

PROJET DE LOI

ENTITLED

The Protection from Harassment (Bailiwick of Guernsey) Law, 2005

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THE STATES, in pursuance of their Resolution of the 24th November, 2004^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have the force of law in the Bailiwick of Guernsey.

PART 1

CRIMINAL HARASSMENT

Prohibition of harassment.

1. (1) A person must not pursue a course of conduct -
 - (a) which amounts to harassment of another, and
 - (b) which he knows or ought to know amounts to harassment of the other.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it amounts to harassment of another if a reasonable person in possession of the same information would think the course of conduct amounted to harassment of the other.

^a Billet d'État No. XX of 2004.

(3) Subsection (1) does not apply to a course of conduct if the person who pursued it shows -

- (a) that it was pursued for the purpose of preventing or detecting crime,
- (b) that it was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person thereunder, or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

Offence of harassment.

2. (1) A person who pursues a course of conduct in breach of section 1 is guilty of an offence.

(2) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 4 years, or a fine, or both, or
- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

Putting people in fear of violence.

3. (1) A person whose course of conduct causes another to fear, on at least two occasions, that violence will be used against him is guilty of an offence

if he knows or ought to know that his course of conduct will cause the other so to fear on each of those occasions.

(2) For the purposes of this section, the person whose course of conduct is in question ought to know that it will cause another to fear that violence will be used against him on any occasion if a reasonable person in possession of the same information would think the course of conduct would cause the other so to fear on that occasion.

(3) It is a defence for a person charged with an offence under this section to show that -

- (a) his course of conduct was pursued for the purpose of preventing or detecting crime,
- (b) his course of conduct was pursued under any enactment or rule of law or to comply with any condition or requirement imposed by any person thereunder, or
- (c) the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

(4) A person guilty of an offence under this section is liable -

- (a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both, or

- (b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

(5) If on the trial on indictment of a person charged with an offence under this section the Royal Court finds him not guilty of the offence charged, it may find him guilty of an offence under section 2.

PART 2 CIVIL PROCEEDINGS

Restraining orders.

4. (1) A court sentencing or otherwise dealing with a person ("the defendant") convicted of an offence under section 2 or 3 may (as well as sentencing him or dealing with him in any other way) make an order under this section.

(2) The order may, for the purpose of protecting the victim of the offence, or any other person (whether identified by name or description, or as a member of a class) mentioned in the order, from further conduct which -

- (a) amounts to harassment, or
- (b) will cause a fear of violence,

prohibit the defendant from doing anything described in the order.

(3) The order may have effect for a specified period or until further order.

(4) Her Majesty's Procureur, the defendant or any other person mentioned in the order may apply to the court which made the order for it to be varied or discharged by a further order.

(5) If without reasonable excuse the defendant does anything which he is prohibited from doing by an order under this section, he is guilty of an offence.

(6) A person guilty of an offence under this section is liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

Civil remedy.

5. (1) An actual or apprehended breach of section 1 may be the subject of a claim in civil proceedings in the Royal Court by the person who is or may be the victim of the course of conduct in question.

(2) On such a claim, damages may be awarded for (among other things) any anxiety caused by the harassment and any financial loss resulting from the harassment.

(3) Where -

(a) in such proceedings the Royal Court grants an injunction for the purpose of restraining the defendant

from pursuing any conduct which amounts to harassment, and

- (b) the plaintiff considers that the defendant has done anything which he is prohibited from doing by the injunction,

the plaintiff may apply to the Bailiff for the issue of a warrant for the arrest of the defendant.

(4) The Bailiff, on an application under subsection (3), may only issue a warrant if -

- (a) the application is substantiated on oath, and
- (b) he has reasonable grounds for believing that the defendant has done anything which he is prohibited from doing by the injunction.

(5) Where -

- (a) the Royal Court grants an injunction for the purpose mentioned in subsection (3)(a), and
- (b) without reasonable excuse the defendant does anything which he is prohibited from doing by the injunction,

he is guilty of an offence.

(6) Where a person is convicted of an offence under subsection (5) in respect of any conduct, that conduct is not punishable as a contempt of court.

(7) A person cannot be convicted of an offence under subsection (5) in respect of any conduct which has been punished as a contempt of court.

(8) A person guilty of an offence under subsection (5) is liable -

(a) on conviction on indictment, to imprisonment for a term not exceeding 5 years, or a fine, or both, or

(b) on summary conviction, to imprisonment for a term not exceeding 12 months, or a fine not exceeding level 5 on the uniform scale, or both.

(9) In this section "**Royal Court**" means the Royal Court sitting as an Ordinary Court and is properly constituted by the Bailiff sitting alone.

PART 3 MISCELLANEOUS

Limitation.

6. In section 5 of the Law Reform (Tort) (Guernsey) Law, 1979^b (time limit for personal injuries), after subsection (1) insert the following subsection -

"(1A) This section does not apply to any action brought for damages under section 5 of the Protection from Harassment (Bailiwick of Guernsey) Law, 2005."

^b Ordres en Conseil Vol. XXVII, p. 50.

Interpretation.

7. (1) This section applies to the interpretation of sections 1 to 5.
- (2) References to harassing a person include alarming the person or causing the person distress.
- (3) A company may for the purposes of this Law be the subject of harassment, whether or not any of its officers, shareholders, members or employees (by whatever name called) are, by the same course of conduct, the subject of harassment.
- (4) A "**company**" includes a body corporate or unincorporate, and a group or association of persons whether formally constituted as such or otherwise.
- (5) A "**course of conduct**" must involve conduct on at least two occasions.
- (6) A person's conduct on any occasion shall be taken, if aided, abetted, counselled or procured by another -
 - (a) to be conduct on that occasion of the other (as well as conduct of the person whose conduct it is), and
 - (b) to be conduct in relation to which the other's knowledge and purpose, and what he ought to have known, are the same as they were in relation to what

was contemplated or reasonably foreseeable at the time of the aiding, abetting, counselling or procuring.

(7) "**Conduct**" includes speaking, writing and any other form or manner of communicating.

National security, etc.

8. (1) If Her Majesty's Procureur certifies that in his opinion anything done by a specified person on a specified occasion related to -

- (a) national security,
- (b) the economic well-being of any part of the Bailiwick of Guernsey, or
- (c) the deterrence, prevention or detection of serious crime,

and was done on behalf of the Crown, the certificate is conclusive evidence that this Law does not apply to any conduct of that person on that occasion.

(2) In subsection (1), "**specified**" means specified in the certificate in question.

(3) A document purporting to be a certificate under subsection (1) is to be received in evidence and, unless the contrary is proved, is to be treated as being such a certificate.

Extension of Part 2 to Alderney and Sark.

9. The States of Alderney and the Chief Pleas of Sark may respectively by Ordinance provide that Part 2 shall extend to Alderney or (as the case may be) to Sark subject to such exceptions, adaptations and modifications as may be prescribed in the Ordinance.

Ordinances.

10. (1) The States of Deliberation may by Ordinance amend the provisions of this Law.

(2) An Ordinance under this section or section 9 -

(a) may be amended or repealed by a subsequent Ordinance, and

(b) may contain such transitional, consequential, incidental and supplementary provisions as the States of Deliberation, the States of Alderney or (as the case may be) the Chief Pleas of Sark think fit.

Application.

11. (1) Parts 1 and 3 apply throughout the Bailiwick.

(2) Part 2 applies, subject to the provisions of section 9, to Guernsey, Herm and Jethou.

Citation.

12. This Law may be cited as the Protection from Harassment (Bailiwick of Guernsey) Law, 2005.