

**THE ELECTORAL SYSTEM REFERENDUM (GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Electoral System Referendum (Guernsey) Law, 2018", 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 provides for a referendum to be held on Guernsey's voting system. Sections 1 and 2 provide for the date of the referendum and entitlement to vote in it. Sections 3 and 4 provide for the appointment of specific officials in respect of voting in the referendum and related matters: the Chief Counting Officer, Ballot Officers and deputy Ballot Officers, and Scrutineers (to assist with the counting of the votes). Section 5 provides that the Constables and Douzaines shall supervise the conduct of the ballot, and section 6 makes provision in relation to the counting of votes. Section 7 gives the States' Assembly and Constitution Committee (SACC) the power to make regulations in respect of the conduct and management of the referendum.

Sections 8 to 12 make provision in relation to campaign groups. Section 8 sets out the procedure for applying for appointment as a campaign group, and section 9 provides for there to be a panel to assess such applications. Section 10 provides for SACC to appoint campaign groups, and section 11 requires that Committee to publicise the referendum and provide information about each option. Section 12 provides for an appointed campaign group to be entitled to a grant.

Sections 13 to 22 are concerned with financial controls on spending in the referendum. They set out requirements for such expenditure by a campaign group to be incurred with the authority of a campaign official of that group, and for payment of such expenses to be made by such an official within a specified period; set out a procedure for disputed claims for payment, and restrictions on the amount of expenses that can be incurred; and make provision in relation to the making of returns and the furnishing of documents in respect of referendum expenses.

Section 23 provides that the method of voting in the referendum and the calculation of the result shall be in accordance with Schedule 2, and section 24 makes provision in respect of the publication of the result. Section 25 provides for Schedule 3 (see below) to have effect, section 26 makes provision in relation to penalties for offences under the Law, and the remaining sections are standard provisions in relation to regulations, interpretation etc. Section 33 provides for the Law to come into force by Ordinance.

Schedule 1 to the Law sets out the question to be posed on the ballot paper, and the alternative responses to that question. Schedule 2 sets out the method of voting in, and the calculation of the result of, the referendum, and is susceptible to amendment by Ordinance of the States under section 23. Schedule 3 provides for various provisions of the Reform (Guernsey) Law, 1948 and the Reform (Amendment) (Guernsey) Law, 1972 (in respect of postal voting) to apply to the holding of the referendum, with various modifications. These provisions are susceptible to amendment by regulations made by SACC under section 7. Schedule 4 makes further provision in relation to allowable types of referendum expenses.

# PROJET DE LOI

## ENTITLED

### **The Electoral System Referendum (Guernsey) Law, 2018**

#### ARRANGEMENT OF SECTIONS

##### *The referendum*

1. The referendum.
2. Entitlement to vote in the referendum.

##### *Conduct of the referendum*

3. Chief Counting Officer.
4. Ballot Officers and Scrutineers.
5. Supervision of referendum ballot and delivery of ballot boxes.
6. Counting of votes.
7. Power of Committee to make regulations.

##### *Campaign groups and financial assistance*

8. Application for appointment as campaign group.
9. Campaign Group Assessments Panel.
10. Appointment of campaign groups.
11. Committee to publicise referendum and provide information.
12. Financial assistance for campaign groups.

##### *Financial controls on expenditure*

13. Referendum expenses.
14. Restriction on payments in respect of referendum expenses.

15. Restriction on making claims for referendum expenses.
16. Disputed claims.
17. General restriction on referendum expenses.
18. Special restrictions on referendum expenses by campaign groups.
19. Returns as to referendum expenses.
20. Delivery of returns to Committee.
21. Declaration of campaign official as to return under section 18.
22. Public inspection of returns under section 18.

*Method of voting and calculation of result, and publication of result*

23. Method of voting, and calculation of result.
24. Publication of result.

*General and final provisions*

25. Application of provisions of Reform (Guernsey) Law, 1948 and Reform (Amendment) (Guernsey) Law, 1972.
26. Penalties for offences.
27. Criminal liability of directors etc.
28. Criminal proceedings against unincorporated bodies.
29. General provisions as to Ordinances.
30. General provisions as to regulations.
31. Interpretation.
32. Citation.
33. Commencement.

## SCHEDULES

- |             |  |
|-------------|--|
| SCHEDULE 1: | Question and alternative responses (options)   |
| SCHEDULE 2: | Method of voting, and calculation of the result  |
| SCHEDULE 3: | Application of provisions of Reform (Guernsey) Law, 1948 and Reform (Amendment) (Guernsey) Law, 1972 |
| SCHEDULE 4: | Referendum expenses  |

# PROJET DE LOI

ENTITLED

## **The Electoral System Referendum (Guernsey) Law, 2018**

**THE STATES**, in pursuance of their Resolution of the 22<sup>nd</sup> June, 2017<sup>a</sup>, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

### *The referendum*

#### **The referendum.**

1. (1) A referendum is to be held on what electoral system Guernsey should have ("**the referendum**").

(2) The referendum is to be held on 10<sup>th</sup> October, 2018, or such other date prescribed for this purpose by the Committee.

(3) The question that is to appear on the ballot papers, and the alternative responses ("**the Options**") to the question, shall be in accordance with Schedule 1.

---

<sup>a</sup> Article IX of Billet d'État No. XIV of 2017 (P. 2017/49).

**Entitlement to vote in the referendum.**

2. (1) A person who on the appointed day is entitled to vote in an election, in accordance with the provisions of the Reform (Guernsey) Law, 1948<sup>b</sup>, is entitled to vote in the referendum.

(2) For the purposes of subsection (1), the "**appointed day**" means the day prescribed for this purpose by the Committee.

*Conduct of the referendum*

**Chief Counting Officer.**

3. (1) The Committee shall nominate a Chief Counting Officer who shall be responsible under this Law for the management of voting in the referendum, the counting of votes, and related matters.

(2) On the application of one of the Law Officers of the Crown, the Royal Court shall appoint the Chief Counting Officer.

(3) Upon appointment under subsection (2), the Chief Counting Officer shall be sworn as such before the Royal Court.

**Ballot Officers and Scrutineers.**

4. (1) The Chief Counting Officer shall nominate –

(a) a Ballot Officer for each District, and

---

<sup>b</sup> Ordres en Conseil Vol. XIII, p. 288 (there are amendments not relevant to this Law).

- (b) a deputy Ballot Officer for each Parish within the District concerned, where that District comprises more than one Parish.

(2) On the application of one of the Law Officers of the Crown, the Royal Court shall appoint a Ballot Officer and deputy Ballot Officer nominated under subsection (1).

(3) Upon appointment under subsection (2), a Ballot Officer and deputy Ballot Officer shall be sworn as such before the Royal Court.

(4) The Chief Counting Officer shall –

- (a) count the votes cast in the referendum,
- (b) calculate the result of the referendum in accordance with section 23, and
- (c) appoint such Scrutineers to assist him or her in the counting of votes and the calculation of the result as he or she may deem necessary.

**Supervision of referendum ballot and delivery of ballot boxes.**

5. (1) The Constables and Douzaines shall supervise the conduct of the referendum ballot at the polling stations in their respective Parishes.

(2) Without prejudice to the generality of their duty under subsection (1), the Constables and Douzaines shall -

(a) seal the referendum ballot boxes on the conclusion of the voting, and

(b) subject to subsection (3), deliver them to the Ballot Officer for the District.

(3) Where, pursuant to section 4(2), a deputy Ballot Officer for each Parish within the District has been appointed, the Constables and Douzaines shall, after sealing the referendum ballot boxes, deliver them to the deputy Ballot Officer for the Parish, who shall thereupon deliver them to the Ballot Officer for the District.

(4) Upon receipt of the referendum ballot boxes the Ballot Officer shall deliver them to the Chief Counting Officer.

(5) A person may discharge his or her duty to deliver a ballot box under this section by making arrangements with any responsible person to deliver the ballot box on their behalf.

**Counting of votes.**

6. (1) The Chief Counting Officer shall count the votes cast in the referendum on the day after the day on which the referendum is held.

(2) Subject to the provisions of any regulations made under section 7, any person may attend the place where the votes in the referendum are to be counted for the purpose of watching the counting.

(3) A campaign official of a campaign group appointed by the Committee under section 10(1) present at the counting of the votes –



- (a) is to be given by the Chief Counting Officer all such reasonable facilities for overseeing the proceedings, and all such information in respect of them, as can be given consistently with their orderly conduct and the proper discharge of the Chief Counting Officer's duties in connection with them, but
- (b) must not impede the efficient counting of the votes, and
- (c) must comply with all reasonable directions given by the Chief Counting Officer.

**Power of Committee to make regulations.**

7. (1) The Committee may by regulation make such provision as it thinks fit in respect of the conduct and management of the referendum and associated matters.

(2) Without prejudice to the generality of subsection (1), regulations under this section may make provision in respect of –

- (a) the publication of the date of the referendum, and of other arrangements in respect of the holding of the referendum,
- (b) the establishment of polling stations,
- (c) the form of the ballot paper in the referendum,

- (d) circumstances in which the votes cast in the referendum are to be recounted and the result recalculated in accordance with the method set out at Schedule 2, and procedures governing the same,
- (e) the appointment of persons to fulfil the duties in section 5(1) to (3) in respect of any Parish in circumstances where the Committee is satisfied that the Constables and Douzaines of that Parish are not able adequately to fulfil those duties,
- (f) the meaning of "responsible person" for the purposes of section 5(5) (including the appointment of responsible persons for these purposes by the Committee), and
- (g) the imposition of conditions regarding the behaviour of those attending the place where the votes in the referendum are to be counted.

(3) Regulations made under this section may amend Schedule 3 (Application of provisions of Reform (Guernsey) Law, 1948 and Reform (Amendment) (Guernsey) Law, 1972<sup>c</sup>).

(4) Subject to subsection (5), regulations made under this section may contain provision as to the creation of new offences.

---

<sup>c</sup> Ordres en Conseil Vol. XXIII, p.476; as amended by Vol. XXVI, p. 255; Vol. XXXIV, p. 397; Vol. XXXVI, p. 478; Vol. XXXVIII, p. 295; No. XIII of 2003; No. VII of 2010; Ordinance No. III of 2004; Ordinance No. LI of 2006; Ordinance No. XIII of 2012.

(5) The power conferred by this section to create new offences does not include power –

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment exceeding three months or a fine exceeding level 5 on the uniform scale, or both, or
- (c) to authorise the imposition, on conviction of any offence, of a term of imprisonment exceeding six months or a fine, or both.

*Campaign groups and financial assistance*

**Application for appointment as campaign group.**

8. (1) On or before the relevant day, any 2 or more qualifying individuals may apply to the Committee for appointment as a campaign group which intends to publicise and represent the Option indicated in its application.

(2) An application under subsection (1) must include details of at least 2 qualifying individuals who agree to act as campaign officials for the campaign group, and the identity of the campaign official who is nominated to undertake the duties set out in sections 19(1) and 20(1) and (2) (the campaign group's "**nominated official**").

(3) The Committee may prescribe -

(a) the form and content, and

(b) such other matters as it thinks fit for the purpose,

of an application under subsection (1).

(4) In this section, "**the relevant day**" means the day prescribed by the Committee.

(5) The day prescribed under subsection (4) must be no later than 21 days before the day on which the referendum is to be held under section 1.

**Campaign Group Assessments Panel.**

9. (1) There shall be a Campaign Group Assessments Panel ("**the Panel**").

(2) Subject to subsection (3), the Panel shall consist of 3 members appointed by the States on the recommendation of the Committee.

(3) The following may not hold appointment as a member of the Panel –

(a) a serving member of the States,

(b) a qualifying individual who has made an application under section 8(1).

(4) The functions of the Panel are –

- (a) to review and assess any application made under section 8(1) referred to it by the Committee, and
- (b) to certify whether or not, in the opinion of the Panel, the campaign group which has submitted the application is capable of publicising and representing adequately the Option to which the application relates.

(5) Where -

- (a) more than one application has been made under section 8(1) in respect of the same Option,
- (b) the Committee has referred the applications to the Panel for review, assessment and certification under subsection (4), and
- (c) the Panel has certified more than one of the applications referred to it as adequate,

the Panel shall also indicate, based on the contents of the applications, which campaign group it believes would most effectively publicise and represent the Option concerned.

(6) Where a campaign group has been appointed in respect of an Option under section 10(1), the Panel shall not consider an application under section 8(1) in respect of that same Option unless the campaign officials for the campaign group appointed for that Option –

- (a) have been notified of the application,
- (b) consent to consideration of the application by the Panel,  
and
- (c) have been given an opportunity to make  
representations relating to the application to the Panel.

**Appointment of campaign groups.**

10. (1) The Committee may appoint a campaign group, which has been certified as adequate under section 9, to publicise and represent the Option to which its application relates.

(2) The Committee may revoke an appointment made under subsection (1).

(3) For the avoidance of doubt –

- (a) the same campaign group may not be appointed in respect of more than one Option, and
- (b) each Option may be supported by one appointed campaign group only.

**Committee to publicise referendum and provide information.**

11. (1) The Committee shall take measures –

- (a) to publicise the holding of the referendum, and

- (b) to ensure the provision of a set of impartial and comparable information relating to each Option.
- (2) For the purposes of subsection (1)(b) the set of information –
  - (a) shall be –
    - (i) provided in such format, and
    - (ii) published in such manner,

as the Committee believes will be most readily accessible to all qualifying individuals, and
  - (b) shall be, as far as reasonably practicable, sufficient to enable those qualifying individuals who wish to participate in the referendum to reach an informed decision for the purpose of voting in the referendum.
- (3) The obligations of the Committee under this section apply –
  - (a) equally in respect of each Option, and
  - (b) irrespective of whether or not a campaign group has been appointed under section 10 in respect of an Option.

**Financial assistance for campaign groups.**

12. (1) A campaign group appointed under section 10 shall be entitled to a grant funded from the general revenue of the States of –

(a) £5,000, or

(b) such other amount as may be prescribed.

(2) The Committee may pay the grant to such person as a campaign official of the campaign group shall nominate in writing for the purpose.

(3) A grant may be paid –

(a) in one lump sum, or

(b) in whatever instalments the Committee considers appropriate.

(4) A grant shall be applied solely for the purpose of enabling the campaign group entitled to the grant to publicise and represent the Option to which its application relates.

(5) Where a grant is not applied as required by subsection (4), the Committee may recover the grant as a civil debt from the members of the campaign group concerned, who shall be jointly and severally liable.

*Financial controls on expenditure*



**Referendum expenses.**

13. (1) No amount of referendum expenses shall be incurred by or on behalf of a campaign group appointed under section 10 unless it is incurred with the authority of -

- (a) a campaign official of that campaign group, or
- (b) a person authorised in writing by such a campaign official.

(2) A person who, without reasonable excuse, incurs any expenses in contravention of subsection (1) commits an offence.

**Restriction on payments in respect of referendum expenses.**

14. (1) No payment (of whatever nature) may be made in respect of any referendum expenses incurred or to be incurred by or on behalf of a campaign group unless it is made by -

- (a) a campaign official of that campaign group, or
- (b) a person authorised in writing by such a campaign official.

(2) Any payment made in respect of any such expenses by a person within subsection 1(a) or (b) must be supported by an invoice or a receipt.

(3) Where a person within subsection (1)(b) makes a payment which must be supported by an invoice or a receipt under subsection (2), that person must deliver to a campaign official of the campaign group -

- (a) notification that he or she has made the payment, and
- (b) the supporting invoice or receipt,

as soon as possible after making the payment.

(4) A person who, without reasonable excuse -

- (a) makes any payment in contravention of subsection (1),  
or
- (b) contravenes subsection (3),

commits an offence.

**Restriction on making claims in respect of referendum expenses.**

15. (1) Subject to subsection (4), a claim for payment in respect of referendum expenses incurred by or on behalf of a campaign group during the referendum period shall not be payable unless the claim is sent to -

- (a) a campaign official of that campaign group, or
- (b) a person authorised in writing by such a campaign official,

not later than 30 days after the end of the referendum period.

(2) Any claim sent in accordance with subsection (1) shall be paid not later than 60 days after the end of the referendum period.

(3) A person who without reasonable excuse -

(a) pays any claim which by virtue of subsection (1) is not payable, or

(b) makes any payment in respect of a claim after the end of the period allowed under subsection (2),

commits an offence.

(4) In the case of any claim to which subsection (1) applies -

(a) the person making the claim, or

(b) the person with whose authority the expenses in question were incurred,

may apply to the Committee for permission for the claim to be paid although sent in more than 30 days after the end of the referendum period.

(5) If satisfied that for any special reason it is appropriate to do so, the Committee may grant permission.

(6) Subsection (1) or (2) shall not apply in relation to any sum paid in pursuance of a permission granted under subsection (5).

(7) Subsection (2) is without prejudice to any rights of a creditor of a campaign group to obtain payment before the end of the period allowed under that subsection.

**Disputed claims.**

16. (1) This section applies where –

(a) a claim for payment in respect of referendum expenses incurred by or on behalf of a campaign group as mentioned in section 15(1) is sent to –

(i) a campaign official of that campaign group, or

(ii) any other person with whose authority it is alleged that the expenditure was incurred,

within the period allowed under that provision, and

(b) the campaign official or other person to whom the claim is sent fails or refuses to pay the claim within the period allowed under section 15(2).

(2) A claim described in subsection (1) is referred to in this section as "**the disputed claim**".

(3) The person by whom the disputed claim is made may bring an action for the disputed claim, and nothing in section 15(2) shall apply in relation to any sum paid in pursuance of any judgment or order made by a court in the proceedings.

(4) For the purposes of this section, section 15(4) and (5) shall apply in relation to an application made by the person mentioned in subsection (1)(b) for leave to pay the disputed claim as they apply in relation to an application for leave to pay a claim (whether it is disputed or otherwise) which is sent in after the period allowed under section 15(1).

**General restriction on referendum expenses.**

17. (1) The total referendum expenses incurred by or on behalf of any individual or body during the referendum period must not exceed £100 (in money or money's-worth) unless, in the case of a body, the body is a campaign group.

(2) Where during the referendum period any referendum expenses are incurred by or on behalf of any individual in excess of the limit imposed by subsection (1), he or she commits an offence if he or she knew, or ought reasonably to have known, that the expenses were being incurred in excess of that limit.

(3) Where –

(a) during the referendum period any referendum expenses are incurred by or on behalf of any body in excess of the limit imposed by subsection (1), and

(b) the body is not a campaign group appointed under section 10,

any person who authorised the expenses to be incurred by or on behalf of the body commits an offence if he or she knew, or ought reasonably to have known, that the

expenses would be incurred in excess of that limit.

(4) Where subsection (3)(a) and (b) apply, the body in question is also guilty of an offence.

**Special restrictions on referendum expenses by campaign groups.**

18. (1) The total referendum expenses incurred by or on behalf of any campaign group appointed under section 10 during the referendum period must not exceed £10,000 (in money or money's-worth).

(2) Where any referendum expenses are incurred by or on behalf of a campaign group during any such period in excess of any limit imposed by subsection (1), then –

- (a) a campaign official of the campaign group is guilty of an offence if he or she authorised the expenses to be incurred by or on behalf of the group and he or she knew or ought reasonably to have known that the expenses would be incurred in excess of that limit, and
- (b) the members of the campaign group body also commit an offence.

(3) For the purposes of this section and section 19, any reference to referendum expenses incurred by or on behalf of a campaign group during the referendum period includes any referendum expenses so incurred by the members of the group, or any member of the group, at any time before they became a campaign group appointed under section 10.

**Returns as to referendum expenses.**

19. (1) Where –

- (a) any referendum expenses are incurred by or on behalf of a campaign group during the referendum period, and
- (b) that period ends,

the nominated official of the campaign group shall make a return under this section in respect of the referendum expenses incurred by or on behalf of the group during that period.

(2) A return under this section must contain –

- (a) a statement of all payments made in respect of referendum expenses incurred by or on behalf of the campaign group during the referendum period,
- (b) a statement of all disputed claims (within the meaning of section 16), and
- (c) a statement of all the unpaid claims (if any) of which the campaign official is aware in respect of which an application has been made, or is about to be made, to the Committee under section 15(4).

(3) A return under this section must be accompanied by all invoices or receipts relating to the payments mentioned in subsection (2)(a).

(4) The Committee may prescribe a form of return which may be used for the purposes of this section.

**Delivery of returns to Committee.**

20. (1) Where any return falls to be prepared under section 19 in respect of referendum expenses incurred by or on behalf of a campaign group, the nominated official of that campaign group shall deliver the return to the Committee, within six months of the end of the referendum period.

(2) Where after the date on which a return is delivered to the Committee under this section, permission is granted by the Committee under section 15(5) for any claim to be paid, the nominated official shall, within seven days after the payment, deliver to the Committee a return of any sums paid in pursuance of the permission.

(3) A person who, without reasonable excuse –

- (a) fails to comply with the requirements of subsection (1) in relation to a return under section 19,
- (b) delivers a return which does not comply with the requirements of section 19(2) or (3), or
- (c) fails to comply with the requirements of subsection (2),

commits an offence.



**Declaration of campaign official as to return under section 19.**

21. (1) Each return prepared under section 19 in respect of referendum expenses incurred by or on behalf of a campaign group must be accompanied by a declaration which complies with subsection (2) and is signed by a campaign official of the campaign group.

(2) The declaration must state –

(a) that the campaign official has examined the return in question,

(b) that to the best of his or her knowledge and belief–

(i) it is a complete and correct return as required by law, and

(ii) all expenses shown in it as paid have been paid by –

(A) him or her,

(B) another campaign official of the campaign group in question, or

(C) a person authorised by him or her or another campaign official of the campaign group in question.

(3) A person commits an offence if –

- (a) he or she knowingly or recklessly makes a false declaration under this section, or
- (b) subsection (1) is contravened at a time when he or she is a campaign official in the case of the campaign group to which the return relates.

**Public inspection of returns under section 19.**

22. (1) Where the Committee receives a return under section 19 it shall –

- (a) as soon as reasonably practicable after receiving the return, make a copy of the return and of the documents accompanying it available for public inspection, and
- (b) keep any such copy available for public inspection for the period for which the return or other document is kept by them.

(2) At the end of the period of two years beginning with the date when any return or other document mentioned in subsection (1) is received by the Committee –

- (a) it may cause the return or other document to be destroyed, but

- (b) if requested to do so by the campaign official who submitted the return, it shall arrange for the return or other document to be returned to that person.

*Method of voting and calculation of result, and publication of result*

**Method of voting, and calculation of result.**

23. (1) The methods of –

- (a) voting in, and
- (b) calculating the result of,

the referendum shall be in accordance with Schedule 2.

(2) The States may amend Schedule 2 by Ordinance.

**Publication of result.**

24. The Chief Counting Officer shall certify and publish in such manner as appears to him or her to be fit –

- (a) the total number of ballot papers counted, and
- (b) the total number of votes cast in favour of each Option,

in all Districts.

*General and final provisions*

**Application of provisions of Reform (Guernsey) Law, 1948 and Reform (Amendment) (Guernsey) Law, 1972.**

25. Schedule 3 has effect.

**Penalties for offences.**

26. A person guilty of an offence under this Law is liable –

- (a) on summary conviction, to a term of imprisonment not exceeding three months, or a fine exceeding level 5 on the uniform scale, or both, or
- (b) on indictment, to a term of imprisonment not exceeding six months, or a fine, or both.

**Criminal liability of directors etc.**

27. (1) Where an offence under this Law is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a body corporate, any director, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described

in paragraphs (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

(3) In this section -

**"foundation"** means -

- (a) a foundation created under the Foundations (Guernsey) Law, 2012<sup>d</sup>, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named),

**"foundation official"** means -

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and

---

<sup>d</sup> Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017 and Ordinance No. IX of 2016.

- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

**"general partner"** means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of **"limited partnership"**, a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995<sup>e</sup>, and
- (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of **"limited partnership"**, a person whose liability for, and functions in relation to, the partnership correspond to that of a general partner described in paragraph (a) of this definition.

(4) In this section and in section 28 **"limited partnership"** means -

- (a) an arrangement which is registered as a limited

---

<sup>e</sup> Ordres en Conseil Vol. XXXVI, p. 264; as amended by Ordres en Conseil Vol. XXXVI, p. 571; Order in Council No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or

(b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which-

(i) one or more of them is, or are jointly and severally, liable without limitation for all debts and obligations to third parties incurred pursuant to the arrangement, and

(ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

**Criminal proceedings against unincorporated bodies.**

28. (1) Where an offence under this Law is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of -

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar governing body, or
- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Law must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey)



Law, 2013, or

- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a limited liability partnership described in paragraph (a).

**General provisions as to Ordinances.**

29. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder;
- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to the States to be necessary or expedient.

(2) Any power conferred upon the States by this Law to make an Ordinance 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) Any power conferred by this Law to make an Ordinance may be exercised at any time after the registration of this Law and before Commencement; provided that no Ordinance so made shall come into force until Commencement.

**General provisions as to regulations.**

30. (1) Regulations under this Law -

- (a) may be amended or repealed by subsequent regulations hereunder,
- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and
- (c) shall be laid before a meeting of the States as soon as possible and shall, if at that or the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to

the making of new regulations.

(2) Any power conferred by this Law to make regulations 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 conditions specified in the regulations.

**Interpretation.**

31. (1) In this Law -

**"Ballot Officer"** and **"deputy Ballot Officer"**: see section 4,

**"body corporate"** means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

**"campaign group"** means a group of qualifying individuals appointed by the Committee under section 10,

**"campaign official"** means a qualifying individual who has agreed to act as a campaign official for a campaign group under section 8(2),

**"the Chief Counting Officer"** means the Chief Counting Officer appointed under section 3,

**"the Committee"** means the States' Assembly & Constitution Committee,

**"District"** means an Electoral District under the Reform (Guernsey) Law, 1948,

**"enactment"** includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

**"Guernsey"** includes the Islands of Herm and Jethou which Islands shall be deemed for all purposes of this Law to be part of the Parish of St. Peter Port,

**"nominated official"**: see section 8(2),

**"Option"**: see section 1(3),

**"the Panel"**: see section 9(1),

**"person"** includes -

- (a) an individual,
- (b) a body corporate,
- (c) any other legal person, and
- (d) an unincorporated body of persons,

**"prescribe"** and **"prescribed"** means prescribe or prescribed, as the case may be, by regulations made by the Committee,

**"qualifying individual"** means a person who is entitled to vote in the referendum (see section 2),

**"the referendum"**: see section 1(1),

**"referendum expenses"** –

- (a) means expenses incurred by or on behalf of any individual or body –

- (i) in connection with the conduct or management of any campaign conducted with a view to promoting or procuring a particular outcome in relation to any question asked in the referendum, or
  - (ii) otherwise in connection with promoting or procuring any such outcome, and
- (b) includes expenses incurred for any purpose described in Schedule 4,

**"the referendum period"** means the period –

- (a) commencing on the day prescribed for this purpose by the Committee, and
- (b) ending on the day on which the referendum is held,

**"the Royal Court"** means the Royal Court sitting as a Full Court,

**"Scrutineer"** means a person appointed by the Chief Counting Officer under section 4(4)(c) for the purposes set out in that section, and

**"subordinate legislation"** means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

(2) Any reference in this Law to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Citation.**

32. This Law may be cited as the Electoral System Referendum (Guernsey) Law, 2018.

**Commencement.**

33. This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be appointed for different provisions and for different purposes.

## SCHEDULE 1

Section 1(3)

### QUESTION AND ALTERNATIVE RESPONSES (OPTIONS)

#### **Question.**

Which of the following options should be used to elect Deputies?

#### **Alternative responses.**

##### Option A

- 1 island-wide electoral district to elect 38 Deputies
- An election would be held every 4 years for all Deputies at once
- Each voter would have 38 votes at each election
- Each Deputy would serve for 4 years.

##### Option B

- 7 electoral districts to elect 38 Deputies
- An election would be held every 4 years for all Deputies at once
- Each voter would have 5 or 6 votes at each election (number of votes dependent on the size of the population of the district)
- Each Deputy would serve for 4 years.

##### Option C

- Electoral Districts:
  - 1 island-wide electoral district to elect 10 island-wide Deputies; and



- 7 electoral districts to elect 28 district Deputies
- Elections would be held every 4 years for all Deputies, with the election for the island-wide Deputies taking place first and the election for the district Deputies taking place at a later date
- Each voter would have:
  - 10 votes for island-wide Deputies; and
  - 3, 4 or 5 votes for district Deputies in their own electoral district (number of votes dependent on the size of the population of the district)
- Each Deputy would serve for 4 years.

#### Option D

- 4 electoral districts to elect 38 Deputies
- An election would be held every 4 years for all Deputies at once
- Each voter would have 9, 10 or 11 votes at each election (number of votes dependent on the size of the population of the district)
- Each Deputy would serve for 4 years.

#### Option E

- 1 island-wide electoral district to elect 38 Deputies
- An election would be held every 2 years for a third of Deputies each time
- Each voter would have 12 or 13 votes at each election
- Each Deputy would serve for 6 years.

## SCHEDULE 2

### Section 23

#### METHOD OF VOTING, AND CALCULATION OF THE RESULT

1. A voter may vote for one, two, three, four, or all five Options, and must rank the Options by marking "1" on the ballot paper beside his or her first-choice Option, "2" beside the second-choice Option, and so on. For the avoidance of doubt, a vote by a voter who votes for only one Option shall be treated for the purposes of this Schedule as being a vote for that voter's first-choice Option.
2. Votes for voters' first-choice Options shall be counted initially. If one Option receives a majority of such votes (excluding, for the avoidance of doubt, void ballot papers) that Option shall be declared the winner.
3. If no Option receives a majority of votes at the end of the initial round of counting, the Option receiving the fewest first-choice votes shall be eliminated, and each vote cast for the eliminated Option shall be transferred to the Option which was the voter's next choice (if any), and counted as a vote cast for that Option in the next round of voting.
4. Options with the fewest votes shall continue to be eliminated as described in paragraph 3 in that next round of counting, and in subsequent rounds, and a vote cast for an eliminated Option shall be transferred to the Option which was the voter's next choice (if any), and counted as a vote cast for that Option, until an Option receives a majority of votes in that round of counting (excluding, for the avoidance of doubt, void ballot papers, and ballot papers declared exhausted under paragraph 5, 6 or 7), when that Option shall be declared the winner.
5. If a ballot paper has no more available choices ranked on it, that ballot paper

shall be declared exhausted. A ballot paper that is declared exhausted in a round of counting under this paragraph, or under paragraph 6 or 7, shall not be counted in that round of counting or any subsequent round of counting.

6. If a ballot paper skips numbered choices, then that ballot paper shall be declared exhausted in the round where that skipping is reached.

7. If a ballot paper has the same number ranking for two or more Options, then that ballot paper shall be declared exhausted in the round where that same number ranking is reached.

8. Subject to paragraph 9, if in any round of counting there is a tie between Options for last place, the tie shall be resolved so as to eliminate the Option which received the lower number of votes in the previous round of counting. In the case of a tie in the first round of counting, or if there was a tie in the previous round of counting, the tie shall be resolved by drawing lots.

9. If the tie occurs when there are only two Options remaining, the Committee shall submit proposals to the States as to how that tie should be resolved.

## SCHEDULE 3

Section 25

### APPLICATION OF PROVISIONS OF REFORM (GUERNSEY) LAW, 1948 AND REFORM (AMENDMENT) (GUERNSEY) LAW, 1972

#### **Application of provisions of Reform (Guernsey) Law, 1948**

1. (1) The following provisions of the Reform (Guernsey) Law, 1948 shall apply in respect of the holding of the referendum, subject to the modifications set out in this paragraph: articles 27(3),(3A) and (4), 27A (Prisoners), 28 (Persons not to vote unless inscribed on the Electoral Roll. Penalties for plural voting), 30 (Elections to be determined by Secret Ballot Law), 34(9), 34(9A), 38B (Maintenance of order at elections), 39 (Hours of polling), 40 (Duties on completion of Ballot), 43 (Persons physically incapable of recording a vote), 46 (Obligation of secrecy) and 74 (Limitation of application of the Secret Ballot Laws).

(2) In article 27(3) –

- (a) for "At an election the Returning Officer" substitute "At the referendum to be held under the provisions of provisions of the Electoral System Referendum (Guernsey) Law, 2018 ("**the referendum**"), the Ballot Officer",
- (b) for "Returning Officer shall cause" substitute "the Ballot Officer shall cause", and
- (c) for "that election" substitute "the referendum".

(3) In article 27(3A), for "the Returning Officer" in both places

substitute "the Ballot Officer".

(4) In article 27A(2)(a), for "or any Ordinance thereunder" substitute "(as applied in respect of the holding of the referendum by the provisions of the Electoral System Referendum (Guernsey) Law, 2018)".

(5) In article 28(1), for "at any election" (in both places) substitute "at the referendum", and for "the election" substitute "the referendum".

(6) In article 30, for "Elections" substitute "The referendum".

(7) In article 34(9) –

(a) for "an election for any of the offices of People's Deputy, Constable or Douzenier, and at any election", substitute "the referendum, and at the referendum", and

(b) in both places it appears, for "Returning Officer" substitute "Ballot Officer".

(8) In article 34(9A), for "the Returning Officer" substitute "the Ballot Officer".

(9) In article 38B(1), for "A Returning Officer, or any person appointed by him to be in charge of a polling station," substitute "A Ballot Officer or a deputy Ballot Officer", and delete from "or" at the end of (2)(b) to the end of (2)(c).

(10) In article 39, for "at every election" substitute "on the day on

which the referendum is held".

(11) In article 40, for "as aforesaid each Returning Officer shall in respect of his District" substitute "the Chief Counting Officer shall".

(12) In article 43, for "the Returning Officer" substitute "the Chief Counting Officer".

(13) For article 46(2), substitute –

"(2) Any person who contravenes the provisions of this Article shall be guilty of an offence and liable, on conviction to a fine not exceeding level 5 on the uniform scale, or to a term of imprisonment not exceeding three months, or to both."

**Application of provisions of Reform (Amendment) (Guernsey) Law, 1972: voting by post in the referendum.**

2. (1) Sections 2 to 15 of Part II (Voting by Post) of the Reform (Amendment) (Guernsey) Law, 1972 shall apply in respect of the holding of the referendum, subject to the modifications set out in this paragraph.

(2) In section 2, for the words from "an election for" to the end, substitute "the referendum to be held under the provisions of provisions of the Electoral System Referendum (Guernsey) Law, 2018 ("**the referendum**")".

(3) In section 5, for "that election" substitute "the referendum", in sections 5, 6A(1) and 14(1), for "an election" substitute "the referendum", and in sections 8, 11, 12, and 13, for "the election" substitute "the referendum".

(4) In section 11, for "each Returning Officer a copy of the section of the Register for his Electoral District" substitute "the Chief Counting Officer a copy of the Register".

(5) In section 13, for "the Returning Officer of the Electoral District indicated by the letter on the envelope", substitute "the Chief Counting Officer".

(6) For section 14, substitute –

**"Recording of vote of absent voter."**

14. (1) The Chief Counting Officer shall, immediately before counting starts of the votes cast in the referendum, cause any pre-paid envelopes sent to him under section 13 to be opened in the presence of at least one Scrutineer appointed by him and, after satisfying himself that the number on the form of declaration of identity coincides with the number on the envelope marked "BALLOT PAPER ENVELOPE" and that the form of declaration of identity has been duly completed, he shall then place the envelope marked "BALLOT PAPER ENVELOPE" unopened with the other votes to be counted, and seal in a separate package used solely for that purpose the forms of declaration of identity and the pre-paid envelopes and the copy of the Register sent to him as aforesaid.

(2) If the number on the form of declaration of identity does not coincide with the number on the envelope marked "BALLOT PAPER ENVELOPE", the Chief Counting Officer shall endorse the form of declaration of identity with the words "VOTE REJECTED" and place the envelope marked "BALLOT PAPER ENVELOPE" unopened and the form of declaration of identity and the pre-paid envelope in a separate package used solely for that purpose.

(3) On the completion of the counting of the votes and the calculation of the result, the Chief Counting Officer shall seal, in a package used solely for that purpose, the envelopes marked "BALLOT PAPER ENVELOPE" not placed in a separate package under subsections (1) and (2).".

(7) In section 15(1) –

- (a) for "forty-eight hours", substitute "three days",
- (b) for "the date appointed for the holding of an election the Returning Officer", substitute "the date of the referendum the Chief Counting Officer", and
- (c) for "subsections (2) and (3)" substitute "subsections (1), (2) and (3).

(8) For section 15(2), substitute –

"(2) Not earlier than three days after the publication of the result of the referendum (or of the result of any recount), the Registrar-General shall destroy all the sealed packages delivered to him in pursuance of subsection (1).".



## SCHEDULE 4

Section 31(1)

### REFERENDUM EXPENSES

1. Advertising of any nature (whatever the medium used) including agency fees, design costs and other costs in connection with preparing, producing, distributing or otherwise disseminating such advertising or anything incorporating such advertising and intended to be distributed for the purpose of disseminating it.

2. Unsolicited material addressed to qualifying individuals (whether addressed to them by name or intended for delivery to households within any particular area or areas) including design costs and other costs in connection with preparing, producing or distributing such material (including the cost of postage).

3. Market research or canvassing conducted for the purpose of ascertaining voting intentions.

4. The provision of any services or facilities in connection with press conferences or other dealings with the media.

5. Transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign including the costs of hiring a particular means of transport for the whole or part of the period during which the campaign is being conducted.

6. Rallies and other events, including public meetings organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign including costs incurred in connection with

the attendance of persons at such events, the hire of premises for the purposes of such events or the provision of goods, services or facilities at them.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**STATES' ASSEMBLY & CONSTITUTION COMMITTEE**

**THE ELECTORAL SYSTEM REFERENDUM (GUERNSEY) LAW, 2018**

The President  
Policy & Resources Committee  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

19<sup>th</sup> December, 2017

Dear Deputy St Pier,

**Preferred date for consideration by the States of Deliberation**

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the States' Assembly & Constitution Committee requests that the Proposition be considered at the States' meeting to be held on 7<sup>th</sup> February, 2018.

The Committee proposes that the referendum should take place on 10<sup>th</sup> October, 2018 and it is therefore important that the legislation is presented to the States of Deliberation on 7<sup>th</sup> February to enable the necessary arrangements to be put in place to hold the referendum.

Yours sincerely,

M. J. Fallaize  
President

P. J. Roffey  
Vice-President

M. H. Dorey  
M. K. Le Clerc  
H. L. de Sausmarez