

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE EUROPEAN UNION (AMENDMENT OF LEGISLATION)
(BAILIWICK OF GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The European Union (Amendment of Legislation) (Bailiwick of 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

The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the "Brexit Law"), approved by the States of Deliberation on the 6th June, 2018, preserves in domestic law the directly applicable European legislation which had effect in the Bailiwick immediately before exit day ("Preserved EU law"). The Brexit Law provides powers for Preserved EU law to be amended and repealed by regulations, but only where it is necessary and expedient to do so in consequence of the repeal of the European Communities Law, 1973 or otherwise in consequence of Brexit.

Section 1 of the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 (the "Amendment of Legislation Law") permits the repeal or amendment of Preserved EU law for broader policy purposes by Ordinance of the States of Deliberation (in relation to Guernsey and the Bailiwick as a whole) and the States of Alderney and the Chief Pleas of Sark (in relation to their respective islands). In addition, section 1 permits the repeal or amendment of any Ordinance made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 for broader policy purposes by Ordinance.

Section 2 of the Amendment of Legislation Law sets out examples of the matters in relation to which Ordinances may make provision, including customs and trade, financial services, agriculture and fisheries.

PROJET DE LOI

ENTITLED

The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018

THE STATES, in pursuance of their Resolution of the 8th day of November, 2017^a, 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.

General power to make Ordinances amending EU-related law.

1. (1) The States may by Ordinance -
 - (a) provide for the disapplication of Preserved EU law,
 - (b) provide that any Preserved EU law shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the Ordinance, and
 - (c) amend or repeal any Ordinance made under the Implementation Law,

^a Article III of Billet d'État No. XXI of 2017.

for any purpose.

(2) The powers conferred by subsection (1) are in addition to, and not in derogation from, the powers conferred by the Implementation Law.

(3) For the avoidance of doubt, subsection (1) does not displace the presumption that a statutory power to –

- (a) prescribe exceptions, adaptations or modifications in respect of, or
- (b) amend,

an enactment does not include power to prescribe exceptions, adaptations or modifications, or make amendments, that are outwith the scope of that enactment.

Examples of specific matters for which Ordinances may make provision.

2. An Ordinance under section 1 may, without limitation and by way of example, make provision in relation to the following matters -

- (a) customs and trade,
- (b) financial services,
- (c) transport,
- (d) energy,
- (e) agriculture and horticulture, and

- (f) fisheries.

General provisions as to Ordinances.

- 3. (1) An Ordinance under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -
 - (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),
 - (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
 - (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsection (1)(b)(i) 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 or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^b, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred 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, and
- (b) so as to make, as respects the cases in relation to which it is exercised -

^b Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

- (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.

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

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,
- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith (but may not prevent an award of

damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^c,

- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,
- (d) may direct that any EU provision, Preserved EU law or any enactment shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision, law or enactment described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any

^c Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; G.S.I. No. 27 of 2006.

enactment for the time being in force,

- (g) may, in the case of an Ordinance of the States of Deliberation, specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the Government of Alderney Law, 2004^d or, as the case may be, section 11 of the Reform (Sark) Law, 2008^e,

- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on indictment which exceeds the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment or the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or, as the case may be, the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and

^d Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

^e Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance No. II and VI of 2015; No. XI of 2017.

- (i) 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 other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) Before a committee of the States of Guernsey recommends that the States of Deliberation agrees to make an Ordinance under this Law having effect in Alderney or Sark, the committee must consult –

- (a) in the case of an Ordinance having effect in Alderney, the Alderney Committee, and
- (b) in the case of an Ordinance having effect in Sark, the Sark Committee,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(7) An Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases to have effect -

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of

Alderney resolve to disapprove its application to Alderney, and

- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(9) In subsection (7), "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

Interpretation.

4. In this Law, unless the context otherwise requires -

"**the Alderney Committee**" means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

"**committee**" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"**EU provision**" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"**the Implementation Law**" means the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^f,

"**Preserved EU law**" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"**the Sark Committee**" means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law, and

"**the States**" means -

- (a) in relation to an Ordinance having effect in Alderney only, the States of Alderney,
- (b) in relation to an Ordinance having effect in Sark only, the Chief Pleas of Sark, and

^f Ordres en Conseil Vol. XXXV (1), p. 65; amended by Order in Council No. * of 2018.

(c) in any other case, the States of Deliberation.

Citation.

5. This Law may be cited as the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018.

Commencement.

6. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions of this Law or for different purposes.