

ORDER IN COUNCIL

IV
1989

ratifying a Projet de Loi

ENTRÉ

The Hired Boats and Passenger Boats (Guernsey) Law, 1989

(Registered on the Records of the Island of Guernsey
on the 18th day of April, 1989.)



1989

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 18th day of April, 1989 before Graham Martyn Dorey, Esquire, Deputy Bailiff; present: Brian Ernest Herbert Joy, Harry Wilson Bisson, James de Sausmarez Carey, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley and Kenneth John Rowe, Esquires, Jurats.

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 15th day of March, 1989 approving and ratifying a *Projet de Loi* of the States of Guernsey entitled "The Hired Boats and Passenger Boats (Guernsey) Law, 1989", THE COURT, after the reading of the said Order in Council and after having heard Her Majesty's Procureur thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 15th day of March 1989

PRESENT,

**The Queen's Most Excellent Majesty
in Council**

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 1st day of March 1989, in the words following, viz.:—

“Your Majesty having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolution of the 28th day of January 1988, the States of Deliberation at a meeting held on the 27th day of April 1988 approved a Bill or “Projet de Loi” entitled “The Hired Boats and Passenger Boats (Guernsey) Law, 1989”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Hired Boats and Passenger Boats (Guernsey) Law, 1989”, and to order that the same shall have force of law in the Islands of Guernsey, Herm and Jethou’

“The Lords of the Committee, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have the force of Law within the Islands of Guernsey, Herm and Jethou.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney.

PROJET DE LOI

ENTITLED

The Hired Boats and Passenger Boats (Guernsey) Law, 1989

ARRANGEMENT OF SECTIONS

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3. Grant, refusal and conditions of a boat licence.
4. Duties of licensed operators.
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9. Duties of licensed boatmen.
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11. Collisions and accidents.
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Section

16. Offences by bodies corporate.
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18. Regulations.
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PROJET DE LOI

ENTITLED

The Hired Boats and Passenger Boats (Guernsey) Law, 1989

THE STATES, in pursuance of their Resolution of the 28th day of January, 1988, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

PART I

LICENSING AND REGULATION OF BOATS

1. (1) Subject to the provisions of any regulations made under subsection (3), no person shall be carried for payment in a boat sailing from Guernsey except in accordance with the conditions of a boat licence issued under this Part of this Law. Requirement for a boat licence.

(2) A person is "carried for payment" for the purposes of this Law if, otherwise than as a member of the crew of the boat, he travels—

(a) in a boat let for hire or reward to him or another person; or

(b) as a passenger for hire or reward.

(3) The States Board of Administration may, by regulations made under this section, prescribe descriptions of boat or carriage to which, and circumstances in which, this section does not apply.

2. (1) An application for a boat licence shall be made to the Board at such time and in such form Application for a boat licence.

and manner, and shall contain, and be accompanied by, such information and such fee as may be prescribed.

(2) Upon receipt of an application under this section and at any time thereafter the Board may require the applicant to furnish such information, in addition to any information contained in or accompanying the application, as the Board may require.

Grant,
refusal and
conditions
of a boat
licence.

3. (1) Upon receipt of an application for a boat licence the Board may—

- (a) refuse the application; or
- (b) grant the application subject to such conditions as the Board considers necessary or expedient.

(2) Without prejudice to the generality of paragraph (b) of subsection (1), a boat licence in respect of a boat may be granted subject to conditions—

- (a) prohibiting the use of the boat as a hired boat or as a boat for the carriage of passengers;
- (b) restricting the area in which, subject to any regulations made under section 5, the boat may be used for the carriage of persons for payment;
- (c) restricting the number of persons permitted to be carried on the boat at any one time whether for payment or otherwise:

PROVIDED THAT a licence shall not in any case permit the carriage at any one time of more than 12 persons for payment;

- (d) limiting the period during which, subject to paragraph (b) of section 11(1) and to section 12, the licence is to be valid:

PROVIDED THAT the period of validity of a boat licence shall in no case exceed 12 months;

- (e) regulating, by reference to times of the day, days of the week, weather conditions or otherwise, when the boat may be used for the carriage of persons for payment;
- (f) specifying the number, or the minimum number, of members of the crew to be carried on the boat and, subject to Part II of this Law, their qualifications;
- (g) prescribing the functions of members of the crew and the manner in which those functions are to be performed;
- (h) requiring, without prejudice to the provisions of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972(a), the maintenance of a policy of insurance with an authorised insurer insuring hirers of, or, as the case may be, persons on board, the boat in respect of such risks and in such sum as may be so required;
- (i) prescribing the equipment to be carried on the boat to ensure the safety of persons on board and others, and the manner in which that equipment is to be carried and used;

(a) Ordres en Conseil Vol. XXIII, p. 516.

- (j) requiring a copy of the boat licence to be displayed at all times, or at any specified times, in a prominent place on board the boat.

**Duties of
licensed
operators.**

4. It is the duty of a licensed operator—
- (a) to observe and perform the conditions of the boat licence under which he is the licensed operator;
 - (b) to comply with all reasonable directions given to him by the Harbourmaster;
 - (c) to ensure that the boat in respect of which he is the licensed operator does not carry persons for payment at any time if it is not thoroughly sound and in complete repair or does not comply with a regulation made under section 5 or with a condition of the boat licence issued in respect of the boat;
 - (d) if the boat in respect of which he is the licensed operator is involved in a collision or an accident, to ensure that the provisions of section 11(1) are complied with;
 - (e) forthwith to deliver up to the Board the boat licence under which he is the licensee—
 - (i) upon its expiration, suspension or revocation under section 12(1);
 - (ii) if it is deemed to have been suspended by virtue of paragraph (b) of section 11(1);
 - (iii) at any time if so required by the Board.

**Regulations
as to
licensed
boats etc.**

5. (1) The Board may, subject to section 4, by regulations made under this section—

- (a) restrict the areas within which, and the times at which, licensed boats may carry persons for payment;
- (b) make provision as to the dimensions, proportions and construction of licensed boats;
- (c) impose requirements as to the hulls, fittings, propelling machinery and equipment of licensed boats, including requirements as to their maintenance, inspection and operation;
- (d) prescribe the time, form and manner in which an application for a boat licence is to be made, and the information to be contained in and to accompany such an application;
- (e) provide for the survey, by a person approved by the Board, of any boat in respect of which an application for a boat licence is made, and of any licensed boat, to ascertain whether the boat complies with the requirements of any regulations for the time being in force as to the matters mentioned in paragraphs (b) and (c) of this subsection;
- (f) prescribe the fees to be payable upon the making of an application for a boat licence and in respect of any such survey as is mentioned in paragraph (e) of this subsection;
- (g) provide for such incidental and supplementary matters for which the Board considers it necessary or expedient to provide.

(2) Any fees payable by virtue of regulations made under this section shall be recoverable as a civil debt due to the States from the applicant for a licence, or, in the case of fees payable in respect of the survey of a licensed boat, from the boat's licensed operator.

PART II

LICENSING AND REGULATION OF BOATMEN

Requirement for a boatman's licence.

6. A person shall not act as a member of the crew of a licensed boat except in accordance with the conditions of a boatman's licence issued by the Board under this Part of this Law.

Application for a boatman's licence.

7. (1) An application for a boatman's licence shall be made to the Board in such form and manner, and shall contain, and be accompanied by, such information, as may be prescribed.

(2) Upon receipt of an application under this section and at any time thereafter the Board may require the applicant to furnish such information, in addition to any information contained in or accompanying the application, as the Board may require.

Grant, refusal and conditions of a boatman's licence.

8. (1) Upon receipt of an application under section 7 the Board may require the applicant to satisfy the Board as to his competence to act in the capacity in respect of which he has applied for a licence by means of examinations (which may be written, oral or practical) and may—

- (a) refuse the application; or
- (b) subject to subsection (2), grant the application subject to such conditions as the Board considers necessary or expedient.

(2) The Board shall not grant a boatman's licence permitting a person to act in any capacity on board a licensed boat unless the Board is satisfied—

- (a) that he has sufficient practical experience to act in that capacity; and
- (b) that his health and eyesight are satisfactory.

(3) Without prejudice to the generality of paragraph (b) of subsection (1), a boatman's licence may be granted subject to conditions—

- (a) specifying the licensed boats or classes of licensed boats in which the boatman may act as a member of the crew;
- (b) restricting the capacities in which the boatman may act on board a licensed boat;
- (c) restricting the areas within which the boatman may act as a member of the crew of a licensed boat or within which he may so act in any specified capacity;
- (d) requiring the boatman to act as a member of the crew of a licensed boat, or in a specified capacity in the crew of a licensed boat, on a specified minimum number of occasions within a specified period of time;
- (e) limiting the period during which, subject to paragraph (b) of section 11(1) and to section 12, the licence is to be valid:

PROVIDED THAT the period of validity of a boatman's licence shall in no case exceed 5 years.

9. It is the duty of a licensed boatman—

- (a) to observe and perform the conditions of the boatman's licence issued to him;

Duties of
licensed
boatmen.

- (b) to observe and perform the conditions of the boat licence of any boat of which he is a member of the crew;
- (c) not to permit any person to embark in a boat of which he is a member of the crew for the purpose of being carried for payment—
 - (i) if the boat is not thoroughly sound and in complete repair or does not comply with a regulation made under section 5 or with a condition of the boat licence issued in respect of the boat; or
 - (ii) if the carriage of that person in the boat would or may occasion a breach of a regulation made under section 5 or of a condition of the boat licence issued in respect of the boat; or
 - (iii) in such other circumstances as the Board may specify in regulations made under section 10;
- (c) if he is the person in charge of a licensed boat, not, except in an emergency, to cause or permit a person other than a licensed boatman to assume control or assist in the navigation or management of the boat whilst it is carrying any passenger for hire or reward;
- (d) if he is the person in charge of a licensed boat,—
 - (i) to report to the Harbourmaster, and to the boat's licensed operator, within 24 hours of its occurrence, any collision or accident in which the boat is

involved, and to ensure that the other provisions of section 11(1) are complied with; and

- (ii) to report to the Harbourmaster, within such period as may be prescribed, any other incident of a type specified in regulations made under section 10;
- (e) to comply with all reasonable directions given to him by the Harbourmaster;
- (f) forthwith to deliver up his boatman's licence to the Board—
 - (i) upon its expiration, suspension or revocation under section 12(1);
 - (ii) if it is deemed to have been suspended by virtue of paragraph (b) of section 11(1);
 - (iii) at any time if so required by the Board.

10. The Board may, subject to section 9, by regulations made under this section—

Regulations
as to
licensed
boatmen etc.

- (a) prescribe the duties of licensed boatmen in respect of the navigation and management of licensed boats;
- (b) prescribe the duties of licensed boatmen in order to prevent danger or discomfort to persons carried on a licensed boat, whether as passengers, members of the crew or otherwise;
- (c) prohibit any licensed boatman from permitting a person to embark in a boat of which he is a member of the crew for the

purpose of being carried for payment in such circumstances as may be specified in the regulations;

- (d) require licensed boatmen to report to the Harbourmaster such incidents, within such time and in such manner, as may be specified in the regulations;
- (e) prescribe the form and manner in which an application for a boatman's licence is to be made and the information to be contained in, and to accompany, such an application;
- (f) provide for such incidental and supplementary matters for which the Board considers it necessary or expedient to provide.

PART III

GENERAL AND SUPPLEMENTARY

**Collisions
and
accidents.**

11. (1) If a licensed boat is involved in a collision or an accident—

- (a) the boat shall forthwith be taken to the nearest port;
- (b) the boat licence issued in respect of the boat, and the boatman's licence of every licensed boatman who was on the boat as a member of its crew when the collision or accident occurred, shall be deemed to have been suspended with effect from the time when the boat arrives at that nearest port until such time as a notice is served on the licensed operator in respect of the boat licence or, as the case may be, on a

licensed boatman in respect of his boatman's licence, under subsection (3) or subsection (4);

- (c) the occurrence of the collision or accident, and the name of each licensed boatman who was on board the boat as a member of its crew when the collision or accident occurred, shall be reported to the Harbourmaster within 24 hours;
- (d) such further information as the Harbourmaster may require shall be provided to him as soon as practicable.

(2) As soon as practicable after a collision or an accident involving a licensed boat comes to the attention of the Harbourmaster, he shall submit a report thereon to the Board and the Board shall consider any such report within 14 days of its submission.

(3) If it appears to the Harbourmaster that it is safe and proper so to do he may, by notice served on a licensed operator or on a licensed boatman as the case may be, declare that any suspension deemed to have been imposed by virtue of paragraph (b) of subsection (1) shall cease to have effect pending consideration by the Board of his report.

(4) After consideration of a report submitted to it by the Harbourmaster under subsection (2), the Board may, by notice served on the licensed operator of the boat involved in the collision or accident or on any licensed boatman who was on the boat as a member of its crew when the collision or accident occurred—

- (a) declare that any suspension deemed to have been imposed by virtue of paragraph (b) of subsection (1) shall cease to have effect;

- (b) under section 12(1) and subject to section 12(3), suspend, revoke, or vary the conditions of, the boat licence issued in respect of that licensed boat or, as the case may be, the boatman's licence issued to that licensed boatman.

Suspension,
revocation
and variation
of licences.

12. (1) The Board may at any time suspend (for a specified period or until specified conditions have been complied with) revoke, or vary the conditions of, a boat licence or a boatman's licence by notice served on the licensed operator, or, as the case may be, the licensed boatman, concerned.

(2) Without prejudice to the generality of subsection (1), a boat licence may be suspended under that subsection until a survey of the boat concerned has been carried out in accordance with any regulations for the time being in force under section 5 and until a satisfactory survey report has been submitted to the Board.

(3) Before exercising any of its powers under subsection (1) the Board shall—

- (a) serve notice on the licensed operator, or as the case may be, the licensed boatman, concerned, stating the decision which it proposes to take and inviting him, within 14 days, to make written or oral representations to the Board; and
- (b) consider any representations made in response to the notice served under paragraph (a) of this subsection.

(4) If in any case of urgency the Board considers it necessary, the period of 14 days referred to in paragraph (a) of subsection (3) may be reduced to such period of not less than 48 hours as may be specified in the notice served under that paragraph.

13. (1) A person aggrieved by a decision of the Appeals Board—

- (a) to refuse an application for a boat licence under section 3; or
- (b) to refuse an application for a boatman's licence under section 8; or
- (c) to impose any condition upon the grant of a boat licence or a boatman's licence; or
- (d) to suspend, revoke, or vary any condition of, a boat licence or a boatman's licence under section 12(1),

may appeal to the Royal Court against that decision on the grounds that it was ultra vires or was an unreasonable exercise of the powers of the Board; and on an appeal under this section the Royal Court may quash, confirm or vary the decision of the Board against which the appeal is brought.

(2) An appeal under this section shall be instituted by a summons served on the President of the Board and setting out the grounds, and the material facts, on which the appellant relies.

14. A person authorised in writing by the Board may at any reasonable time, upon production if so required of his authority so to do,—

Powers of entry and inspection.

- (a) enter and inspect any vessel;
- (b) enter any premises other than premises used solely as a dwelling,

for any purpose connected with the enforcement of this Law or of any regulations made under this Law.

Offences
and
penalties.

15. (1) A person who—

- (a) carries another person in a boat for payment in contravention of section 1; or
- (b) permits another person to be carried in a boat for payment in contravention of section 1,

is guilty of an offence and liable,—

- (i) on conviction on indictment, to imprisonment for a term not exceeding two years or to a fine or to both;
- (ii) on summary conviction, to a fine not exceeding £1,000.

(2) A person who acts as a member of the crew of a licensed boat in contravention of section 6 is guilty of an offence and liable, on conviction, to a fine not exceeding £500.

(3) A licensed operator who fails to discharge any of his duties under section 4, and a licensed boatman who fails to discharge or acts in breach of any of his duties under section 9, is guilty of an offence and liable, on conviction, to a fine not exceeding £500.

(4) A person who contravenes, attempts to contravene or fails to comply with—

- (a) a provision of any regulations made under this Law; or
- (b) any condition of a boat licence; or
- (c) any condition of a boatman's licence,

is guilty of an offence and liable, on conviction, to a fine not exceeding £500.

(5) A person who, in connection with an application for a boat licence or a boatman's licence,—

- (a) conceals any information which he knows or believes to be relevant; or
- (b) furnishes information or makes a statement which he knows to be false in a material particular; or
- (c) recklessly furnishes information or makes a statement which is false in a material particular,

is guilty of an offence and liable, on conviction, to a fine not exceeding £500.

(6) A person who wilfully obstructs a person authorised in that behalf under section 14 in the exercise of his functions under that section is guilty of an offence and liable, on conviction, to a fine not exceeding £200.

16. (1) Where an offence under this Law committed by a body corporate is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or other similar officer of the body corporate, or any person purporting to act in any such capacity, he, as well as the body corporate, shall be guilty of that offence and liable to be proceeded against and punished accordingly.

Offences by
bodies
corporate.

(2) For the purposes of subsection (1) a person shall be deemed to be a director of a body corporate if he is a person in accordance with whose directions or instructions the directors of the body corporate or any of them act.

Service of
notices.

17. A notice under this Law shall, without prejudice to any other lawful method of service, be validly served—

- (a) on any person, if delivered to him, or if left or sent by registered post or by recorded delivery service to him at his usual or last known place of abode;
- (b) on any firm, if delivered to any partner of the firm, or left at, or sent by registered post or by recorded delivery service to, the principal or last known principal place of business of the firm;
- (c) on any body corporate, if left at, or sent by registered post or by recorded delivery service to, its registered office if situated in Guernsey, or, if its registered office is not so situated, its principal or last known principal place of business in Guernsey.

Regulations.

18. Regulations made under any provision of this Law—

- (a) may make different provision for different descriptions or categories of boats or boatmen and for different circumstances generally;
- (b) may be varied or revoked by subsequent regulations so made;
- (c) shall be laid before a meeting of the States as soon as may be after the regulations are made; and if, at that meeting or at their next meeting, the States resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under the regulations or to the making of new regulations.

19. (1) In this Law, unless the context otherwise requires,— Interpreta-
tion.

“authorised insurer” means an insurance company for the time being approved by the Guernsey Financial Services Commission as an authorised insurer for the purposes of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972;

“the Board” means the States Board of Administration;

“boat” includes every description of vessel used or intended to be used in navigation, by whatever means propelled, but excludes a vessel to which the Merchant Shipping (Guernsey) Law, 1915(b) or the Passenger Vessels (Bailiwick of Guernsey) Ordinance, 1970(c) applies;

“boat licence” means a licence under Part I of this Law;

“boatman’s licence” means a licence under Part II of this Law;

“carried for payment” has the meaning assigned by section 1(2) and related expressions shall be construed accordingly;

“Guernsey” includes Herm and Jethou;

“Harbourmaster” means the States Harbourmaster and includes the Deputy States Harbourmaster and also, except in section 11, any person acting under the authority of either of them;

(b) Ordres en Conseil Vol. V, p. 189; Vol. X, p. 199; Vol. XV, p. 472; Vol. XVII, p. 210; Vol. XXII, p. 404.

(c) Recueil d’Ordonnances Tome XVI, p. 516; Tome XIX, p. 268.

“hired boat” means a boat which is for the time being let or chartered (with or without crew) by or on behalf of its owner to another person for hire or reward;

“licensed boat” means a boat in respect of which there is for the time being in force a boat licence;

“licensed boatman” means a person for the time being licensed by the Board under Part II of this Law;

“licensed operator” means a person named as licensed operator in a boat licence;

“a member of the crew” of a boat is any person employed or engaged on board the boat on the business of the boat;

“passenger” means any person carried on a boat, otherwise than as a member of the crew of the boat, pursuant to an agreement for his carriage;

“prescribed”, in Part I of this Law means prescribed by regulations made under section 5, and in Part II of this Law means prescribed by regulations made under section 10;

“the Royal Court” means the Royal Court sitting as a Full Court;

“the States” means the States of Guernsey;

“vessel” includes anything made for the conveyance by water of persons or property, except a sailboard and a surfboard.

(2) Unless the context otherwise requires—

(a) a reference in this Law to a numbered provision is a reference to the provision of this Law which is so numbered;

- (b) a reference in a section of this Law to a numbered subsection is a reference to the subsection of that section which is so numbered.

(3) Unless the context otherwise requires, a reference in this Law to any other enactment is a reference to that enactment as amended, repealed and replaced, extended or applied by or under any other enactment including this Law.

20. (1) The States may by Ordinance suspend, for such period or periods and subject to such conditions as may be specified in the Ordinance, any of the provisions mentioned in subsection (2). Suspension of certain provisions.

(2) The provisions referred to in subsection (1) are sections 1, 4, 5, 6, 9, 10 and 11 of this Law.

(3) An Ordinance made under this section—

- (a) may be made in respect of all boats or boats of a specified description or, as the case may be, in respect of all licensed boatmen or licensed boatmen of a specified description;
- (b) may make different provision for different descriptions of boats or licensed boatmen and for different circumstances;
- (c) may be varied or repealed by a subsequent Ordinance so made.

21. In section 1(1) of the Vessels and Speedboats (Compulsory Third-Party Insurance, Mooring Charges and Removal of Boats) (Guernsey) Law, 1972, for paragraph (a) there is substituted the following paragraph: Amendment to Law of 1972.

“(a) a vessel which is a licensed boat within the meaning of the Hired Boats and Passenger Boats (Guernsey) Law, 1988;”.

Citation. 22. This Law may be cited as the Hired Boats and Passenger Boats (Guernsey) Law, 1988.

Commencement. 23. This Law shall come into force on such date as the States may by Ordinance appoint and different dates may be so appointed for different provisions of this Law and for different purposes.

K. H. TOUGH,
Her Majesty's Greffier.