

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE SEXUAL OFFENCES (MISCELLANEOUS PROVISIONS) (BAILIWICK OF GUERNSEY)
LAW, 2024**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Sexual Offences (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2024", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

EXPLANATORY MEMORANDUM

This Law abolishes the customary law offence of indecent assault against a girl under sixteen years and makes consequential provision, including in relation to the position where it cannot be proved beyond reasonable doubt when the offence took place. In addition, an amendment is made to the Sexual Offences (Transitional Provisions) (Bailiwick of Guernsey) Ordinance, 2023 for purposes of consistency with this Law and a technical change is made to the offence of assault by penetration (against children and adults) to ensure that a defendant who penetrates a complainant with an unknown object can still be convicted of that offence, rather than a less serious offence. The Law also makes a technical amendment to the definition of extreme pornography in order to encompass all images involving serious sexual conduct with animals.

PROJET DE LOI

ENTITLED

The Sexual Offences (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2024

THE STATES, in pursuance of their Resolutions of the 28th July, 2011^a and the 26th February, 2020^b, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Abolition of customary law offence.

1. There are hereby abolished -
 - (a) the customary law offence of indecent assault on a girl below the age of sixteen years, and
 - (b) the rules of customary law establishing and otherwise relating to that offence,

together referred to as "**the customary law offence**".

^a Article IX of Billet d'État No. XIII of 2011.

^b Article VII of Billet d'État No. V of 2020.

Consequential provisions.

2. (1) The abolition of the customary law offence does not -
 - (a) affect the previous operation of the customary law offence or anything duly done or suffered under it,
 - (b) affect any right, interest, title, power, privilege, status or capacity created, acquired, accrued, established or exercisable under the customary law offence,
 - (c) affect any duty, obligation, liability or burden of proof imposed, created or incurred under the customary law offence,
 - (d) affect any penalty, forfeiture or punishment incurred in respect of any conduct committed in contravention of the customary law offence, or
 - (e) affect any investigation, legal proceeding or remedy in respect of any such right, interest, title, power, privilege, status, capacity, duty, obligation, liability, burden of proof, penalty, forfeiture or punishment.

- (2) Accordingly -
 - (a) any penalty, forfeiture or punishment referred to in subsection (1)(d) may be imposed and enforced, and

- (b) any investigation, legal proceeding or remedy referred to in subsection (1)(e) may be instituted, continued or enforced,

as if the customary law offence had not been abolished.

Continuity of sexual offences law.

- 3. (1) This section applies where, in any proceedings -
 - (a) a person ("**the defendant**") is charged in respect of the same conduct both with an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020 ("**the 2020 Law offence**") and with the customary law offence of indecent assault on a girl below the age of sixteen years,
 - (b) the only thing preventing the defendant from being found guilty of the 2020 Law offence is the fact that it has not been proved beyond a reasonable doubt that the time when the conduct took place was after the coming into force of the enactment providing for the 2020 Law offence, and
 - (c) the only thing preventing the defendant from being found guilty of the customary law offence of indecent assault on a girl below the age of sixteen years is the fact that it has not been proved beyond a reasonable doubt that the time was before the coming into force of the enactment abolishing the customary law offence of indecent assault on a girl below the age of sixteen years.

(2) For the purpose of determining the guilt of the defendant, it shall be conclusively presumed that the time when the conduct took place was a time after the coming into force of the enactment providing for the 2020 Law offence.

(3) A reference in this section to -

- (a) an offence under the Sexual Offences (Bailiwick of Guernsey) Law, 2020, or
- (b) the customary law offence of indecent assault on a girl below the age of sixteen years,

includes a reference to -

- (i) inciting the commission of that offence,
- (ii) conspiracy to commit that offence, and
- (iii) attempting to commit that offence,

and, in relation to an offence falling within subparagraphs (i) to (iii), a reference in this section to the enactment providing for that offence so falling has effect as a reference to the enactment providing for the 2020 Law offence or, as the case may be, to the enactment abolishing the customary law offence of indecent assault on a girl below the age of sixteen years.

(4) This section applies to any proceedings, whenever commenced, other than proceedings in which the defendant has been convicted or acquitted of the

2020 Law offence or the customary law offence of indecent assault on a girl below the age of sixteen years before the commencement of this section.

Amendments.

4. (1) In the Sexual Offences (Bailiwick of Guernsey) Law, 2020 -
 - (a) in section 12(a)(i) and 17(a)(i) of, delete "other than A's penis", and
 - (b) in section 58(2)(d), for "penetrating the vagina, anus or mouth of ", substitute "performing an act of intercourse or oral sex with".

(2) In section 1(4) of the Sexual Offences (Transitional Provisions) (Bailiwick of Guernsey) Ordinance, 2023, for the words "so specified" substitute "which was repealed by that Law".

Interpretation.

5. For the purpose of this Law, "**customary law**" includes common law.

Extent.

6. This Law shall have effect throughout the Bailiwick of Guernsey.

Citation and commencement.

7. (1) This Law may be cited as the Sexual Offences (Miscellaneous Provisions) (Bailiwick of Guernsey) Law, 2024.

(2) This Law shall come into force on the day after it is registered on the Records of the Island of Guernsey.