

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE PUBLIC FUNCTIONS (TRANSFER AND PERFORMANCE) (BAILIWICK OF GUERNSEY)
(AMENDMENT) LAW, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) (Amendment) Law, 2021", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Law amends the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 ("the 1991 Law").

Section 1(2) replaces section 1 of the 1991 Law with a new section 1 that includes within scope of the powers to transfer functions by Ordinance parochial office holders and Douzaines, and public offices and public office holders. Section 1(3) provides for the transfer of functions of a Committee of the States of Alderney or the Chief Pleas of Sark conferred within a Bailiwick-wide enactment to another Committee of the States of Alderney or the Chief Pleas of Sark (as the case may be), while section 1(4) replaces the very short section 3 of the 1991 Law making general provision in respect of Ordinances under the 1991 Law with more modern and standard form wording in that regard. Sections 1(5) to 1(7) and section 1(9)(d) make changes to provision in the 1991 Law in respect of the holders of a public office to include public offices themselves; in this regard section 1(9)(c) replaces the definition of "public office" in the 1991 Law with a more expansive definition that expressly includes the Guernsey Financial Services Commission ("the GFSC"), making separate references to the GFSC no longer necessary. Section 1(8) and section 1(9)(a) deal with references to the GFSC that are consequently otiose, and section 1(9)(b) replaces the definition of "officer" with wording that includes a definition of the meaning, for the purposes of the 1991 Law, of an officer being "responsible to" a Committee, a public office or the holder of a public office.

PROJET DE LOI

ENTITLED

The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) (Amendment) Law, 2021

THE STATES, in pursuance of their Resolutions of the 30th June, 2010^a and the 29th September, 2015^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Amendment of the Public Functions Law.

1. (1) The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^c is amended as follows.

(2) For section 1, substitute –

"Transfer of functions of Committees etc.

1. (1) The States may by Ordinance vary any relevant enactment which (in whatever words) –

^a Article III of Billet d'État No. XV of 2010.

^b Article XII of Billet d'État No. XVI of 2015.

^c Ordres en Conseil Vol. XXXIII, p. 478; as amended by Recueil d'Ordonnances Tome XXIX, p. 406 and Ordinance No. IX of 2016.

- (a) confers a function on -
 - (i) a named Committee of the States,
 - (ii) the Constables, the Constables and the Douzaine, the Douzaine, or the Douzeniers of any Parish or any named Parish, or
 - (iii) a named public office or the holder of a named public office, or
- (b) empowers the States to confer a function on –
 - (i) a named Committee of the States,
 - (ii) the Constables, the Constables and the Douzaine, the Douzaine, or the Douzeniers of any Parish or any named Parish, or
 - (iii) a named public office or the holder of a named public office,

so as to transfer that function to, or as the case may be, so as to empower the States to confer that function on any person, or office referred to in subsection (2).

- (2) For the purpose of subsection (1), the persons and

offices are –

- (a) in the case of a named Committee of the States –
 - (i) a Committee of a different name (whether formed for the purpose or existing at the time),
 - (ii) the Constables, the Constables and the Douzaine, or the Douzaine, of any Parish, or any named Parish, or
 - (iii) a named public office, or the holder of a named public office,
- (b) in the case of the Constables, the Constables and the Douzaine, or the Douzaine, of any Parish, or any named Parish –
 - (i) a named Committee of the States,
 - (ii) the Constables, the Constables and the Douzaine, or the Douzaine, of any Parish, or any different named Parish, or

(iii) a named public office, or the holder of a named public office,

(c) in the case of a named public office, or the holder of a named public office –

(i) a named Committee of the States,

(ii) the Constables, the Constables and the Douzaine, or the Douzaine, of any Parish or any named Parish, or

(iii) a different named public office or, the holder of a different named public office.".

(3) After section 1, insert –

"Transfer of functions of Committees etc: Alderney and Sark.

1A. (1) This section applies where a relevant enactment that is applicable throughout the Bailiwick confers a function on a Committee of the States of Alderney or the Chief Pleas of Sark.

(2) Where this section applies, the States of Alderney or the Chief Pleas of Sark may by Ordinance transfer that function to, or empower the States of Alderney or the Chief Pleas of Sark (as the case may

be) to confer that function on, such other Committee of the States of Alderney or the Chief Pleas of Sark (as the case may be) as may be prescribed in that Ordinance."

(4) For section 3, substitute -

"Ordinances.

3. (1) An Ordinance under this Law -

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

(b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, without limitation, provisions making consequential amendments to this Law and any other enactment).

(2) Any power to make an Ordinance under this Law may be exercised -

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised -

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may empower any Committee, and any other body, to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance made under it,
- (b) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (c) may make provision for the purpose of dealing

with matters arising out of or related to matters set out in sections 1, 1A, or 2,

(d) may repeal, replace, amend, extend, adapt, modify or disapply any rule of custom or law, and

(e) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi, but for the avoidance of doubt may not provide that a person is to be guilty of an offence as a result of any retrospective effect of the Ordinance."

(5) In section 4(1), for paragraph (b), substitute –

"(b) a public office may arrange for any of its functions to be performed in its name by any officer responsible to that office, and the holder of a public office may arrange for any of that office-holder's functions to be performed by an officer responsible to that office-holder."

(6) In section 4(2) and (3), wherever it appears for "the Committee or office holder concerned" substitute "the Committee, office-holder or public office concerned", and in section 4(2) for "the Committee concerned", substitute "the Committee or public office concerned".

(7) In section 4(4)(b), for "the holder of a public office" substitute "a public office, or the holder of a public office,".

(8) In section 4(6), delete from the start to "Committee of the States; and," .

(9) In section 5 –

(a) in the definition of "function", for "Financial Services Commission," substitute "a public office",

(b) for the definition of "officer", substitute –

""**officer**" means an employee of the States, or of the public office concerned (as the case may be); and an officer is "**responsible to**" a Committee if that officer is an employee of the States, and is "**responsible to**" a public office, or to the holder of a public office, where that officer is an employee of that public office or the holder of that public office,"

(c) for the definition of "public office", substitute –

""**public office**" means any office, authority or body, however created, to which functions of a public nature are specifically assigned by an enactment, and for the avoidance of doubt includes the Financial Services Commission, and "**office-holder**" and related terms are to be construed accordingly," and

(d) in the definition of "**the States**", for " or the holder of a

named public office in Alderney" substitute ", a named public office in Alderney or the holder of a named public office in Alderney", and for " or the holder of a named public office in Sark" substitute ", a named public office in Sark or the holder of a named public office in Sark".

Citation.

2. This Law may be cited as the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) (Amendment) Law, 2021.

Commencement.

3. This Law shall come into force on the date of its registration in the records of the Island of Guernsey.