ORDER IN COUNCIL

XIX
1983

ratifying a Projet de Loi

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 1983

(Registered on the Records of the Island of Guernsey on the 15th day of November, 1983.)

1983

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ORDER IN COUNCIL

IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 15th day of November, 1983 *before Graham Martyn Dorey, Esquire, Deputy Bailiff; present:—Albert Richard McCartney Straw, Esquire, Lionel Walter Sarre, Esquire, M.B.E., K.P.M., Donald Pescott Plummer, Esquire, Sydney Haydn Heard, Esquire, M.B.E., Brian Ernest Herbert Joy, Harry Wilson Bisson, Herbert Nicolle Machon, James de Sausmarez Carey, John Christopher Bultsrode, Geoffrey Ernest Le Page and Stanley Walter John Jehan, Esquires, Jurats.*

The Deputy Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th day of October, 1983, ratifying a Projet de Loi of the States of Guernsey entitled "The Sexual Offences (Bailiwick of Guernsey) Law, 1983", 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 and that an extract of this present Act, together with a copy of the said Order in Council be sent by Her Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of October 1983

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 21st day of September 1983 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 30th day of March 1983, the States of Deliberation at a meeting held on the 28th day of July 1983 approved a Bill or "Projet de Loi" entitled "The Sexual Offences (Bailiwick of Guernsey) Law, 1983", 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 in the words and figures 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 Sexual Offences (Bailiwick of Guernsey) Law, 1983", and to order that the same shall have force of law in the Bailiwick of Guernsey.'

"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, as it is hereby ordered, that the same shall have the force of Law within the Bailiwick of Guernsey.

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.

N. E. Leigh.

PROJET DE LOI

ENTITLED

The Sexual Offences (Bailiwick of Guernsey) Law, 1983

THE STATES, in pursuance of their Resolution of the thirtieth day of March, nineteen hundred and eighty-three, 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.

Amendment of law relating to homosexual acts in private.

1. (1) Notwithstanding the provisions of the Law of 1929 or any rule of customary law, but subject to the next following section, a homosexual act in private shall not be an offence provided that the parties consent thereto and have attained the age of twenty-one years.

(2) An act which would otherwise be treated for the purposes of this Law as being done in private shall not be so treated if done—

(*a*) when more than two persons take part or are present; or

(*b*) in a lavatory to which the public have or are permitted to have access, whether on payment or otherwise.

(3) A man who is suffering from severe mental handicap cannot in law give any consent which, by virtue of subsection (1) of this section, would prevent a homosexual act from being an offence, but a person shall not be convicted, on account of

the incapacity of such a man to consent, of an offence consisting of such an act if he proves that he did not know and had no reason to suspect that man to be suffering from severe mental handicap.

(4) It is hereby declared that where in any proceedings it is charged that a homosexual act is an offence the prosecutor shall have the burden of proving that the act was done otherwise than in private or otherwise than with the consent of the parties or that any of the parties had not attained the age of twenty-one years.

(5) For the purposes of this section a man shall be treated as doing a homosexual act if, and only if, he commits, or attempts to commit, buggery with another man or commits an act of gross indecency with another man or is a party to the commission by a man of such an act.

(6) In subsection (3) of this section "severe mental handicap" means a state of arrested or incomplete development of mind which includes severe impairment of intelligence and social functioning.

Homosexual acts on merchant ships.

2. (1) It shall continue to be an offence under the Law of 1929 and under customary law—

(*a*) for a man to commit, or attempt to commit, buggery with another man in circumstances in which by reason of the provisions of section one of this Law it would not be an offence (apart from this section); and

(*b*) for a man to commit an act of gross indecency with another man, or to be party to the commission by a man of such an act, in such circumstances as aforesaid;

provided that the act charged is done on a merchant ship registered in the Bailiwick, wherever it may be, by a man who is a member of the crew of that ship with another man who is a member of the crew of that or any other ship so registered.

(2) In this section—

"member of the crew", in relation to a ship, includes the master of the ship and any apprentice to the sea service serving in that ship;

"merchant ship registered in the Bailiwick" means a ship registered in the Bailiwick habitually used or used at the time of the act charged for the purpose of carrying passengers or goods for reward.

Revised punishments for homosexual acts.

3. (1) Notwithstanding the provisions of the Law of 1929 or any rule of customary law—

(*a*) the maximum punishment which may be imposed on conviction on indictment of a man for buggery, or attempt to commit buggery, with another man of or over the age of sixteen years, shall be—

(i) imprisonment for a term of ten years except where the other man consented thereto; and

(ii) in the said excepted case, imprisonment for a term of five years if the accused is of or over the age of twenty-one years and the other man is under that age, but otherwise two years;

(*b*) the maximum punishment which may be imposed on conviction on indictment of a man—

(i) of committing an act of gross indecency with another man; or

(ii) of being a party to or procuring or attempting to procure the commission by a man of such an act with another man;

shall be two years except as provided by paragraph (*c*) of this subsection;

(*c*) the maximum punishment which may be imposed on conviction on indictment of a man of or over the age of twenty-one years—

(i) of committing an act of gross indecency with another man under that age; or

(ii) of being a party to or procuring or attempting to procure the commission by a man under that age of such an act with another man;

shall be imprisonment for a term of five years.

(2) References in this section to a person's age, in relation to any offence, are references to his age at the time of the commission of the offence.

Procuring others to commit homosexual acts.

4. (1) A man who procures another man to commit with a third man an act of buggery which by reason of section one of this Law is not an offence shall be liable on conviction on indictment to imprisonment for a term not exceeding two years.

(2) It shall not be an offence under Article 3 of the Law of 1929 for a man to procure the commission by another man of an act of gross indecency with the first-mentioned man which by reason of section one of this Law is not an offence under the said Article 3.

Living on earnings of male prostitution.

5. A man or woman who knowingly lives wholly or in part on the earnings of prostitution of another man shall be liable—

(*a*) on summary conviction, to imprisonment for a term not exceeding six months; or

(*b*) on conviction on indictment, to imprisonment for a term not exceeding seven years.

Premises resorted to for homosexual practices.

6. (1) It is an offence under this section for a person to keep, or to manage, or act or assist in the management of, any premises to which people resort for the purpose of lewd homosexual practices in circumstances in which resort to those premises for lewd heterosexual practices would have led to those premises being treated as a brothel for the purposes of the Law entitled "Loi relative à la protection des Femmes et des Filles mineures" registered on the first day of August, nineteen hundred and fourteen(*a*).

(2) It is an offence under this section for the lessor or landlord of any premises, or his agent, to let the whole or part of the premises with the knowledge that it is to be used, in whole or in part, as premises of the description set out in subsection (1) of this section or, where the whole or part of the premises is used as premises of such description, to be wilfully a party to that use continuing.

(*a*) Ordres en Conseil Vol. V. p. 74.

(3) It is an offence under this section for the tenant or occupier, or person in charge, of any premises knowingly to permit the whole or part of the premises to be used as premises of the description set out in subsection (1) of this section.

(4) A person guilty of an offence under this section shall be liable, on conviction, to imprisonment for a term not exceeding six months or to a fine not exceeding one thousand pounds, or to both such imprisonment and fine.

Past offences.

7. (1) Except as provided by the following provisions of this section, sections one, three and four of this Law shall have effect in relation to acts done before the commencement of this Law as they apply in relation to acts done after the commencement of this Law.

(2) Except as provided in the next following subsection, this Law shall not have effect in relation to any act which is, or apart from this Law would be, an offence where the defendant to an indictment for that offence has been committed for trial before the commencement of this Law.

(3) The foregoing provisions of this section shall not operate to increase the punishment for any offence committed before the commencement of this Law.

Extension of amending Law of 1948 to the whole Bailiwick.

8. The Law entitled "Loi de 1948 portant amendement à la Loi de 1929 relative à la Sodomie" registered on the thirteenth day of January, nineteen hundred and forty-nine(*b*), shall have effect throughout the Bailiwick.

(*b*) Ordres en Conseil Vol. XIV, p. 13.

Citation, interpretation and extent.

9. (1) This Law may be cited as the Sexual Offences (Bailiwick of Guernsey) Law, 1983.

(2) In this Law—

(*a*) "the Bailiwick" means the Bailiwick of Guernsey;

(*b*) "the Law of 1929" means the Law entitled "Loi relative à la Sodomie" registered on the first day of June, nineteen hundred and twenty-nine(*c*).

(3) References in this Law to any other Law shall be construed as references to that other Law as amended or extended by any subsequent Law including this Law.

(4) This Law shall have effect throughout the Bailiwick.

Duration.

10. (1) The provisions of sections one, two, four and seven of this Law shall cease to have effect on the expiration of the three years next following the commencement of this Law unless the States of Guernsey provide by Ordinance that those provisions shall continue in force; and in that event this Law (other than this section) shall continue in force in all respects as if this section had not been enacted.

(2) In the event of the provisions of sections one, two, four and seven of this Law ceasing to have effect by virtue of subsection (1) of this section, then, notwithstanding that those provisions shall have so ceased to have effect, this Law shall continue to have effect in relation to acts done before the date on which those provisions so ceased to have effect.

D. J. ROBILLIARD,
Her Majesty's Deputy Greffier.

(*c*) Ordres en Conseil Vol. VIII, p. 273.