

INFORMATION NOTES ON THE JERSEY AND GUERNSEY COURTS OF APPEAL

The Norman origins of the Bailiwick of Jersey and the Bailiwick of Guernsey are still evident in the legal systems in the Islands but nowadays there is a substantial corpus of statute law.

The legislation governing the Jersey Court of Appeal is the Court of Appeal (Jersey) Law 1961 as amended which came into force in 1964. The legislation governing the Guernsey Court of Appeal is the Court of Appeal (Guernsey) Law 1961 which came into force in 1964.

The Judicial Committee of the Privy Council is the court of last resort in appeals from the two Courts of Appeal.

The Presidents of the Courts of Appeal

The Bailiffs are ex officio the Presidents of their respective Courts of Appeal.

By custom the Bailiff of Jersey is appointed by warrant to serve on the Guernsey Court of Appeal and the Bailiff of Guernsey is appointed to serve on the Jersey Court of Appeal. However, these warrants of appointment provide that they are appointed to the Court of Appeal in the other Island only for so long as they hold office as Bailiff in their respective Bailiwicks.

The Ordinary Judges of the Courts of Appeal

All other judges are referred to in the relevant statutes as Ordinary Judges. It has been the custom for the same Ordinary Judges to be appointed to the Courts of Appeal in both Guernsey and Jersey. Until fairly recently, all the judges were drawn from practising silks at the Bar of England and Wales, although there have also always been one or two leading Scottish silks. The majority of judges still fall within this category. However, in recent times, one or two of the judges have usually been recently retired judges of the English High Court or Court of Appeal.

In accordance with the provisions of the above statutes, in order to be eligible for appointment as an Ordinary Judge of the Courts of Appeal, candidates must be persons who:

- (a) hold or have held judicial office in the Commonwealth;
- (b) have been at least 10 years in practice at the Bar in Jersey or Guernsey as the case may be, whether as a Law Officer of the Crown or otherwise; or
- (c) have been at least 10 years in practice at the Bar in England and Wales, Scotland, Northern Ireland, Jersey, Guernsey or the Isle of Man.

Number of Judges allocated to each session

The quorum is 3 judges.

Very exceptionally, 5 judges (or even 7) might be empanelled to deal with a guideline case.

Certain applications are made before single judges.

Number of Sessions and Allocation of Judges

Jersey schedules 6 sessions per year, each lasting a week. The Court therefore sits every 2 months. Guernsey has 5 such sessions and the Court therefore sits every 10 weeks. Additional sessions may be scheduled to deal with urgent cases.

It follows that by and large a judge may be scheduled for 1 or 2 sessions in Jersey and 1 or occasionally 2 in Guernsey each year.

Sessions are scheduled for 5 working days (Monday to Friday) with judges arriving on a Sunday. The Court's business may quite often be completed on day 3 or 4, but judges should allow for the full week.

The Registrars of the Courts of Appeal liaise together in late summer and fix the dates for sessions in the following year. The Registrar of the Jersey Court of Appeal, acting with the consent of the two Bailiffs, circulates in October of each year, the schedule of sessions to all Court of Appeal judges and invites them to indicate their availability. Judges are then allocated to sessions in each Island. Once committed, they are expected to adhere to that commitment, save in the most extreme unforeseen circumstances, mindful that it can be difficult to find a replacement judge for a week long session even at one or two months' notice.

Daily Remuneration

It has been customary for the two Courts of Appeal to fix the daily remuneration to mirror the daily rate paid to a Deputy High Court Judge in England and Wales (currently £917.52 per day). The payments are exempt from tax in Guernsey and Jersey.

Travel Expenses and Hotel Accommodation

The host Court of Appeal will pay reasonable costs of travel, hotel accommodation and the cost of taxis and meals taken in the Islands.

Judgments

A considerable effort is made to deliver judgments during the sessions but that is not always achievable.

Range of Cases

The range of work which comes before the two Courts of Appeal is extremely varied. In the first place there is the sort of work one would expect from a community with the population of the Islands. At most sittings there will be one or more criminal appeals and each panel of judges therefore usually includes one specialist in criminal law. On the civil side there will be cases involving the tort, contract, judicial review, family law etc. From time to time there will be cases where customary law principles will feature, particularly when concerned with a property law dispute.

In addition to this line of work, there are cases which arise out of the position of the Islands as international finance centres. Thus there will be potentially complex cases involving the law of trusts, companies, banking, bankruptcy, tracing of assets, conflict of laws, etc. Those who have sat as judges on the Court of Appeal have invariably said that the role has been stimulating and challenging.

Rights of Audience

Rights of audience are restricted in each Island to Advocates of the local Bar.

Criminal Law

The criminal law of England and Wales does not apply in the Islands. Common law offences are largely based on English common law in the 19th century supplemented by statutory offences based generally on equivalent English statutes, modified to suit the needs of the Islands.

Civil Law

The customary law of the Islands is derived from the customary law of Normandy, modified to suit the needs of the Island and as developed in the Islands since the inception of the Code Napoleon in France. When the Court considers ancient customary law, it often has to review texts which are in French and accordingly an ability to understand written French is an advantage, although not essential.

The Islands have adopted some English legislation, again modified to suit the needs of the Islands. The law of trusts in each Island is broadly based on principles of English trust law, but with local variations.

The law of Jersey and Guernsey differs.

In the case of Guernsey, appeal cases may, exceptionally, have originated in Alderney and Sark which are separate jurisdictions in their own right within the Bailiwick of Guernsey. Civil law differs in each of the three jurisdictions in the Bailiwick of Guernsey but the same criminal law is in force in each of the jurisdictions in that Bailiwick.

Appointment

Appointment to the Courts of Appeal is by warrant under the Royal Sign Manual on the recommendation of the Lord Chancellor after consultation with the Bailiffs of each Island. Appointments have in the past been until the age of 70, but they now extend to 72.

Current Members

As stated above, the Bailiff of Jersey (currently Timothy le Cocq QC) is an ordinary judge of the Guernsey Court of Appeal and the Bailiff of Guernsey (currently Richard McMahon QC) is an ordinary judge of the Jersey Court of Appeal. The Deputy Bailiff of Jersey and Sir William Bailhache are also members of the Jersey Court of Appeal though not in Guernsey. Otherwise membership of the two courts is the same and is currently as follows (in order of seniority):-

James McNeill QC (Scottish)
Clare Montgomery QC
Jonathan Crow QC
George Bompas QC
David Perry QC
Lord Anderson QC

Sir Wyn Williams

Selected Recent Past Members

The following have amongst others ceased to be members of the two Courts of Appeal since 2004 either because they have been appointed to judicial office in the United Kingdom or because they have reached the age of retirement:-

Nigel Pleming QC
Sir David Calvert Smith
Sir John Nutting Bt, QC
The Hon. Michael Beloff QC
Sir Hugh Bennett
Sir Christopher Nugee
Lord Jones (Scottish)
Dame Heather Steel
Lord Sumption
Sir Geoffrey Vos
Lord Hodge (Scottish)

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