the presiding judge or such other judge of the Court hearing the case as the presiding judge directs, and no judgment with respect to the determination of any question shall be separately pronounced by any other member of the Court.

General powers of the Court.

28. The Court of Appeal shall, for the purposes of and subject to the provisions of this Part of this Law, have full power to determine, in accordance with this Part of this Law, any questions necessary to be determined for the purpose of doing justice in the case before the Court.

Re-vesting and restitution of property on conviction.

29. (1) The operation of any order as to the disposal of any property on a conviction on indictment or on summary conviction before the Royal Court sitting as a Full Court shall (unless that Court directs to the contrary in any case in which, in its opinion, the title to the property is not in dispute) be suspended –

- (a) in any case, until the expiration of ten days after the date of the conviction, and
- (b) in cases where notice of appeal or leave to appeal is given within ten days after the date of the conviction, until the determination of the appeal,

and, in cases where the operation of any such order is suspended until the determination of the appeal, the order shall not take effect as to the property in question if the conviction is quashed on appeal.

(2) Provision may be made by rules of court for securing the safe custody of any property pending the suspension of the operation of any such order.

(3) The Court of Appeal may by order annul or vary any order made on a trial for the disposal of any property although the conviction is not quashed; and the order, if annulled, shall not take effect, and, if varied, shall take effect as so varied.

Time for appealing.

30. (1) Where a person convicted desires to appeal under this Part of this Law to the Court of Appeal, or to obtain the leave of that Court to appeal under this Part of this Law, he shall, within ten days of the date of conviction, give notice of appeal or notice of his application for leave to appeal in such manner as may be directed by rules of court.

(2) Such rules shall enable any convicted person to present his case and his arguments in writing instead of by oral argument if he so desires and any case or argument so presented shall be considered by the Court.

(3) Except in the case of a conviction involving sentence of death, the time within which notice of appeal or notice of an application for leave to appeal may be given may be extended at any time by the Court of Appeal.

(4) In the case of a conviction involving sentence of death or corporal punishment –

(a) the sentence shall not in any case be executed until after the expiration of the time within which notice of appeal or of an application for leave to appeal may be given under this section, and

(b) if notice is so given, the appeal or application shall be heard and determined with as much expedition as practicable, and the sentence shall not be executed until after the determination of the appeal, or, in any case where an application for leave to appeal is finally refused, of the application.

NOTES

The following case has referred to section 30:

Fernandes v. Law Officers of the Crown (2014) (Unreported, Court of Appeal, 11th December) (Guernsey Judgment No. 53/2014).

In accordance with the provisions of the Homicide (Guernsey) Law, 1965, section 1(1), with effect from 24th August, 1965, no person shall suffer death for murder, and a person found guilty of murder shall be sentenced to imprisonment for life, subject to subsection (2) of the 1965 Law (whereby a person found guilty of murder and appearing to the Royal Court to have been under the age of eighteen years at the time the offence was committed shall not be so sentenced but in lieu thereof the Royal Court shall sentence him to be detained during Her Majesty's pleasure).

In accordance with the provisions of the Criminal Justice (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2006, section 11, with effect from 28th March, 2007 and pursuant to the repeal thereby of the Corporal Punishment (Guernsey) Law, 1957, judicial corporal punishment has been abolished.

Judge's notes and report to be furnished on appeal.

31. The presiding judge of the court before which a person is convicted shall, in the case of an appeal under this Part of this Law against the conviction or against the sentence, or in the case of an application for leave to appeal under this Part of this Law, furnish to the Court of Appeal or to a single judge thereof in accordance with rules of court, his notes of the trial, and shall also furnish to the Court of Appeal or to that judge in accordance with rules of court a report giving his opinion upon the case or upon any point arising in the case.

NOTE

The following case has referred to section 31:

Richards and Five Others v. Law Officers of the Crown (2002) (Unreported, Court of Appeal, 18th April) (Guernsey Judgment No. 1/2002).

Supplemental powers of the Court.

32. (1) For the purposes of this Part of this Law, the Court of Appeal may, if it thinks it necessary or expedient in the interests of justice –

- (a) order the production of any document, exhibit or other thing connected with the proceedings, the production of which appears to it necessary for the determination of the case, and
- (b) order any witnesses who would have been compellable witnesses at the trial to attend and be examined before the Court, whether they were or were not called at the trial, or order the examination of any such witnesses to be conducted in manner provided by rules of court before any judge of the Court or before any officer of the Court or any other person appointed by the Court for the purpose, and allow the admission of any depositions so taken as evidence before the Court, and
- (c) receive any evidence, if tendered, of any witness (including the appellant) who is a competent but not compellable witness and, if the appellant makes an application for the purpose, of the husband or wife of the appellant, in cases where the evidence of the husband or wife could not have been given at the trial except on such an application, and
- (d) where any question arising on the appeal involves prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in the opinion of the Court conveniently be conducted before the Court, order the reference of the question in manner provided by rules of court, for inquiry and report to a special commissioner appointed by the Court, and act

upon the report of any such commissioner so far as it thinks fit to adopt it, and

- (e) appoint any person with special expert knowledge to act as assessor to the Court in any case in which it appears to the Court that such knowledge is required for the proper determination of the case,

and exercise in relation to the proceedings of the Court any other powers which are or would, if Part II of this Law were in force, be exercisable by the Court on appeals in civil matters under this Law, and issue any warrants necessary for enforcing the orders or sentences of the Court:

PROVIDED that in no case shall any sentence be increased by reason of or in consequence of any evidence which was not given at the trial.

- (2) The remuneration, if any, to be paid to an assessor appointed under paragraph (e) of subsection (1) of this section shall be determined by the Court.

NOTE

The following cases have referred to section 32:

Law Officers of the Crown v. Collins (1989) 8.GLJ.16;
Presland v. Law Officers of the Crown (2007) (Unreported, Court of Appeal, 4th July) (Guernsey Judgment No. 20/2007); 2007–2008 GLR Note 11.

Legal aid.

33. Subject to the provisions of subsection (1) of section twelve of this Law (which relates to the right to practise), the Court of Appeal may at any time assign to an appellant an advocate in any appeal under this Part of this Law or in proceedings preliminary or incidental to an appeal in which, in the opinion of the

Court, it appears desirable in the interests of justice that the appellant should have legal aid, and that he has not sufficient means to enable him to obtain that aid.

Presence of appellant at hearing.

34. (1) An appellant, notwithstanding that he is in custody, shall be entitled to be present, if he desires it, on the hearing of his appeal under this Part of this Law, except where the appeal is on some ground involving a question of law alone, but, in that case and on an application for leave to appeal and on any proceedings preliminary or incidental to an appeal, shall not be entitled to be present, except where rules of court provide that he shall have the right to be present, or where the Court of Appeal gives him leave to be present.

(2) The power of the Court of Appeal to pass any sentence under this Part of this Law may be exercised notwithstanding that the appellant is for any reason not present.

Duty of Law Officers.

35. (1) It shall be the duty of Her Majesty's Attorney General to appear for the Crown on the hearing of every appeal under this Part of this Law and on the hearing of any application for leave to appeal and on the hearing of any proceedings preliminary or incidental to an appeal made or brought under this Part of this Law and Her Majesty's Attorney General shall be entitled to have access to and to have transmitted to him all such documents, exhibits and other things connected with the proceedings as he may require for the purpose of his duties under this subsection.

(2) It shall be the duty of the Registrar of the Court of Appeal to give to Her Majesty's Attorney General notice of the day and hour upon which the Court will sit for the purpose of hearing and determining any such appeal, application or proceedings.

(3) The functions of Her Majesty's Attorney General under this

Part of this Law may be exercised by Her Majesty's Solicitor General.

Costs and expenses.

36. (1) The Court of Appeal may, where it dismisses an appeal or application for leave to appeal under this Part of this Law, order the appellant to pay the whole or any part of the costs of any transcript of the shorthand notes of the proceedings at the trial made in accordance with a direction given by the Registrar under section forty-one of this Law (which relates to shorthand note and transcript of proceedings at trial).

(2) The Court of Appeal may, where it allows an appeal against conviction, order the payment out of moneys provided by the States of such an amount as appears to the Court reasonably sufficient to compensate the appellant for any expenses properly incurred by him in the prosecution of his appeal, including any proceedings preliminary or incidental thereto.

(3) The amount of costs that the Court of Appeal has ordered to be paid under the last preceding subsection shall as soon as practicable be ascertained by the Registrar of the Court in consultation with one of Her Majesty's Law Officers.

(4) Whether or not the Court of Appeal makes an order under the preceding provisions of this section, there shall be defrayed out of moneys provided by the States, up to an amount allowed by the Court but subject to any regulations as to rates and scales of payment made by Ordinance of the States –

- (a) the fees and expenses of any advocate assigned to the appellant under section thirty-three of this Law (which relates to legal aid);
- (b) the expenses of any witness attending on the order of the Court, or examined in any proceedings incidental to

an appeal to the Court, under this Part of this Law,

- (c) the expenses of and incidental to any examination of witnesses conducted by a person appointed by the Court for the purpose, or of any reference of a question to a special commissioner appointed by the Court, and
- (d) the expenses of any person appointed as assessor to the Court.

(5) Except as provided in this section, no costs shall be allowed on the hearing or determination of an appeal, or of any proceedings preliminary or incidental to an appeal, under this Part of this Law.

(6) As soon as the amount due under this section to any person as costs payable out of moneys provided by the States has been ascertained, the Registrar of the Court shall make out and deliver to that person, or to any person appearing to the Registrar to be acting on behalf of that person, an order on the [Chief Executive of the States of Guernsey], who shall, upon sight of the order, pay, out of the general revenues of the States, to the person named in the order, or his duly authorised agent, the sum specified in the order.

(7) Where the Court of Appeal orders the payment of costs by the appellant under this Part of this Law, the payment shall be recoverable by the States as a civil debt.

NOTES

In section 36, the words in square brackets in subsection (6) were substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 3, with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.³

The following Ordinances have been made under section 36:

*Criminal Appeal (Fees and Expenses) (Guernsey) Ordinance, 1964;
Criminal Appeal (Fees and Expenses) (Amendment) (Guernsey)
Ordinance, 1981.*

In accordance with the provisions of the Court Proceedings (Mechanical Recording) (Guernsey) Law, 1978, section 1, any reference to a shorthand note or shorthand report of any proceedings of the Court shall be construed as including a reference to a record of the proceedings made by mechanical means or otherwise.

Admission to bail and computation of sentence.

37. (1) The Court of Appeal may, if it seems fit, on the application of an appellant, admit the appellant to bail pending the determination of his appeal.

(2) Where an appellant under this Part of this Law is admitted to bail pending the determination of his appeal, the time during which he is at large after being so admitted shall be disregarded in computing the term of any sentence to which he is for the time being subject.

(3) Subject as hereinafter provided, four weeks of the time during which any such appellant, when in custody, is specially treated as such, or the whole of that time if it is less than four weeks, shall be disregarded in computing the term of any such sentence as aforesaid:

PROVIDED that –

- (a) the foregoing provisions of this subsection shall not apply where leave to appeal is granted under this Part of this Law or any such certificate as is mentioned in paragraph (b) of section twenty-four of this Law (which relates to the right of appeal) has been given for the purposes of the appeal, and

- (b) in any other case, the Court of Appeal may direct that no part of the said time, or such part thereof as the Court thinks fit (whether shorter or longer than four weeks), shall be disregarded as aforesaid.

(4) Subject to the foregoing provisions of this section, the term of any sentence passed by the Court of Appeal under this Part of this Law in substitution for a sentence passed on the appellant in the proceedings from which the appeal is brought shall, unless the Court otherwise directs, begin to run from the time when it would have begun to run if passed in those proceedings, and references in this section to any sentence to which an appellant is for the time being subject shall be construed accordingly.

(5) Any reference in this Part of this Law to the term of any sentence to which a person is subject shall, in relation to a person sentenced to Borstal training, be construed as a reference to the periods during which he may be detained in a Borstal institution; and nothing in this section shall be construed as affecting any period during which a person so sentenced is liable to supervision.

NOTE

In accordance with the provisions of the Criminal Evidence and Miscellaneous Provisions (Bailiwick of Guernsey) Law, 2002, section 19, with effect from 20th January, 2003, the reference in this section to a sentence of borstal training within the meaning of the Criminal Justice (Borstal Training) (Guernsey) Law, 1963 shall be construed as a reference to a sentence of youth detention within the meaning of the Criminal Justice (Youth Detention) (Bailiwick of Guernsey) Law, 1990.

Duties of Registrar.

38. (1) The Registrar of the Court of Appeal shall take all necessary steps for obtaining a hearing under this Part of this Law of any appeals or applications notice of which is given to him under this Part of this Law, and shall obtain and lay

before the Court in proper form all documents, exhibits and other things relating to the proceedings in the court before which the appellant or applicant was tried which appear necessary for the proper determination of the appeal or application.

(2) Any documents, exhibits or other things connected with the proceedings on the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Law shall be kept in the custody of the Royal Court, for such time as may be directed by that Court, and subject to such authority as may be given by that Court for the conditional release of any such documents, exhibits or things from that custody.

(3) The Registrar shall furnish the necessary forms and instructions in relation to notices of appeal or notices of application under this Part of this Law to any persons who demand the same, to the Governor of the Prison in the Island of Guernsey and such other officers and persons as he thinks fit, and the Governor of the Prison shall cause such forms and instructions to be placed at the disposal of prisoners desiring to appeal or to make any application under this Part of this Law and shall cause any such notice given by a prisoner in his custody to be forwarded on behalf of the prisoner to the Registrar.

(4) The Registrar shall report to the Court of Appeal, or a judge thereof, any case in which it appears to him that, although no application has been made for the purpose, legal aid should be assigned to an appellant under the powers given to the Court of Appeal under this Part of this Law.

Rules of court.

39. (1) Rules of court for the purposes of this Part of this Law shall be made by the Court of Appeal.

(2) Rules so made may make provision for regulating the sittings of the Court of Appeal and of a judge of that Court, whether sitting in court or

elsewhere, and with respect to any matter for which provision is to be made under this Part of this Law by rules of court, and may regulate generally the procedure and practice under this Part of this Law, and the officers of any court before which an appellant has been convicted, and any other officers or persons, shall comply with any requirements of those rules so far as they affect those officers or persons, and compliance with such rules may be enforced by order of the Court of Appeal.

NOTE

The following Rules have been made under section 39:

*Court of Appeal (Criminal Division) (Guernsey) Rules, 1964;
Court of Appeal (Criminal Division) (Amendment) (Guernsey) Rules,
1989.*

Powers of single judge.

40. The powers of the Court of Appeal under this Part of this Law to give leave to appeal, to extend the time within which notice of an appeal or of an application for leave to appeal may be given, to assign legal aid to an appellant, to allow the appellant to be present at any proceedings in cases where he is not entitled to be present without leave, and to admit an appellant to bail, and the power of the Court to give directions under the proviso to subsection (3) of section thirty-seven of this Law (which relates to admission to bail and computation of sentence) or to make orders for the payment of costs under subsection (1) or subsection (2) of section thirty-six of this Law (which relates to costs and expenses), may be exercised by any single judge of the Court in the same manner as they may be exercised by the Court, and subject to the same provisions; but, if the judge refuses an application on the part of the appellant to exercise any such power under this Part of this Law in his favour, the appellant shall be entitled to have the application determined by the Court as duly constituted for the hearing and determining of appeals under this Part of this Law.

Shorthand note and transcript of proceedings at trial.

41. (1) A shorthand note shall be taken of the proceedings at the trial of any person who, if convicted, is entitled or may be authorised to appeal under this Part of this Law, and, on any appeal or application for leave to appeal, a transcript of the note or any part thereof shall be made if the Registrar so directs, and furnished to the Registrar for the use of the Court of Appeal or any judge thereof, of Her Majesty's Attorney General and of the appellant:

PROVIDED that a transcript shall be furnished to any party interested, upon the payment of such amount as may be fixed by rules of court made under subsection (2) of this section.

(2) The Royal Court may make rules of court prescribing scales of payment in relation to the cost of any transcript for the purposes of this Part of this Law and such rules of court may make such provision as is necessary for securing the accuracy of any note to be taken and for the verification of the transcript.

(3) Any money received from an interested party under the proviso to subsection (1) of this section shall be paid to the States.

NOTES

The following Rules have been made by Order of the Royal Court under section 41:

Shorthand Notes and Transcripts (Criminal Cases) (Guernsey) Rules, 1964;

Shorthand Notes and Transcripts (Criminal Cases) (Amendment) (Guernsey) Rules, 1985;

Shorthand Notes and Transcripts (Criminal Cases) (Amendment) (Guernsey) Rules, 1989;

Shorthand Notes and Transcripts (Criminal Cases) (Amendment) Rules, 1990;

Shorthand Notes and Transcripts (Criminal Cases) (Amendment) (Guernsey) Rules, 2012;

Shorthand Notes and Transcripts (Criminal Cases) (Guernsey) (Amendment) Rules, 2014;

Shorthand Notes and Transcripts (Criminal Cases) (Guernsey)

(Amendment) Rules, 2016;

Shorthand Notes and Transcripts (Criminal Cases) (Guernsey)

(Amendment) Rules, 2018.

In accordance with the provisions of the Court Proceedings (Mechanical Recording) (Guernsey) Law, 1978, section 1, any reference to a shorthand note or shorthand report of any proceedings of the Court shall be construed as including a reference to a record of the proceedings made by mechanical means or otherwise.

Prerogative of mercy.

42. Nothing in this Part of this Law shall affect the prerogative of mercy, but, as respects the conviction of a person on indictment or summarily in the Royal Court, sitting as a Full Court, or the sentence (other than sentence of death) passed on a person so convicted, the Secretary of State may, if he thinks fit, at any time either –

- (a) refer the whole case to the Court of Appeal, and the case shall then be heard and determined by that Court as in the case of an appeal by a person convicted, or
- (b) if he desires the assistance of the Court of Appeal on any point arising in the case, refer that point to the Court for its opinion thereon, and the Court shall consider the point so referred and furnish the Secretary of State with its opinion thereon accordingly.

NOTE

In accordance with the provisions of the Homicide (Guernsey) Law, 1965, section 1(1), with effect from 24th August, 1965, no person shall suffer death for murder, and a person found guilty of murder shall be sentenced to imprisonment for life, subject to subsection (2) of the 1965 Law (whereby a person found guilty of murder and appearing to the Royal Court to have been under the age of eighteen years at the time the offence was committed shall not be so sentenced but in lieu thereof the Royal Court shall sentence him to be detained during Her Majesty's pleasure).

Interpretation.

43. In this Part of this Law, unless the context otherwise requires –

the expression "**appellant**" includes a person who has been convicted and desires to appeal under this Part of this Law,

the expression "**sentence**" includes any order of the court made on conviction with reference to the person convicted or his [spouse] or children and any recommendation of the court as to the making of a deportation order in the case of a person convicted, and the power of the Court of Appeal to pass a sentence includes a power to make any such order or recommendation.

NOTE

In section 43, the word in square brackets was substituted by, first (in relation to Guernsey), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, section 1, Schedule 1, Part I, paragraph 7, with effect from 2nd May, 2017, second (in relation to Alderney), by the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Alderney) Ordinance, 2018, section 1, Schedule 1, Part I, paragraph 6, with effect from 14th June, 2018 and, third (in relation to Sark), the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Sark) Ordinance, 2020, section 1, Schedule 1, paragraph 4, with effect from 23rd April, 2020.

PART IV

General

Amendment and revocation of rules of court.

44. Rules of court made under this Law may be amended or revoked by subsequent rules.

NOTE

The following Rules have been made under section 44:

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) Rules, 2012;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2015;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2016;

Court of Appeal (Civil Division) (Costs and Fees) (Guernsey) (Amendment) Rules, 2018.

Saving.

45. Save as provided by subsection (2) of section forty-seven of this Law (which relates to repeals) nothing in this Law shall affect the prerogative of Her Majesty or the jurisdiction of Her Majesty in Council.

Interpretation.

46. In this Law, unless the context otherwise requires, the following expressions have the meanings hereby assigned to them respectively, that is to say –

"judgment" includes decree,

"matter" includes "ex parte" proceedings,

"party" includes every person served with notice of or attending any proceedings,

"prescribed" means prescribed by rules of court,

"rules of court" includes forms,

"the States" means the States of Guernsey.

Repeals.

47. (1) The Law entitled "An Act to prescribe the emoluments of the Ordinary Judges of the Court of Appeal" registered on the twenty-seventh day of October, nineteen hundred and fifty-one, is hereby repealed.

(2) The enactments set out in the Second Schedule to this Law shall be repealed on such day as shall be appointed in that behalf by Ordinance of the States.

NOTE

In accordance with the provisions of the Court of Appeal (Commencement of Jurisdiction) (Guernsey) Ordinance, 1964, section 1, the appointed day for the purposes of this section is 4th June, 1964.

Citation.

48. This Law may be cited as the Court of Appeal (Guernsey) Law, 1961.

NOTE

The Law received Royal Sanction on 26th May, 1961 and was registered on the Records of the Island of Guernsey and came into force on 13th June, 1961.

FIRST SCHEDULE

Section five

Form of Oath

Vous jurez et promettez sur la foi et le serment que vous devez à Dieu que vous exercerez bien et fidèlement l'office et la charge de Juge dans la Cour d'Appel du Bailliage de Guernesey; que vous maintiendrez l'avancement de la gloire de Dieu et l'honneur de Sa Majesté notre Souveraine Dame Elizabeth II par la Grâce de Dieu Reine du Royaume Uni de la Grande Bretagne et de l'Irlande du Nord et de Ses autres Royaumes et Territoires, Chef du Commonwealth, Défenseur de la Foi; et qu'à Sa dite Majesté vous serez vrai et loyal sujet; que vous garderez et maintiendrez bien et loyalement et de tout votre pouvoir tous les lois, libertés, usages et anciennes coutumes du dit Bailliage, vous opposant à quiconque les voudrait enfreindre; et que vous administrerez bonne et brève justice à chacun, sans acception de personne. Vous promettez ainsi. Ainsi Dieu vous aide.

DIEU SAUVE LA REINE.

SECOND SCHEDULE

Section forty-seven

Enactments Repealed

<i>Enactment</i>	<i>Date of Registration</i>
Law entitled "Loi relative aux Appels".	30 th August, 1913
Law entitled "Loi Supplémentaire à la Loi relative aux Appels, 1924".	23 rd August, 1924

¹ The Law was previously disapplied, in part, by the Emergency Powers (Coronavirus) (Parochial Matters and Miscellaneous Provisions) (Guernsey) Regulations, 2020, regulation 11, with effect from 2nd April, 2020; the Emergency

Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2020, regulation 33, with effect from 16th April, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2020, regulation 33, with effect from 15th May, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020, regulation 31, with effect from 13th June, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2020, regulation 16, with effect from 10th July, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020, regulation 16, with effect from 7th August, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2020, regulation 20, with effect from 4th September, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2020, regulation 19, with effect from 3rd October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020, regulation 19, with effect from 30th October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2020, regulation 20, with effect from 27th November, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2020, regulation 20, with effect from 15th December, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2021, regulation 21, with effect from 13th January, 2021.

² Section 7 was previously disapplied, in part, by the Emergency Powers (Coronavirus) (Parochial Matters and Miscellaneous Provisions) (Guernsey) Regulations, 2020, regulation 11, with effect from 2nd April, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2020, regulation 33, with effect from 16th April, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 2) Regulations, 2020, regulation 33, with effect from 15th May, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 3) Regulations, 2020, regulation 31, with effect from 13th June, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 4) Regulations, 2020, regulation 16, with effect from 10th July, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 5) Regulations, 2020, regulation 16, with effect from 7th August, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 6) Regulations, 2020, regulation 20, with effect from 4th September, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 7) Regulations, 2020, regulation 19, with effect from 3rd October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 8) Regulations, 2020, regulation 19, with effect from 30th October, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 9) Regulations, 2020, regulation 20, with effect from 27th November, 2020; the Emergency Powers (Coronavirus) (General Provision) (Bailiwick of Guernsey) (No. 10) Regulations, 2020, regulation 20, with effect from 15th December, 2020; the Emergency Powers

(Coronavirus) (General Provision) (Bailiwick of Guernsey) Regulations, 2021, regulation 21, with effect from 13th January, 2021.

³ These words were previously substituted in accordance with the provisions of the States Supervisor and Treasurer of the States (Transfer of Functions) Law, 1971, section 4, with effect from 1st April, 1972.