



LAW OFFICERS
OF THE CROWN

THE BAILIWICK: LEGAL BACKGROUND

Court structure of the Bailiwick

In criminal matters, the 3 main islands each have their own summary court, the Magistrate's Court in Guernsey, the Court of Alderney and the Court of the Seneschal of Sark respectively, which have different sentencing powers in order to deal with less serious offences. However, the Royal Court of Guernsey alone can deal with indictable only offences including murder, manslaughter and robbery wherever in the Bailiwick they are alleged to have been committed. The Royal Court may also deal with more serious offences of theft, violence or drug possession transferred to it from any of the summary courts.

In civil matters (including matrimonial and children proceedings), the Court of Alderney and the Court of the Seneschal have unlimited jurisdiction to deal with any case arising in their respective islands; however, the Royal Court of Guernsey also has concurrent powers to hear claims which originate in Alderney and Sark. In relation to Guernsey, the Royal Court has unlimited civil jurisdiction regarding all claims made there, although the Juvenile Court deals with proceedings relating to the welfare of children.

The Bailiff sits as the chief judge of the Royal Court of Guernsey, assisted by the Deputy Bailiff and the Judge of the Royal Court, whose role it is to decide questions of law and procedure. When hearing civil or criminal cases, the Royal Court consists of the Bailiff and a number of Jurats, who are chosen by the States of Election to form a "permanent jury" which decides questions of fact. In addition to the functions set out above, appeals in civil or criminal cases are made to the Royal Court.

Any subsequent appeal from the Royal Court of Guernsey is heard by the Guernsey Court of Appeal, which includes senior barristers from the mainland and judges from the other Crown Dependencies; a final appeal exists to the Judicial Committee of the Privy Council, which typically includes members of the UK Supreme Court and sits in London.

A number of specialist tribunals also exist in the Bailiwick to deal with matters such as children, planning, taxation, social security and mental health.

For more information, see:

- <http://www.guernseyroyalcourt.gg/article/6322/The-Court-System>
- <http://www.alderney.gov.gg/article/114261/Court>
- <http://www.courtoftheseneschal.sark.gg/>

Sources of law

The principal source of law in the Bailiwick is the legislation enacted by the parliaments of the 3 main islands, or made by their committees or other public bodies. Legislation can apply to a particular island within the Bailiwick, a combination of islands or the Bailiwick of

Guernsey as a whole. For more information on the legislative drafting process, see <http://staging.guernseylawofficers.gov.gg/article/160819/Legislation>

Judges sitting in the Royal Court of Guernsey and the Court of Appeal are sometimes required to decide how legislation should be applied; when doing so, they can set precedents which must then be followed by other courts in similar situations. In order to make these decisions, courts may consider the intention behind that legislation or consider how similar legislation (in the Bailiwick or elsewhere) has been applied.

In addition, an important source of law in the Bailiwick is the customary law. A link with the period when the Bailiwick formed part of the Duchy of Normandy, this law is based upon the accepted tradition and customs of the inhabitants of that region. After the separation from continental Normandy in 1204, the customary law of Guernsey kept pace with certain changes in the law applicable there but continued to develop in its own right. The laws and customs existing in the mid-16th Century were recorded in a series of documents called "*Approbation des Lois*" which were approved by the Privy Council in 1583. They have continued to evolve and adapt to new circumstances, occasionally being amended by legislation enacted by the States of Deliberation. The customary laws of Alderney and Sark were formally declared to be the same as that of Guernsey in 1585 and 1583 respectively. Customary law still informs the current law regarding property, contracts and guardianship in different parts of the Bailiwick.

