

UPDATE

# Guernsey's Court of Appeal Law – The Changes

Update prepared by Abel Lyall and Greg Coburn (Guernsey)

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This article discusses the recent changes to Guernsey's existing Court of Appeal Law.

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## Introduction

On 29 September 2021 the States of Guernsey approved amendments to the Court of Appeal (Guernsey) Law, 1961 (the **Law**), which were registered on 7 February 2022 and came into effect under the Court of Appeal (Guernsey) (Amendment) Law, 2021. The up-to-date version of the Law is [here](#). The Law, last amended in 2011, works alongside the Court of Appeal (Civil Division) Guernsey Rules, 1964 (the **Rules**) and mainly deals with appeals from the Royal Court of Guernsey and covers the functioning of the court, including administrative duties and the procedure for the appeal process. Changes to the Rules have also been made and were brought into effect by the Court of Appeal (Civil Division) (Guernsey) (Amendment) Rules, 2022. The up-to-date version of the Rules is [here](#).

The changes have been made with the aim of modernising the Law to bring it back in line with the [Court of Appeal \(Jersey\) Law, 1961](#) (the **Jersey Law**) following its subsequent amendments. Prior to the enactment of the Law and the Jersey Law, the intention was for there to be a joint Guernsey and Jersey Court of Appeal, however this never came to be and ultimately each island instead enacted its own similar legislations with the Bailiffs of Guernsey and Jersey sitting on the panel of judges for the appeal Courts of both islands.

Whilst these amendments are mostly procedural and do not drastically alter the substance of the Law, they helpfully aim to ensure the proper administration of justice. This update focuses on the changes to the civil regime.

## Notable Changes: Why they are Important

### 1 Deadline to File Notice of Appeal

By virtue of an amendment to Rule 3 of the Rules, the deadline to file a Notice of Appeal has been reduced from one month to 28 days. Anyone wishing to appeal a decision of the Royal Court must bring their appeal within this shorter timeframe, unless they can persuade the Court of Appeal to grant an extension of the deadline. An extension will only be granted in limited circumstances and with justification of the reason(s) for the delay.

### 2 Powers of a Single Judge

An application to the Court of Appeal for leave to appeal against an interlocutory order or judgment, where such leave is required, will be made to a single judge (who may refer the matter to the full Court), and such judge's decision shall now be final. This further addition to the powers of a single judge is considered expedient in the interests of flexibility and efficiency and will ensure consistency with the Jersey Law in relation to the powers of a single judge.

### 3 Right of appeal

The amendments insert an explicit right of appeal against the making of a forfeiture order under section 18 of the [Terrorism and Crime \(Bailiwick of Guernsey\) Law, 2002](#).

### 4 Venues of Hearings

In response to the COVID-19 outbreak, [emergency provisions](#) were brought in, which allowed the Court of Appeal to sit for hearings of appeal both in and out of the Bailiwick and gave the Bailiff or the presiding judge the power to direct how proceedings were to be conducted – for instance, via telephone, teleconference or other means of communication. In order to facilitate the proper and timely administration of justice, alongside promoting flexibility and efficiency, these powers have now been incorporated on a permanent basis.

### 5 Remuneration of Judges

Previously, monies or 'emoluments' were paid to sitting judges via a resolution of the States of Guernsey (the **States**). An unintended effect of this was that the States had the sole power to determine judicial remuneration, which, on the face of it, could be seen to affect the independence and impartiality of the judiciary in contravention of Article 6 (Right to a Fair Trial) of the European Convention on Human Rights.

To avoid this, the Law has now been amended so that sums paid to the ordinary judges of the Court will be determined by or on behalf of the States in conjunction with the approval of the Bailiff. The wording of this amendment means that the Law is now consistent with that of section 4(5) of the Royal Court (Reform) (Guernsey) Law, 2008, and section 3(5) of the Magistrate's Court (Guernsey) Law, 2008, bringing cohesion across the Guernsey Court hierarchy.

### 6 Oaths and Affirmations

Historically oaths by judges in Guernsey have only ever been sworn in French, however to reflect the fact that the majority of the judges of the Court are English speaking, there is now an option to swear the oath in English. Judges can also now opt to make an affirmation as an alternative to swearing an oath. This brings the Court of Appeal Law in line with the [Royal Court Civil Rules, 2007](#), taking note of religious diversity in the Bailiwick.

### 7 Effect of appeal on suspension licences and confiscation of goods

Where notice of either an appeal or an application for leave to appeal has been given, the Law now provides the Bailiff with the power to suspend any order of the Royal Court which suspends or revokes a licence or other permit until there has been a disposal of the appeal or the application for leave has been decided. In relation to the confiscation of goods, the Law is now in line with Article 38 of the Jersey Law in that, where goods have been confiscated or forfeited by order of the Royal Court, the goods will be kept by the Registrar of the Court of Appeal until the appeal or application for leave to appeal has been decided.

### Conclusion

Overall, the amendments to the Law are sensible and welcome, paving the way for a more flexible and modern Court of Appeal.

### Contacts

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