



# BILLET D'ÉTAT

WEDNESDAY, 26<sup>th</sup> APRIL, 2017

VIII  
2017

## LEGISLATIVE BUSINESS

### *Legislation Laid Before the States*

The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017

### *Legislation for Approval*

1. Policy & Resources Committee - The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017, P. 2017/27
2. Committee *for* Employment & Social Security - The Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017, P. 2017/28
3. Policy & Resources Committee - The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017, P. 2017/29
4. Policy & Resources Committee - The Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017, P. 2017/30
5. Committee *for* Employment & Social Security - The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017, P. 2017/31

## OTHER BUSINESS

6. Committee *for* Home Affairs - Data Protection: EU General Data Protection Regulation, P. 2017/26
7. Schedule for future States' business, P. 2017/32

# BILLET D'ÉTAT

---

## TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

---

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **26<sup>th</sup> April, 2017** at **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

4<sup>th</sup> April, 2017

## ***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

The States of Deliberation have the power to annul the Statutory Instruments detailed below.

No. 5 of 2017

### **THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) LAW, 2002 (PROSCRIBED ORGANISATIONS) (AMENDMENT) REGULATIONS, 2017**

In pursuance of section 3 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, “The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017”, made by the Policy & Resources Committee on 28<sup>th</sup> February 2017, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend the list of organisations that are proscribed for the purposes of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002. The amendments have been made so that the list of proscribed organisations mirrors that applicable in the United Kingdom under the Terrorism Act 2000.

These Regulations come into force on the 28<sup>th</sup> February, 2017

The full text of the statutory instruments and other legislation included in this document can be found at: <http://www.guernseylegalresources.gg/article/158414/2017>

## **THE BENEFICIAL OWNERSHIP OF LEGAL PERSONS (GUERNSEY) LAW, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft *Projet de Loi* entitled "The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017", 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 Law establishes the Office of the Registrar of Beneficial Ownership of Legal Persons, sets out the powers and functions of the Registrar, and imposes new duties on beneficial owners of legal persons and resident agents relating to the provision of information. The Law also makes appropriate amendments to the "relevant legal person Laws" – ie the Companies (Guernsey) Law, 2008, the Limited Liability Partnerships (Guernsey) Law, 2013 and the Foundations (Guernsey) Law, 2012 – and makes amendments to other legislation to ensure that the Guernsey Financial Services Commission has appropriate supervisory powers in respect of persons it regulates.

Part 1 of the Law establishes the Office of the Registrar and sets out the Registrar's functions. Part 2 sets out the duties of resident agents and beneficial owners to collect and disclose information. These duties expand on existing duties in the relevant legal persons Laws (eg Part XXIX of the Companies Law). The duties are enforced by a civil penalties regime and, in respect of resident agents, criminal offences. Part 3 amends the existing resident agent and beneficial ownership provisions in the relevant legal person Laws, making them consistent with the duties under Part 2 and the functions of the Registrar. Part 4 is concerned with the enforcement of the provisions, including a range of flexible civil sanctions consistent with those in the Companies Law, such as the power to issue private reprimands. The general provisions at Part 5 include providing for the meaning of 'beneficial owner' and related expressions to be defined by regulations.

Schedule 1 makes standard provision in respect of the Office of the Registrar. Schedule 2 sets out in more detail the general powers of the Registrar to disclose, and obtain, information, as well as the duty on him to keep information secure and confidential; the powers to disclose are consistent with powers in existing legislation such as the Disclosure Law. Also in Schedule 2 is an express power for the GFSC and the Economic Crime Division of the Customs and Immigration Service to inspect the Register for the purposes of carrying out their functions. Schedule 3 sets out amendments to the Foundations Law and Schedule 4 sets out amendments to other enactments, made for

the broad purpose of ensuring that the GFSC has suitable supervisory powers in respect of persons it regulates.

# PROJET DE LOI

ENTITLED

## **The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017**

### ARRANGEMENT OF SECTIONS

#### PART 1 OFFICE OF THE REGISTRAR

1. Office of Registrar of Beneficial Ownership of Legal Persons.
2. Register of Beneficial Owners of Legal Persons.
3. Functions of the Registrar.
4. Ancillary powers of Registrar.
5. Reports.
6. Financial and accounting provisions.
7. Power to apply for directions.
8. Power to amend section 3 by Ordinance.

#### PART 2 INFORMATION DUTIES

9. Duty of resident agent to obtain information in respect of beneficial owners.
10. Record of beneficial owners.
11. Duty of resident agent to keep record of beneficial owners up-to-date.
12. Duty of resident agent to notify Registrar of changes.
13. Duty of resident agent to ensure security of information.
14. Duty to retain documents following dissolution, etc.
15. Duty of beneficial owners to supply information.
16. Duty of beneficial owners to update information.
17. Failure to comply with information duties.
18. False or misleading information.

PART 3  
AMENDMENTS TO OTHER ENACTMENTS

- 19. Amendments to Companies Law.
- 20. Amendments to LLP Law.
- 21. Amendments to Foundations Law.
- 22. Amendments to other enactments.

PART 4  
ENFORCEMENT

- 23. Criminal penalties for offences under this Law.
- 24. Criminal liability of officers, etc.
- 25. Civil penalties.
- 26. Disqualification orders of Registrar against resident agents of non-regulated relevant legal persons, and notification requirements.
- 27. Private reprimands.
- 28. Public statements.
- 29. Representations prior to civil penalty, etc.
- 30. Relationship of civil penalties with prosecutions.

PART 5  
MISCELLANEOUS AND FINAL

- 31. Meaning of "beneficial owner".
- 32. General right to apply to Court to set aside action of Registrar.
- 33. Service of documents.
- 34. Exclusion of liability, etc.
- 35. Guidance.
- 36. Fees payable to the Registrar.
- 37. Nominee relationships.
- 38. Regulations made by the Registrar.
- 39. General provisions as to subordinate legislation.
- 40. Interpretation.
- 41. Meaning of "relevant legal person" and associated terms.
- 42. Citation.
- 43. Commencement.

## SCHEDULES

SCHEDULE 1	Office of the Registrar.
SCHEDULE 2	Register of Beneficial Owners of Legal Persons.
SCHEDULE 3	Resident Agent provisions in Foundations Law.
SCHEDULE 4	Amendments to other enactments.



# PROJET DE LOI

ENTITLED

## **The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017**

**THE STATES**, in pursuance of their Resolution of the 16<sup>th</sup> day of February, 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.

### PART 1 OFFICE OF THE REGISTRAR

#### **Office of Registrar of Beneficial Ownership of Legal Persons.**

1. (1) There is established the Office of the Registrar of Beneficial Ownership of Legal Persons ("**the Office of the Registrar**").

(2) The holder of that office shall be called the Registrar of Beneficial Ownership of Legal Persons ("**the Registrar**").

(3) The Registrar shall be appointed jointly by the Committee and the Committee for Economic Development (together, "**the Committees**").

(4) An appointment of the Registrar under this section -

---

<sup>a</sup> Article IV of Billet d'État No. V of 2017.

- (a) may be periodic or for a fixed term,
- (b) is subject to such terms and conditions as the Committees may from time to time think fit, and
- (c) may be varied or terminated at any time by the Committees, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment.

(5) The Registrar shall, subject to the terms and conditions of his appointment, exercise the functions assigned or transferred to him by or under this Law and any other enactment, or by Resolution of the States.

(6) For the purposes of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991<sup>b</sup> -

- (a) the Office of the Registrar is a public office, and
- (b) the Registrar is an office holder.

(7) The provisions of Schedule 1 have effect in respect of the Office of the Registrar.

**Register of Beneficial Owners of Legal Persons.**

2. (1) The Registrar shall establish and maintain a register of the

---

<sup>b</sup> Ordres en Conseil Vol. XXXIII, p. 478; amended by Ordinance No. XXXIII of 2003; and No. IX of 2016.

beneficial owners of relevant legal persons to be called the Register of Beneficial Owners of Legal Persons ("**the Register**") in accordance with Schedule 2, which schedule has effect.

(2) Information shall be provided to the Registrar and may be disclosed in accordance with Schedule 2.

**Functions of the Registrar.**

3. The functions of the Registrar are -

- (a) to establish and maintain the Register, and ensure its security and confidentiality, in accordance with Schedule 2,
- (b) to ensure the accuracy of information relating to the beneficial ownership of relevant legal persons,
- (c) to monitor and enforce the compliance of the resident agents of non-regulated relevant legal persons with their duties under this Law and the provisions of any other enactment relating to the beneficial ownership of relevant legal persons or the duties of resident agents in Guernsey,
- (d) to obtain and retain information relating to nominee relationships in respect of relevant legal persons,
- (e) to advise the Committees generally in relation to the administration and enforcement of this Law and the practice and procedures relating thereto,

- (f) to administer the Office of the Registrar,
- (g) to determine -
  - (i) the fees payable under regulations made under section 36,
  - (ii) the interest payable in the event of default in the due payment of fees, and
  - (iii) the classes or descriptions of person by whom such fees and interest are to be payable, and
- (h) to exercise, subject to the terms and conditions of his appointment, such other functions as may be assigned or transferred to him -
  - (i) by or under this Law and any other enactment, or
  - (ii) by Resolution of the States.

**Ancillary powers of Registrar.**

4. (1) The Registrar, having regard to the provisions of section 3, has power to do anything that appears to him to be necessary or expedient for the purposes of or in connection with the exercise of his functions including, without limitation, power -

- (a) to require from the resident agent of a non-regulated relevant legal person direct access to (by electronic

means or otherwise) the record of beneficial owners of that relevant legal person,

- (b) to request and obtain information and documents in accordance with the provisions of paragraph 4 of Schedule 2,
- (c) to prepare and, subject to any provision to the contrary in this Law or any other enactment, to publish information, reports, forms, codes of practice, guidance, recommendations and other documents,
- (d) to appoint any person or body to advise him in relation to the exercise of any of his functions, and
- (e) to apply to the Court for directions under section 7.

(2) For the purposes of exercising his functions the Registrar may, having regard to the provisions of section 3 -

- (a) acquire, lease, use, dispose of, exchange or otherwise deal with any movable or immovable property and any interest in it, and
- (b) enter into any contract, including any contract of purchase, sale, insurance, hire or bailment, or make any arrangement with any person.

(3) The Registrar may sue and be sued as Registrar.

**Reports.**

5. (1) The Registrar shall, whenever directed by the Committee for Economic Development, and without prejudice to his powers to prepare and publish reports of his own motion, submit to the Committees a report on the exercise of his functions in such form and in respect of such matters and such periods as the Committee for Economic Development may (subject to any provision to the contrary in this Law or any other enactment) specify.

(2) The Committee for Economic Development -

(a) may submit the Registrar's report made under subsection (1) to the States, and

(b) may at the same time or at any other time submit their own report to the States on the exercise by the Registrar of his functions.

**Financial and accounting provisions.**

6. (1) All fees and similar sums received by the Registrar in the exercise of his functions shall be paid by him to the Committee for Economic Development for the general revenue account of the States.

(2) Subsection (1) does not apply if and to the extent that, in accordance with financial procedures agreed between the Committee for Economic Development and the Registrar, the Committee for Economic Development directs otherwise.

(3) The Registrar shall -

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) submit to the Committee for Economic Development, whenever that Committee may direct but not less than once in any 12 month period, a statement of account giving a true and fair view of the state of affairs of the Office of the Registrar.

(4) Without prejudice to the preceding provisions of this section, the Registrar shall, whenever directed by the Committee for Economic Development, submit to that Committee, in respect of such period as that Committee may specify, audited accounts of the Office of the Registrar together with the auditors' report thereon prepared by auditors appointed by the Registrar with the approval of the Committee for Economic Development.

**Power to apply for directions.**

7. (1) The Registrar may, if he believes that it would assist him in the proper and lawful exercise of his functions, apply to the Court for directions, or for a determination of any question of fact, law or procedure, in such manner as may be prescribed by order of the Royal Court, and on such an application the Court may make such order as it thinks fit.

(2) In this section "**the Court**" means the Royal Court sitting as an Ordinary Court, constituted by the Bailiff sitting unaccompanied by the Jurats; and for the purposes of an application under this section the Court may appoint one or more assessors to assist it in the determination of any matter before it.

(3) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(4) Section 21 of the Court of Appeal (Guernsey) Law, 1961<sup>c</sup> ("Powers of a single judge") applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Power to amend section 3 by Ordinance.**

8. The States may by Ordinance amend section 3 where it appears to them to be necessary or expedient to do so for any of the purposes set out in section 39(1)(a).

PART 2  
INFORMATION DUTIES

**Duty of resident agent to obtain information in respect of beneficial owners.**

9. (1) The resident agent of a relevant legal person must take reasonable steps to ascertain the identity of the beneficial owners in relation to that relevant legal person.

(2) Subject to subsection (3), if the resident agent of a relevant legal person has reasonable grounds for believing that a person is or may be a beneficial owner in relation to that relevant legal person, the resident agent must serve a notice on the person requiring him –

---

<sup>c</sup> Ordres en Conseil Vol. XVIII, p. 315; amended by Order in Council No. III of 2012; and Ordinance No. XXXIII of 2003.



- (a) to state whether he is a beneficial owner in relation to the relevant legal person, and
- (b) if so to confirm or correct any relevant particulars of his that are included in the notice, and to supply any that are missing.

(3) A resident agent is not under a duty to serve a notice under subsection (2) if –

- (a) the resident agent has already been informed that the person is a beneficial owner in relation to that relevant legal person, and
- (b) that information was provided either by the person himself or with his knowledge.

(4) A resident agent may also serve a notice on a person under this section if he knows or has reasonable cause to believe that the person knows the identity of any beneficial owner in relation to the relevant legal person, or knows the identity of someone likely to have that knowledge.

(5) A notice under subsection (4) must require the addressee –

- (a) to state whether or not the addressee knows the identity of –
  - (i) any beneficial owner in relation to the relevant legal person, or

(ii) any person likely to have that knowledge, and

(b) if so, to supply any particulars of theirs that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of each of the persons concerned.

(6) A notice under this section must state that the addressee is to comply with the notice by no later than the end of the period of one month beginning with the date of the notice.

(7) In this section –

(a) a reference to knowing the identity of a person includes knowing information from which that person can be identified, and

(b) "**particulars**" means the required particulars under section 10(3).

**Record of beneficial owners.**

10. (1) The resident agent of a relevant legal person must keep a record of the required particulars of the beneficial owners of that relevant legal person in a record referred to in this Law as the "**record of beneficial owners**".

(2) The record of beneficial owners must be kept at the relevant legal person's registered office, or at some other place in Guernsey of which the Registrar has –

(a) been notified, and

(b) approved in writing.

(3) The "**required particulars**" of an individual means –

(a) his name,

(c) his nationality,

(d) his date of birth,

(e) his principal residential address,

(f) if he became a beneficial owner in respect of the relevant legal person in question after this Part comes into force, the date on which he became a beneficial owner, and

(g) the grounds on which he is considered to be a beneficial owner.

(4) In respect of a class of beneficial owners of such a size that it is not reasonably practicable to identify each member of the class, "required particulars" means information sufficient to identify and describe the class of individuals who are beneficial owners, with sufficient accuracy to make it possible to ascertain that an individual is or is not a member of that class.

(5) If a resident agent has ascertained that there are no beneficial owners in relation to a relevant legal person, he must record that fact in the record of beneficial owners.

**Duty of resident agent to keep record of beneficial owners up-to-date.**

11. (1) Subject to subsection (3), a resident agent must serve a notice on a person whose particulars are recorded in a relevant legal person's record of beneficial owners if the resident agent knows or has reasonable cause to believe that a relevant change has occurred.

(2) A "**relevant change**" in relation to a person occurs if –

- (a) the person ceases to be a beneficial owner in relation to a relevant legal person, or
- (b) any other change occurs, as result of which the required particulars stated for the person on the record of beneficial owners are incorrect or incomplete.

(3) A resident agent is not required to serve a notice under subsection (1) if –

- (a) the resident agent has already been informed of the relevant change and of the information referred to in subsection (5)(b), and
- (b) that information was provided either by the person concerned or with his knowledge.

(4) The resident agent must serve a notice under subsection (1) as soon as reasonably practicable after he learns of the change or first has reasonable cause to believe that the change has occurred.

(5) The notice must require the addressee, within the period of one month beginning with the date of the notice –

(a) to confirm whether or not the change has occurred, and

(b) if so –

(i) to state the date of the change, and

(ii) to confirm or correct the required particulars included in the notice, and supply any that are missing from the notice.

(6) On receipt of information received pursuant to the service of a notice under this section, or on otherwise being satisfied that a relevant change has occurred, a resident agent must within seven days amend the record of beneficial owners accordingly.

**Duty of resident agent to notify Registrar of changes.**

12. (1) This section applies to a resident agent when there has been a change in the particulars contained in the record of beneficial owners.

(2) Within 14 days of this section applying to him, the resident agent must give notice to the Registrar of the change and of the date on which it occurred, to the best of his knowledge.

(3) When providing information to the Registrar under this section, the resident agent must serve copies of the information provided on –

- (a) the relevant legal person, and
- (b) upon request, the officers of the relevant legal person.

**Duty of resident agent to ensure security of information.**

13. A resident agent must take all reasonable steps to ensure the security and confidentiality of information disclosed to him under this Law or under the relevant legal person Laws, and must not disclose such information other than in compliance with a duty imposed, or in exercise of a power conferred, under this Law or those Laws.

**Duty to retain documents following dissolution, etc.**

14. (1) This section applies where a relevant legal person is dissolved, terminated or struck off.

(2) Where this section applies –

- (a) if one has been appointed, the liquidator, or otherwise,
- (b) the resident agent immediately before the dissolution, termination or striking off,

must retain the record of beneficial ownership relating to the relevant legal person as at the date of dissolution, termination or striking off for the minimum retention

period, and must comply with any requirement of the Registrar under this Law in that period.

(3) The Committee may make provision by regulations in respect of the retention of the record of beneficial ownership relating to a relevant legal person in circumstances where -

- (a) this section applies, and
- (b) the resident agent immediately before the dissolution, termination or striking off is a legal person that has subsequently been dissolved, terminated or struck off.

**Duty of beneficial owners to supply information.**

15. (1) This section applies to a person if –

- (a) he is a beneficial owner in relation to a relevant legal person,
- (b) his required particulars are not stated in the relevant legal person's record of beneficial owners,
- (c) he knows, or ought reasonably to know, (a) and (b) to be the case, and
- (d) he has not been served with a notice by the resident agent of that relevant legal person under section 9.

(2) Within 21 days of this section applying to him the person

must–

- (a) notify the resident agent of his status as a beneficial owner in relation to the relevant legal person,
- (b) state the date on which, to the best of his knowledge, he acquired that status, and
- (c) serve on the resident agent his required particulars.

**Duty of beneficial owners to update information.**

16. (1) This section applies to a person if –

- (a) the required particulars of the person are stated in a relevant legal person's record of beneficial owners,
- (b) a relevant change in relation to the required particulars of the person has occurred,
- (c) the person knows, or ought reasonably to know, (a) and (b) to be the case, and
- (d) the person has not been served with a notice by the resident agent of the relevant legal person under section 11.

(2) Within 21 days of this section applying to him the person

must–



- (a) notify the resident agent of the change,
- (b) state the date on which, to the best of his knowledge, it occurred, and
- (c) serve on the resident agent any information needed to update the required particulars.

**Failure to comply with information duties.**

17. (1) A person who without reasonable excuse fails to comply with-

- (a) a notice served on him under section 9 or 11,
- (b) a duty under section 15 or 16, or
- (c) a requirement imposed on him under paragraph 4 of Schedule 2,

is, unless the person is a regulated person, liable to a civil penalty.

(2) A resident agent who fails to comply with –

- (a) a requirement imposed on him under section 4(1)(a), or
- (b) a duty imposed on him under sections 9 to 13,

and a resident agent or a liquidator who fails to comply with a duty under section 14 is guilty of an offence, and, unless the person is a regulated person, liable to a civil penalty.

(3) It is a defence for a resident agent charged with failing to comply with a duty imposed on him under sections 9 to 13 to prove that he took all reasonable steps to attempt to comply with the duty.

**False or misleading information.**

18. (1) If a person to whom subsection (2) applies –
- (a) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
  - (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
  - (c) produces or furnishes or causes or permits to be produced or furnished any information or document which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or
  - (d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he is guilty of an offence.

- (2) This subsection applies to a person who –
- (a) makes any statement or provides any information or document to the Registrar, or to any officer, servant or agent of the Registrar, when acting in the exercise of his functions, or
  - (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Registrar in circumstances in which he knows or could reasonably be expected to know that the statement, information or document would or might be used by the Registrar for the purpose of exercising his functions.

### PART 3 AMENDMENTS TO OTHER ENACTMENTS

#### **Amendments to Companies Law.**

19. (1) The Companies (Guernsey) Law, 2008<sup>d</sup> ("the Companies Law") is amended as follows.

(2) At the end of section 17(2)(d), insert "and a statement that he has complied with his obligations under section 486,".

---

<sup>d</sup> Order in Council No. VIII of 2008; amended by Order in Council No. XXV of 2008; No. XIII of 2010; No. I of 2013; No. VI of 2014; Ordinance Nos. XXV and LIV of 2008; Nos. VII and XIV of 2009; No. XI of 2010; No. XXXI of 2012; No. XXXI of 2013; Nos. IV, XII and XXVI of 2015; No. IX of 2016; G.S.I. No. 34 of 2009; G.S.I. No. 37 of 2013; G.S.I. No. 84 of 2014; and G.S.I. Nos. 29, 35 and 38 of 2016.

(3) After section 237, insert –

**"Power of Committee to make regulations.**

237A. (1) The Committee may, after consultation with the Registrar, make regulations amending sections 234 and 235.

(2) The provisions of this section are without prejudice to any other provision of this Law conferring power to enact regulations (and vice versa). "

(4) For section 486, substitute –

**"Duties of resident agent on incorporation.**

486. (1) Before an application is made for the incorporation of a company the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that company, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the company (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken

reasonable steps to verify that information, and

- (c) serve copies of the statements on –
  - (i) the company,
  - (ii) upon request, the proposed first directors of the company.

(2) In this section, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law."

(5) Sections 487 and 488 are repealed.

(6) In the section heading of section 489 delete "or cancellation", and for subsections (1) and (2) of section 489, substitute –

"(1) This section applies when, in the opinion of the resident agent of a company, a member of the company or a beneficial owner in relation to the company (a "beneficial owner") has -

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,
- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances

where those sections apply), or

- (c) made a statement under those sections which is false, deceptive or misleading in a material particular.

(2) This section also applies when, in the opinion of the Registrar of Beneficial Ownership a member or beneficial owner has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(2A) When this section applies by virtue of subsection (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subsection (1), and when this section applies by virtue of subsection (2), the Registrar of Beneficial Ownership may notify the Registrar of the opinion referred to in subsection (2).

(2B) On the Registrar receiving a notification under subsection (2A), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may, if he thinks it proportionate and appropriate in all the circumstances place such restrictions

as he thinks fit on rights attaching to the relevant member's interest in the company, including, without limitation -

- (a) any right to transfer the interest,
- (b) any voting rights,
- (c) any right to further shares in respect of shares already held, and
- (d) any right to payment due to the member's interest, whether in respect of capital or otherwise.

(2C) For the avoidance of doubt, when the Registrar places restrictions on a member's interests under subsection (2B), he must notify the member and the company.

(2D) A resident agent who fails to comply with the duty under subsection (2A), and a company which fails to comply with or give effect to restrictions placed on rights attaching to a member's interest under subsection (2B), is guilty of an offence."

(7) In section 489(3), for "(2)(a)" substitute "(2B)", in section 489(4) delete "or cancellation" and for "(2)" substitute "(2B)", and in section 489(5) for "the company has" substitute "the company and the Registrar have" .

(8) After section 489, insert –

**"Resignation of resident agent.**

489A. (1) A registered agent of a company may give notice stating that he intends to resign from his position as registered agent.

(2) A notice under subsection (1) shall be served on –

(a) the Registrar,

(b) the Registrar of Beneficial Ownership,

(c) each director at –

(i) his service address, and

(ii) his usual residential address where that address is different from his service address, and

(d) the company.

(3) The notice must state –

(a) the company's name and registration number,

(b) the date from which the resignation of the resident agent shall be effective,

(c) that the company may be struck off the Register of Companies in accordance with Part XX if it



does not appoint a new resident agent.

(4) A company which does not appoint a new replacement agent on the resignation of the resident agent becoming effective following a notice under this section is liable to be struck off the Register of Companies in accordance with Part XX."

(9) At the end of section 490, insert –

"(7) For the avoidance of doubt, this section is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law."

(10) In section 513(1)(c), after "431(1)," insert "489(2D),".

(11) In section 532 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,"

""**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**Registrar of Beneficial Ownership**" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,"

**Amendments to LLP Law.**

20. (1) The Limited Liability Partnerships (Guernsey) Law, 2013<sup>e</sup> ("**the LLP Law**") is amended as follows.

(2) For section 8(3)(b), substitute –

"(b) a statement of the resident agent (if any), comprising his name and address, and confirmation that he has complied with his obligations under paragraph 3 of Schedule 2,".

(3) In section 24, for the existing section heading substitute "Content and timing of annual validation", after subsection (1), insert -

"(1A) The Registrar may prescribe different dates from those specified in section 22 for the completion of the annual validation and for the currency of the information contained therein.",

and in subsection (2) after "subsection (1)" insert "and subsection (1A)".

(4) In section 92(1), for "or 93" substitute "93, or Schedule 2".

(5) In section 114 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,".

---

<sup>e</sup> Order in Council No. VI of 2014; amended by Ordinance No. XII of 2015; and No. IX of 2016.

""**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**Registrar of Beneficial Ownership**" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,".

(6) For paragraph 3 of Schedule 2, substitute –

**"Duties of resident agent on incorporation.**

3. (1) Before an application is made for the incorporation of an LLP the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that LLP, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the LLP (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken reasonable steps to verify that information, and
- (c) serve copies of the statements on –
  - (i) the LLP, and

- (ii) upon request, the proposed first members of the LLP.

(2) In this paragraph, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law."

(7) Delete paragraphs 4 and 5 of Schedule 2.

(8) In the paragraph heading of paragraph 6 of Schedule 2 delete "or cancellation", and for subparagraphs (1) and (2) of paragraph 6 of Schedule 2, substitute –

"(1) This paragraph applies when, in the opinion of the resident agent of an LLP, a member of the LLP or a beneficial owner in relation to the LLP (a "beneficial owner") has -

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,
- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances where those sections apply), or
- (c) made a statement under those sections which is false, deceptive or misleading in a material

particular.

(2) This paragraph also applies when, in the opinion of the Registrar of Beneficial Ownership, a member or beneficial owner has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(2A) When this paragraph applies by virtue of subparagraph (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subsection (1), and when this section applies by virtue of subparagraph (2), the Registrar of Beneficial Ownership may notify the Registrar of the opinion referred to in subsection (2).

(2B) On the Registrar receiving a notification under subsection (2A), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may, if he thinks it proportionate and appropriate in all the circumstances place such restrictions as he thinks fit on rights attaching to the relevant member's interest in the LLP.

(2C) For the avoidance of doubt, when the Registrar places restrictions on a member's interests under subsection (2B), he must notify the member and the LLP.

(2D) A resident agent who fails to comply with the duty under subsection (2A), and an LLP which fails to comply with or give effect to restrictions placed on rights attaching to a member's interest under subsection (2B), is guilty of an offence."

(9) In paragraph 6(3) of Schedule 2, for "(2)(a)" substitute "(2B)", in paragraph 6(4) delete "or cancellation" and for "(2)" substitute "(2B)" and in paragraph 6(5) for "the LLP has" substitute "the LLP and the Registrar have".

(10) At the end of paragraph 6 of Schedule 2, insert –

"(7) For the avoidance of doubt, this section is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law."

(11) After paragraph 6 of Schedule 2, insert –

**"Resignation of resident agent.**

**6A.** (1) A registered agent of an LLP may give notice stating that he intends to resign from his position as registered agent.

(2) A notice under subsection (1) shall be served on –

(a) the Registrar,

(b) the Registrar of Beneficial Ownership,

(c) each member at –

(i) his service address, and

(ii) his usual residential address where that address is different from his service address, and

(d) the LLP.

(3) The notice must state –

(a) the LLP's name and registration number,

(b) the date from which the resignation of the resident agent shall be effective,

(c) that the company may be struck off the Register in accordance with Part VI if it does not appoint a new resident agent.

(4) An LLP which does not appoint a new replacement agent on the resignation of the resident agent becoming effective following a notice under this section is liable to be struck off the Register in accordance with Part VI."

**Amendments to Foundations Law.**

21. (1) The Foundations (Guernsey) Law, 2012<sup>f</sup> ("**the Foundations Law**") is amended as follows.

(2) In section 3(2), for "(see section 12)" substitute "(see Schedule 1A)".

(3) For section 12, substitute –

**"Resident agents.**

12. Schedule 1A (which makes provision in relation to resident agents) has effect."

(4) In section 48(1), after "section 47(1)" insert "or Schedule 1A".

(5) In section 52 (Interpretation) at the appropriate places insert–

""**beneficial owner**" has the meaning it has for the purposes of the Beneficial Ownership Law,"

"**Beneficial Ownership Law**" means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

""**customs officer**" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,"

---

<sup>f</sup> Order in Council No. I of 2013; amended by No. IX of 2016.



""**police officer**"" means a member of the salaried police force of the Island of Guernsey and, within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,"

""**Registrar of Beneficial Ownership**"" means the Registrar of Beneficial Ownership of Legal Persons, the office of which was established under section 1 of the Beneficial Ownership Law,".

(6) In paragraph 7(3) of Schedule 1, for paragraph (f) substitute –

"(f) a statement by the resident agent (if any), comprising his name and address and confirmation that he has complied with his obligations under paragraph 3 of Schedule 1A,".

(7) In paragraph 22 of Schedule 1, for "under section 12" substitute "under Schedule 1A".

(8) Immediately after Schedule 1 insert the schedule at Schedule 3 as Schedule 1A.

(9) In paragraph 24(1)(i) of Schedule 2, for "section 12" substitute "Schedule 1A".

**Amendment to other enactments.**

**22.** Schedule 4 (Amendments to other enactments) has effect.

PART 4  
ENFORCEMENT

**Criminal penalties for offences under this Law.**

23. (1) A person (including a relevant legal person) guilty of an offence under this Law is liable -

- (i) on summary conviction, to a fine not exceeding level 5 on the uniform scale, imprisonment for a term not exceeding 3 months or both, and
- (ii) on conviction on indictment, to a fine, imprisonment for a term not exceeding 2 years or both.

(2) The imposition by this Law of a criminal penalty in respect of any act or omission is without prejudice to any other remedy or liability (civil or criminal) in respect thereof (except as provided for by section 30).

(3) In deciding whether a person is guilty of an offence under this Law the court must consider whether he followed any relevant rules, codes, guidance principles or instructions which were at the time concerned -

- (a) made or issued by the Registrar under this Law or any other enactment, and
- (b) published in a manner he approved as appropriate in his opinion to bring the rules, guidance or instructions to the attention of persons likely to be affected by them.

**Criminal liability of officers, etc.**

24. (1) Where an offence under this Law is committed by a legal person 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) any director, manager, secretary or other similar officer, or any foundation official, of the legal person, or

(b) any person purporting to act in such a capacity,

he as well as the legal person is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a legal person are managed by its members, subsection (1) applies to a member in connection with his functions of management as if he were a director.

(3) 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, any partner,

(b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty whereof 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 such a capacity,

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

(4) Where an offence under this Law is alleged to have been committed by an unincorporated body, proceedings for the offence shall be brought in the name of the body and not in the name of any of its members.

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

**Civil penalties.**

25. (1) Where the Registrar is satisfied that a person is liable to a civil penalty under section 17, he may (subject to the provisions of this section and section 29) impose on that person a financial penalty in respect of the failure to comply that gave rise to the liability of such amount as he considers appropriate and proportionate, but not exceeding £20,000, or such other amount as the Committee may prescribe by regulations.

(2) In deciding whether or not to impose a penalty under this section and, if so, the amount thereof the Registrar must take into consideration the following factors -

- (a) whether the failure was brought to the attention of the Registrar by the person concerned,
- (b) the seriousness of the failure,

- (c) whether or not the failure was inadvertent,
- (d) what efforts, if any, have been made to rectify the failure and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of imposing a penalty,
- (f) the penalties imposed by the Registrar under this section in other cases, and
- (g) any other matter the Registrar considers relevant.

(3) Any financial penalty imposed under this section is payable to the States and is recoverable as a civil debt.

(4) Where the Registrar proposes to impose a financial penalty, he must notify in writing the person on whom the penalty is to be imposed of –

- (a) the proposed penalty, and the reasons for the same,
- (b) the date on which it is proposed, subject to section 29, to impose the penalty, which must not be less than 42 days after the date of the notice, and
- (c) that person's right to make written representations to the Registrar under section 29(1).

(5) Where the Registrar imposes a financial penalty he must-

- (a) issue to the person on whom the penalty is being imposed notice of the penalty, and
- (b) include in the notice a statement of the right to apply to the Court under section 32.

(6) Where a penalty is imposed on a person under this section, the Registrar may publish, in such manner and for such period as the Registrar may determine, his name and the amount of the penalty, and the publication may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

**Disqualification orders of Registrar against resident agents of non-regulated relevant legal persons, and notification requirements.**

26. (1) Without prejudice to any other powers of the Registrar, where in the opinion of the Registrar the resident agent of a non-regulated relevant legal person has contravened in a material particular -

- (i) a provision of this Law or the relevant legal person Laws, or
- (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

the Registrar may (subject to subsection (2)) make and subsequently renew, on one

or more occasions, an order (a "**resident agent disqualification order**") disqualifying him from being a resident agent of a non-regulated relevant legal person.

(2) A person who performs or agrees to perform any function in breach of a resident agent disqualification order is guilty of an offence.

(3) A relevant legal person and its officers shall take all reasonable care to ensure that none of its functions in relation to the carrying on of any business of the relevant legal person is performed by a person who is disqualified from performing that function by a resident agent disqualification order.

(4) A resident agent disqualification order and any renewal thereof -

(a) shall have effect for such period (which may be indefinite), and

(b) may contain such ancillary, incidental and supplementary terms and conditions,

as shall be specified in it.

(5) Where the Registrar proposes to make a resident agent disqualification order, issue a private reprimand under section 27 or to publish a statement under section 28, he must notify in writing the person in respect of whom the order is to be imposed, reprimand issued or statement published of –

(a) the proposed order, reprimand or statement, and the reasons for the same,

- (b) the date on which it is proposed, subject to section 29, to make the order, issue the reprimand or publish the statement, which must not be less than 42 days after the date of the notice, and
- (c) that person's right to make written representations to the Registrar under section 29(1).

(6) Where the Registrar makes a residents agent disqualification order, issues a private reprimand or publishes a statement under section 28 he must—

- (a) issue to the person in respect of whom the order is being made notice of the order, statement or reprimand, and
- (b) include in the notice a statement of the right to apply to the Court under section 32.

**Private reprimands.**

27. (1) Without prejudice to any other powers of the Registrar, where the Registrar considers that, having regard to the conduct of a resident agent of a non-regulated relevant legal person, it is appropriate to do so, the Registrar may issue to the resident agent a private reprimand.

(2) The Registrar may not publish a private reprimand without the consent of the resident agent in question.



(3) A private reprimand issued under subsection (1) may be taken into account by the Registrar in considering any matter under this Law concerning the resident agent in question.

**Public statements.**

28. (1) Without prejudice to any other powers of the Registrar, where in the opinion of the Registrar a resident agent of a non-regulated relevant legal person has contravened in a material particular -

- (i) a provision of this Law or the relevant legal person Laws, or
- (ii) any prohibition, restriction, condition, obligation, enforcement requirement, other requirement, duty, direction or arrangement imposed, issued or arising under any such provision,

it may publish, in such manner and for such period as the Registrar may determine, a statement to that effect.

The statement may contain such information in respect of any person named therein, and such ancillary, incidental and supplementary information, as the Registrar may determine.

(2) In deciding whether or not to publish a statement under this section and, if so, the terms thereof the Registrar must take into consideration the following factors -

- (a) whether the contravention was brought to the attention

of the Registrar by the person concerned,

- (b) the seriousness of the contravention,
- (c) whether or not the contravention was inadvertent,
- (d) what efforts, if any, have been made to rectify the contravention and to prevent a recurrence,
- (e) the potential financial consequences to the person concerned, and to third parties including customers and creditors of that person, of publishing a statement,
- (f) the action taken by the Registrar under this section in other cases, and
- (g) any other matter the Registrar considers relevant.

(3) If at any time it appears to the Registrar that a statement published under this section or any information contained in it is or has become misleading, inaccurate or incomplete, or that it is necessary or desirable in the interests of the public or the reputation of the Bailiwick as a finance centre to do so, the Registrar shall make such addition, erasure or other alteration to the statement or content thereof as the Registrar considers necessary.

(4) A statement published under subsection (1) may be taken into account by the Registrar in considering any matter under this Law concerning the resident agent in question.

**Representations prior to civil penalty, etc.**

29. (1) The person on whom a notice is served under section 25(4) or section 26(5) may make written representations to the Registrar concerning the proposed financial penalty, order, statement or reprimand within 28 days of the date of the notice.

(2) If the person in question exercises their right under subsection (1) the Registrar -

- (a) must consider their representations, and
- (b) may decide to –
  - (i) impose the penalty, make the order, publish the statement or issue the reprimand,
  - (ii) in the case of a proposed financial penalty, impose a penalty in a lesser amount, or issue a private reprimand or publish a statement under section 28,
  - (iii) withdraw the penalty, not make the order, not issue the reprimand or not publish the statement, or
  - (iv) postpone the date for imposing the penalty, making the order, publishing the statement or issuing the reprimand,

as the case may be, but in any event must inform that person of his decision in writing, and the reasons for the same, before the date on which the financial penalty is imposed or would otherwise have been imposed, the order is made or would otherwise have been made, the statement is published or would otherwise have been published, or the reprimand is issued or would otherwise have been issued, as the case may be.

(3) For the avoidance of doubt, where the Registrar has imposed a financial penalty under section 25 he may not seek to recover payment of that penalty until –

- (a) 28 days immediately following the date of the notice of the penalty issued under section 25(5)(a), or
- (b) if an application to the Court is instituted within that period under section 32, the final determination, or withdrawal, of that application,

and for the purposes of this subsection, an appeal shall be deemed not to have been finally determined until the expiration of the time allowed for the institution of an appeal to the Court of Appeal under the Court of Appeal (Guernsey) Law, 1961 or until the determination of any such appeal instituted within that time.

**Relationship of civil penalties with prosecutions.**

30. (1) A relevant legal person is not liable to a civil penalty if a prosecution in respect of the matter has been commenced.

(2) If the prosecution commences after the civil penalty has been paid, the Registrar shall repay the civil penalty to the relevant legal person.

PART 5  
MISCELLANEOUS AND FINAL

**Meaning of "beneficial owner".**

31. The Committee may prescribe the meaning of the expression "beneficial owner", and any related expressions, for the purposes of this Law, by way of regulations.

**General right to apply to Court to set aside action of Registrar.**

32. (1) Without prejudice to any specific right of appeal in any enactment, a person who is directly affected by any action, direction, decision or determination of the Registrar (including an order imposing a financial penalty) may apply to the Court to set aside that action, direction, decision or determination.

(2) An application under subsection (1) shall be made in such manner (if any) as may be prescribed by order of the Court.

(3) On such an application the Court may make such order on such terms and conditions as it thinks fit.

(4) Subject to any direction given by the Court -

(a) the applicant shall give at least seven days' notice of the application to the Registrar,

- (b) where the application is made in respect of a legal person and the applicant is not the legal person in respect of which the application is made, the applicant shall give at least seven days' notice of the application to the legal person, and
- (c) the application shall be made within 21 days after the day of the action, direction, decision or determination of the Registrar.

(5) An appeal from an order of the Court under this section lies, with leave of the Court or the Court of Appeal, to the Court of Appeal on a question of law.

(6) Section 21 of the Court of Appeal (Guernsey) Law, 1961 (powers of a single judge) applies to the powers of the Court of Appeal to give leave to appeal under this section as it applies to the powers of the Court of Appeal to give leave to appeal under Part II of that Law.

**Service of documents.**

33. (1) Any notice or document other than a summons to be served under or for the purposes of the provisions of this Law may be served on -

- (a) an individual, by being delivered to him, or by being left at, or sent by post or transmitted to, his usual or last known place of abode, or by being transmitted to his relevant electronic address,
- (b) a legal person with a registered office in Guernsey, by

being left at, or sent by post or transmitted to, that office, or by being transmitted to its relevant electronic address,

- (c) a legal person without a registered office in Guernsey, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered office or principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (d) an unincorporated body -
  - (i) by being served on any partner, member of the committee or other similar governing body, manager, director or other similar officer thereof in accordance with paragraph (a), or
  - (ii) by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or by being transmitted to its relevant electronic address,
- (e) the Registrar, by being left at, or sent by post or transmitted to, the Registrar's offices.

(2) If service of a notice or document cannot, after reasonable enquiry, be effected in accordance with subsection (1), the notice or document may be served by being published -

- (a) by the Registrar in such manner and for such period as he thinks fit, or
- (b) in La Gazette Officielle (or, where service is required to be effected in Alderney, in the Alderney Official Gazette) on two occasions falling in successive weeks.

(3) Subsections (1) and (2) are without prejudice to any other lawful method of service.

(4) Where a document is sent by post it shall, unless the contrary is shown, be deemed for the purposes of the provisions of this Law to have been received -

- (a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the third day after the day of posting,
- (b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any non-business day.



(5) For the purposes of the provisions of this Law, service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

(6) Notwithstanding the provisions of this section and of any other rule of law in relation to the service of documents, no document to be served on the Registrar under or for the purposes of the provisions of this Law shall be deemed to have been served until it is received.

(7) In this section -

**"by post"** means by registered post, recorded delivery service or ordinary letter post,

**"non-business day"** means -

(a) a Saturday, a Sunday, Christmas Day and Good Friday, and

(b) any day appointed as a public holiday by Ordinance of the States under section 1(1) of the Bills of Exchange (Guernsey) Law, 1958<sup>g</sup>,

**"electronic address"** includes, without limitation, an e-mail address and a telecommunications address,

---

<sup>g</sup> Ordres en Conseil Vol. XVII, p. 384; amended by Vol. XXIV, p. 84; No. XI of 1993; Vol. XXXIV, p. 504; No. XIV of 1994; and Vol. XXXV(1) p. 367.

**"relevant electronic address"** means an electronic address –

- (i) with which the person or body concerned has a personal, business or other connection, and
- (ii) a document transmitted to which is likely to come to his attention,

**"served"** includes given and submitted,

**"summons"** includes any document compelling a person's attendance before a court, and

**"transmitted"** means transmitted by electronic communication (that is to say, in electronic form and by electronic means), facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document shall be regarded as served immediately after it was transmitted, unless the contrary is shown.

**Exclusion of liability, etc.**

34. (1) No liability is incurred by –

- (a) the Registrar,
- (b) any person to whom the Registrar has, under paragraph 3 of Schedule 1, delegated any function,
- (c) any person appointed as Deputy Registrar under

paragraph 4 of Schedule 1, or

(d) any officer or servant of the Registrar or of the States,

in respect of anything done or omitted to be done after the commencement of this Law in the discharge or purported discharge of their functions under this Law, unless the thing was done or omitted to be done in bad faith.

(2) Subsection (1) does not apply so as to 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<sup>h</sup>.

(3) A requirement imposed by or under this Law to provide any information or document has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise; and, accordingly, the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement.

(4) Nothing in this Law authorises -

(a) a disclosure in contravention of any provisions of the Data Protection (Bailiwick of Guernsey) Law, 2001<sup>i</sup> of personal data which are not exempt from those

---

<sup>h</sup> 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; and G.S.I. No. 27 of 2006.

<sup>i</sup> Order in Council No. V of 2002; amended by Ordinance No. XXXIII of 2003; No. II of 2010; No. XXXIV of 2011; No. XLIX of 2012; No. XXIX of 2013; and No. IX of 2016.

provisions, or

- (b) a disclosure which is prohibited by Part I of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>j</sup>.

(5) Nothing in this Law compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>k</sup>), but an Advocate or other legal adviser may be required to give the name and address of any client.

**Guidance.**

35. (1) The Registrar, after consultation with the Committees and such other persons as appear to him to be appropriate, may issue such guidance as he thinks necessary for the purposes of this Law and other enactments making provision in respect of beneficial ownership and resident agents.

(2) The Registrar may, after consultation mentioned in subsection (1), revise the whole or any part of guidance issued under this Law and issue that revised guidance.

**Fees payable to the Registrar.**

36. (1) The Committee for Economic Development may make

---

<sup>j</sup> Order in Council No. XXX of 2003; amended by Ordinance No. XXXIII of 2003; No. XXIX of 2013; No. IX of 2016; and G.S.I. No. 26 of 2004.

<sup>k</sup> Order in Council No. XXIII of 2003; amended by Order in Council No. XVI of 2009, No. XV of 2011; Ordinance No. XXXIII of 2003; No, XXUX if 2011; and No. XXXIX of 2015.

regulations which prescribe -

- (a) the fees payable (whether generally or in any particular case) in respect of the exercise of the Registrar's functions,
- (b) the interest payable in the event of default in the due payment of fees, and
- (c) the persons by whom such fees and interest are to be payable.

(2) The Registrar may refuse to exercise his functions in any particular case if the fees payable have not been paid.

**Nominee relationships.**

37. (1) The Committee may by regulation make provision in relation to the obtaining by resident agents of information relating to nominee relationships in respect of relevant legal persons, and the disclosure of such information by resident agents to the Registrar.

(2) Subject to subsection (3), regulations made under subsection (1) may contain provision as to the creation of new liabilities, obligations, penalties and offences.

(3) The power conferred by subsection (2) to create new liabilities, obligations, penalties and 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 six months or a fine exceeding level 5 on the uniform scale, or both, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding six months.

**Regulations made by the Registrar.**

38. (1) Without prejudice to any other power conferred on him to make regulations or his functions under section 3, the Registrar may make such regulations as he thinks fit in relation to the practice and procedure of the Office of the Registrar and in relation to the exercise of his functions.

(2) The Registrar must consult with and obtain the approval of the Committees before making the regulations.

**General provisions as to subordinate legislation.**

39. (1) The States may by Ordinance -

- (a) amend Schedule 2, where it appears to the States to be necessary or expedient to do so for the purpose of-
  - (i) enabling the Registrar more effectively to carry out any of his functions under this Law,

- (ii) enhancing or protecting the security and confidentiality of the Register,
- (iii) facilitating the administration and maintenance of the Register,
- (iv) enhancing or protecting the reputation or economic interests of the Bailiwick or any part thereof,
- (v) improving or enhancing the investigation, prevention or detection of crime,
- (vi) facilitating the instigation of, or otherwise for the purposes of, any criminal proceedings,
- (vii) facilitating the detection, seizure and forfeiture of the proceeds of crime or assets intended for use in crime,
- (viii) discharging any international obligation to which the Bailiwick is subject, or
- (ix) assisting, in the interests of the public or otherwise, any authority which appears to the States to exercise in a place outside the Bailiwick functions corresponding to any of the functions under this Law of the Registrar, and

(b) make such other provision as they think fit for the purposes of carrying this Law into effect.

(2) Without prejudice to the generality of the powers conferred by any other provision of this Law, the States may by Ordinance made under this section repeal, replace amend, extend, adapt, modify or disapply, and make transitional and savings provisions in relation to, any of the regulatory Laws and any of the relevant legal person Laws for the purposes of enabling the Registrar more effectively to carry out any of his functions under this Law and carrying this Law into effect.

(3) The provisions of subsections (1) and (2) are without prejudice to any other provision of this Law conferring power to enact Ordinances or regulations (and vice versa).

(4) The Committee may by regulations make further provision in respect of the power of the Registrar under section 4(1)(a), including, but not limited to, prescribing any requirements governing its exercise.

(5) Any regulations made under the provisions of subsection (4) shall not have effect unless and until approved by a resolution of the States.

(6) Any Ordinance or regulation under this Law -

(a) may be amended or repealed by a subsequent Ordinance or regulation, as the case may be, hereunder,



- (b) may contain such consequential, incidental, supplementary and transitional provision as may appear to be necessary or expedient, and
- (c) may, in the case of an Ordinance, and without limitation, contain provision -
  - (i) subject to subsection (7), as to the creation of new liabilities, obligations, penalties and offences,
  - (ii) making consequential amendments to this Law and any other enactment, and
  - (iii) repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(7) The power conferred by subsection (6)(c)(i) to create new liabilities, obligations, penalties and 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 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<sup>1</sup>, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(8) Any power conferred by this Law to make any Ordinance or regulation 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,

---

<sup>1</sup> Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; and No. IX of 2016.

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(9) Except for regulations made under subsection (4) and paragraph 2(3) of Schedule 2, regulations under this Law must be laid before a meeting of the States as soon as possible after being made; and if, at that or their next meeting, the States resolve to annul the regulations, they shall cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

40. (1) In this Law, unless the context otherwise requires -

"**Bailiff**" includes the Deputy Bailiff, a Lieutenant Bailiff, the Juge-Délégué and a Judge of the Royal Court,

"**beneficial owner**": see section 31,

"**civil penalty**": see section 25,

"**the Commission**" means the Guernsey Financial Services Commission established by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987<sup>m</sup>,

---

<sup>m</sup> Ordres en Conseil Vol. XXX, p. 243; amended by Orders in Council No. XXXI, p. 278; No. XX of 1991; No. XIII of 1994; No. II of 1997; Nos. XVII and XXI of 2002; Nos. III and XXII of 2003; Nos. XIX, XXIII and XXIV of 2008; No. XIX of 2010; No. III of 2013; No. I of 2015; Ordinance No. XXXIII of 2003; No. XXXIV of 2005; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXII of 2016; and G.S.I. No. 29 of 2009.

**"the Committee"** means the States Policy and Resources Committee,

**"the Committees"**: see section 1(3),

**"the Committee for Economic Development"** means the States Committee for Economic Development,

**"the Companies Law"**: see section 19(1),

**"conduct"** includes acts, omissions and statements,

**"the Court"** means the Royal Court sitting as an Ordinary Court,

**"criminal conduct"** means any conduct which -

- (a) constitutes a criminal offence under the law of any part of the Bailiwick, or
- (b) is, or corresponds to, conduct which, if it took place in any part of the Bailiwick, would constitute an offence under the law of that part of the Bailiwick,

**"criminal investigation"** means an investigation of any criminal conduct including an investigation of alleged or suspected criminal conduct or an investigation of whether criminal conduct has taken place,

**"criminal proceedings"** does not include legal proceedings outside Guernsey unless the conduct with which the defendant in those proceedings is charged is criminal conduct or conduct which, to a substantial extent,

consists of criminal conduct,

**"documents"** means information recorded in any form (including without limitation, in electronic form) and, in relation to information recorded otherwise than in legible form, references to its production, howsoever expressed, include references to the production of the information in hard copy; and a document is sent or supplied in hard copy form if it is sent or supplied in a paper copy or similar form capable of being read,

**"Economic Crime Division"** means that branch of the Customs and Immigration Service responsible for the investigation of financial and economic crime (including for the avoidance of doubt the Financial Intelligence Service),

**"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,

**"Financial Intelligence Service"** means the division of the Economic Crime Division comprising persons assigned to the division for the purpose of the receipt, analysis and dissemination within the Bailiwick, and elsewhere, of disclosures under Part I of the Disclosure (Bailiwick of Guernsey) Law, 2007<sup>n</sup>, which are more commonly known or referred to as suspicious transaction reports or suspicious activity reports,

---

<sup>n</sup> Order in Council No. XVI of 2007; amended by Ordinance No. XXXIX of 2008; No. VII of 2009; No. XIV of 2010; No. XIX of 2010; No. XXXVII of 2010; No. XVI of 2014; No. LIII of 2014; No. XXXIX of 2015; and No. IX of 2016.

**"the Foundations Law"**: see section 21(1),

**"Guernsey"** includes Herm and Jethou,

**"information"** includes documents,

**"intelligence service"** has the same meaning as in section 67 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003,

an **"LLP"** means a limited liability partnership incorporated under the LLP Law,

**"the LLP Law"**: see section 20(1),

**"the minimum retention period"** means –

- (a) a period of at least 5 years starting from the date of the dissolution or termination of the relevant legal person in question, or
- (b) such longer period as the Registrar may direct,

a **"nominee relationship"** is a relationship in which an interest in a legal person, or a power exercisable in relation to a legal person, is held or is exercisable by one person on behalf of another,

**"non-regulated relevant legal person"**: see section 41,

**"the Office of the Registrar"**: see section 1(1),

**"person"** includes -

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

**"record of beneficial owners"**: see section 10(1),

**"the Register"**: see section 2(1),

**"the Registrar"**: see section 1(2),

**"regulated person"**: see section 41,

**"regulated relevant legal person"**: see section 41,

**"the regulatory Laws"** means -

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987<sup>o</sup>,

---

<sup>o</sup> Ordres en Conseil Vol. XXX, p. 281; amended by Vol. XXX, p. 243; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Order in Council No. XVII of 2002; Nos. XV and XXXII of 2003; No. XVIII of 2008; Nos. XIII and XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, pp. 51 and 87; Ordinance No. XXXIII of 2003; No. XXXI of 2008; No. VII of 2009; Nos. XII, XX and XXXIX of 2015; Nos. II, IX and XXIX of 2016; and G.S.I. No. 83 of 2010.

- (b) the Banking Supervision (Bailiwick of Guernsey) Law, 1994<sup>p</sup>,
- (c) the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000<sup>q</sup>,
- (d) the Insurance Business (Bailiwick of Guernsey) Law, 2002<sup>r</sup>,
- (e) the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002<sup>s</sup>, and
- (f) any other enactment prescribed for the purposes of this Law by regulations of the Committee,

---

<sup>p</sup> Ordres en Conseil Vol. XXXV(1), p. 271; amended by Order in Council Nos. XVII and XXI of 2002; No. XVI of 2003; No. XVI of 2008; No. IV of 2009; No. XIII of 2010; No. XXI of 2010; Ordinance No. XXXIII of 2003; Nos. XII, XX and XXXIX of 2015; Nos. II and IX of 2016; and G.S.I. No. 1 of 2008; G.S.I. No's. 35 and 83 of 2010.

<sup>q</sup> Order in Council No. I of 2001; amended by No. I of 2000; No. XIV of 2003; No. XVI of 2007; Nos. VIII and XXV of 2008; Nos. XIII and XIX of 2010; No. I of 2013; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. VII of 2009; Nos. XII and XXXIX of 2015; Nos. II and IX of 2016; G.S.I. No. 3 of 2008; G.S.I. No. 83 of 2010; G.S.I. No. 4 of 2013.

<sup>r</sup> Order in Council No. XXI of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XII of 2008; No. LI of 2008; No. VIII of 2010; No. XXXI of 2010; No. XXXVI of 2011; No. LV of 2014; No. XII of 2015; No. XXXIX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 33 of 2004; G.S.I. No. 4 of 2008; G.S.I. Nos. 15 and 83 of 2010; G.S.I. No. 68 of 2014; G.S.I. No. 121 of 2015.

<sup>s</sup> Order in Council No. XXII of 2002; amended by No. I of 2000; No. XIII of 2010; Ordinance No. XXXIII of 2003; No. XIII of 2008; No. IX and XXXII of 2010; Nos. XII and XXXIX of 2015; No. II of 2016; No. IX of 2016; G.S.I. No. 2 of 2008; G.S.I. Nos. 16 and 83 of 2010.



**"relevant change"**: see section 11(2),

**"relevant legal person"**: see section 41,

**"the relevant legal person Laws"** means the Companies Law, the LLP Law and the Foundations Law,

**"required particulars"**: see section 10(3),

**"the States"** means the States of Guernsey, 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.

**Meaning of "relevant legal person" and associated terms.**

41. (1) In this Law, a **"relevant legal person"** means –

- (a) a company incorporated under the Companies Law,
- (b) an LLP incorporated under the LLP Law, or
- (c) a foundation established under the Foundations Law.

- (2) In this Law a "**regulated person**" means a person who –
- (a) holds or is deemed to hold a licence granted by the Commission under the regulatory Laws,
  - (b) carries on a prescribed business for the purposes of the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008<sup>t</sup>, or
  - (c) carries on a registered financial services business for the purposes of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008<sup>u</sup>.

(3) In this Law a "**regulated relevant legal person**" means a relevant legal person which is administered, controlled or operated by a regulated person in the course of his activities, and a "**non-regulated relevant legal person**" means a relevant legal person which is not a regulated relevant legal person.

- (4) In this Law, the "**officers**" of a relevant legal person means –
- (a) in the case of a company, the officers of the company (within the meaning of section 532 of the Companies

---

<sup>t</sup> Order in Council No. XII of 2009; amended by Ordinance No. XXXIX of 2015; No. II of 2016; and No. IX of 2016.

<sup>u</sup> Order in Council No. XV of 2008; amended by Order in Council No. XIII of 2010; No. XXXII of 2008; Ordinance Nos. XII and XX of 2015; Nos. II and IX of 2016; G.S.I. No. 75 of 2008; G.S.I. Nos. 17 and 83 of 2010; and No. 16 of 2013;

Law),

(b) in the case of an LLP, those members of the LLP exercising functions under the members' agreement equivalent to the functions of the officers of a company (within the meaning of section 532 of the Companies Law), and

(c) in the case of a foundation, the foundation officials of the foundation.

(5) In this Law, the "**members**" of a relevant legal person means–

(a) in the case of a company, the members of the company,

(b) in the case of an LLP, the members of the LLP, and

(c) in the case of a foundation, the beneficiaries (if any) of the foundation.

(6) The States may by Ordinance amend the definitions at subsections (1), (2), (4) and (5).

**Citation.**

42. This Law may be cited as the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017.

**Commencement.**

43. This Law shall come into force on the day appointed by regulations

made by the Committee, and regulations made under this section may appoint different dates for different provisions of this Law and for different purposes.

SCHEDULE 1  
OFFICE OF THE REGISTRAR

**Salary or fees of Registrar.**

1. The Registrar shall be paid such salary, fees, emoluments and other allowances as the Committee may determine.

**Appointment of staff.**

2. (1) The Registrar may -
- (a) subject to the approval of the Committee, appoint such officers and employees, and
  - (b) appoint and instruct such other persons,

on such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions.

(2) The Registrar may, subject to the approval of the Committee, establish and maintain such schemes or make such other arrangements as he thinks fit for the payment of pensions and other benefits in respect of his officers and employees.

**Delegation of functions.**

3. (1) The Registrar may, by an instrument in writing, either generally or otherwise as specified in the instrument, arrange for any of his functions to be exercised in his name by any person named or described in the instrument, other than this power of delegation.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a delegate pursuant to such an arrangement has the same effect as if taken or done by the Registrar.

(3) An arrangement made under this paragraph for the exercise of a function by a delegate -

(a) may be varied or terminated at any time by the Registrar, but without prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

(b) does not prevent the exercise of the function by the Registrar while the arrangement subsists.

(4) The provisions of this paragraph, and of paragraph 4, are without prejudice to the provisions of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

**Appointment of Deputy Registrar.**

4. (1) Without prejudice to the Registrar's powers under paragraph 3, the Committee may, subject to such terms and conditions as it may from time to time think fit, appoint any person as Deputy Registrar with authority to exercise the Registrar's functions during any period in which the Registrar is unavailable or unable to act or during any vacancy in that office.

(2) A function exercised by a Deputy Registrar pursuant to an

appointment under this paragraph is for all purposes exercised by the Registrar; and every decision taken or other thing done by a Deputy Registrar pursuant to such an appointment has the same effect as if taken or done by the Registrar.

- (3) An appointment under this paragraph of a Deputy Registrar -
  - (a) may be varied or terminated at any time by the Committee, but without prejudice to anything done pursuant to the appointment or to the making of a new appointment,
  - (b) does not prevent the exercise of the function by the Registrar while the appointment subsists.

**Disclosure of interests.**

5. (1) The Registrar shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seised under this Law or any other enactment, disclose the nature of his interest to the Committee.

(2) For the purposes of this paragraph, a general notice given by the Registrar to the effect that he is a shareholder in, or a director of, a body corporate, and is to be regarded as interested in any matter concerning that body corporate, is a sufficient disclosure in relation to any such matter.

**Proof of documents.**

6. (1) In any legal proceedings the provisions of subparagraph (2) apply in relation to any document purporting to be -

- (a) issued by or on behalf of the Registrar, or

- (b) signed by the Registrar, by any of his officers or employees or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.

(2) The document -

- (a) may be received in evidence,
- (b) unless the contrary is proved, is deemed -
  - (i) to be the document which it purports to be, and
  - (ii) to have been issued by or on behalf of the Registrar or, as the case may be, to have been signed by the person by whom it purports to have been signed, without proof of his identity, signature or official capacity, and
- (c) is evidence of the matters stated therein.



## SCHEDULE 2

### REGISTER OF BENEFICIAL OWNERS OF LEGAL PERSONS

Section 2(1).

#### **Register of Beneficial Owners of Legal Persons and security of information.**

1. (1) The Registrar shall establish the Register which shall be kept in such form as the Registrar thinks fit and may, without limitation, be kept in electronic form.

(2) The Registrar shall take all reasonable steps to ensure the confidentiality and security of the Register and of information kept on the Register, and of other information disclosed to him under this Law or under any other enactment, and (subject to subparagraph (3) and paragraphs 2 and 3) shall not disclose to any other person the Register or any part of it, or information or document obtained by him or disclosed to him –

(a) under this Law or any other enactment, or

(b) in connection with the carrying out of any of his functions.

(3) The Registrar shall, on application being made to him in such form as he may specify, and having taken all reasonable steps to verify the identity of the applicant, disclose to a person any information on the Registrar directly relating to that person only.

#### **Disclosure of information by the Registrar.**

2. (1) Subject to the provisions of the regulatory Laws, information obtained by the Registrar -

- (a) under this Law or any other enactment, or
- (b) in connection with the carrying out of any of the Registrar's functions,

may only be disclosed if the disclosure is for any purposes set out in subsection (2).

(2) The purposes are any of the following –

- (a) the prevention, detection, investigation or prosecution of criminal conduct, whether in Guernsey or elsewhere,
- (b) the prevention, detection, investigation or sanctioning of conduct for which penalties other than criminal penalties are provided under the law of Guernsey or of any country or territory outside Guernsey,
- (c) the carrying out of any functions of any intelligence service,
- (d) the carrying out -
  - (i) by the Commission, or
  - (ii) by a body in another country or territory which carries out similar functions to the Commission,

of its functions,

(e) the carrying out -

(i) by the Director of Income Tax, or

(ii) by an officer of a body in another country or territory which carries out similar functions to the Director of Income Tax,

of his functions,

(f) the conduct of -

(i) any civil forfeiture investigations within the meaning of section 18 of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007<sup>v</sup>, or

(ii) any proceedings under that Law or under corresponding legislation in force in a country designated under section 53 of that Law,

---

<sup>v</sup> Order in Council No. XVII of 2008; amended by Order in Council No. XIII of 2010; No. XVI of 2012; Ordinance No. XXX of 2008; No. VII of 2009; No. XX of 2015; and No. IX of 2016

- (g) the implementation of, compliance with or enforcement of international sanctions measures within the Bailiwick,
- (h) the prevention, detection or investigation of breaches of international sanctions measures that have been given effect within the Bailiwick,
- (i) the enabling of any person or body within the Bailiwick, whose functions include any of the matters set out at paragraphs (g) and (h), to carry out those functions,
- (j) the enabling of any person or body in another country or territory, with similar functions to those set out at paragraphs (g) and (h), to carry out those functions,
- (k) the carrying out by the Alderney Gambling Control Commission of its functions,
- (l) the carrying out by the Registrar of Non-Profit Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Guernsey) Law, 2008<sup>w</sup> of his functions,
- (m) the carrying out by the Registrar of Non-Profit

---

<sup>w</sup> Order in Council No. XXVI of 2008; amended by Order in Council No. III of 2010; No. VIII of 2011; Ordinance No. XXXVI of 2008; No. XLIX of 2008; No. XXIX of 2010; No. VI of 2015; and No. IX of 2016.

Organisations appointed under the Charities and Non-Profit Organisations (Registration) (Sark) Law, 2010<sup>x</sup> of his functions,

(n) the enabling of the Registrar of Companies, the Registrar of Limited Liability Partnerships, the Registrar of Foundations, the Greffier, and the Registrar for the purposes of the Companies (Alderney) Law, 1994<sup>y</sup> –

(i) to carry out their functions relating to the beneficial ownership of legal persons, or

(ii) to investigate matters relating to such functions.

(3) The list of purposes at sub-paragraph (2) may be amended by regulations made by the Committee.

(4) Any regulations made under the provisions of subparagraph (3) shall not have effect unless and until approved by a resolution of the States.

---

<sup>x</sup> Order in Council No. VI of 2010; amended by the Charities and Non-Profit Organisations (Registration) (Sark) (Amendment) Ordinance, 2011.

<sup>y</sup> Order in Council No. XXXIV of 1994; amended by Order in Council No. I of 2001; No. XV of 2002; No. XIII of 2010; No. XIX of 2012; Alderney Ordinance No. V of 1995; Alderney Ordinance No. I of 1996; Alderney Ordinance No. II of 1997; Ordinance No. XXXIII of 2003; Alderney Ordinance No. XI of 2007; Alderney Ordinance No. XVII of 2008; Ordinance No. VII of 2009; Alderney Ordinance No. VI of 2009; Alderney Ordinance No. XIV of 2010; Alderney Ordinance No. I of 2011; Alderney Ordinance No. XV of 2011; Alderney Ordinance No. VIII of 2012; Alderney Ordinance No. XIV of 2013; Ordinance No. IX of 2016.

**Power of Commission and Economic Crime Division to inspect Register.**

3. (1) Without prejudice to the provisions of this Schedule and to the powers and duties of the Registrar, the Register must at all times be open to the inspection of the Commission and the Economic Crime Division, for the purpose of the carrying out of their functions.

(2) The Committee may by regulations make such provision as it thinks fit in respect of the inspection of the Register under subparagraph (1), including (but not limited to) provision with the purpose of ensuring that such inspection does not risk damage to the confidentiality and security of the Register.

(3) For the avoidance of doubt, the power of the Committee to make regulations under subparagraph (2) is without prejudice to the power of the Registrar to make regulations under section 38 (Regulations made by the Registrar).

**Power of Registrar to request and obtain information and documents.**

4. (1) The Registrar may, by notice in writing served on a person other than a regulated person or a regulated relevant legal person, require him to provide the Registrar in such form and manner, at such times or intervals, at such place and in respect of such periods as may be specified in the notice, with such information as the Registrar may reasonably require for the performance of his functions.

(2) The Registrar may, by notice in writing served on a person other than a regulated person or a regulated relevant legal person -

- (a) require him to produce, in such form and manner, within such time and at such place as may be specified in the notice, such information or documents of such

description as may be so specified, for the purposes of the Registrar inspecting them,

- (b) require him to furnish, to any of the Registrar's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents or information and documents of such description as the officer, servant or agent may specify, either forthwith or within such time, and at such place, and in such form and manner, as may be so specified, for the purposes of their inspecting them,

being information or documents reasonably required by the Registrar for the performance of his functions.

(3) Where under subparagraph (2) the Registrar or any officer, servant or agent thereof has power to require the production of any information or documents from a person, the Registrar or that officer, servant or agent has the like power to require the production of that information or those documents from any person who appears to be in possession of them (but without prejudice to any lien claimed by such a person on any documents produced by him).

(4) The powers conferred by this paragraph to require a person to produce any documents include power -

- (a) if the documents are produced, to take copies of them or extracts from them, in circumstances where the Registrar is satisfied that the taking of such copies or

extracts is necessary for the proper exercise of powers under or in relation to Part 4 (Enforcement) of this Law, and

- (b) if the documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

(5) The powers conferred by this paragraph to require a person to provide any information include power to require that person to attend at such time and place as may be required and to give an explanation of and to answer questions relating to any matters in relation to which the production of the information may be required.

(6) A statement made by a person in response to a requirement imposed by or under this paragraph -

- (a) may be used in evidence against him in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against him in criminal proceedings except -
  - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
  - (ii) in proceedings for -



- (A) an offence under section 18,
- (B) some other offence where, in giving evidence, he makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
- (C) perjury, or
- (D) perverting the course of justice.

(7) A notice under this paragraph shall state the grounds of the Registrar's decision to serve the notice and give particulars of the right to apply to the Court conferred by section 32 (General right to apply to Court to set aside action of Registrar).

**Provision of information to the Registrar.**

5. (1) Information required to be provided to the Registrar under this Law or any other enactment shall be in such form as may be specified by the Registrar.

(2) Where a person claims a lien on a document, its production under this Law is without prejudice to his lien.

**Tipping off.**

6. (1) A person is guilty of an offence if a notice is served on him under paragraph 4, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the service of that notice.

(2) Nothing in subparagraph (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of or in connection with legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subparagraph (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this paragraph, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subparagraph (1).

**Rectification of the Register.**

7. (1) The Registrar may, in his absolute discretion and on such terms and conditions as he thinks fit -

- (a) on an application by or on behalf of a relevant legal person or the officers or members of a relevant legal person,
- (b) on an application by or on behalf of a resident agent,
- (c) on an application by or on behalf of any other person,  
or
- (d) of his own motion,

rectify any error or formal defect in the Register.

(2) Where the Registrar rectifies the Register in respect of a relevant legal person or other person, he shall give notice of that rectification to the relevant legal person or that other person (as the case may be).

(3) Except where the Registrar directs otherwise, the effect of rectification of the Register is that the error or defect in question shall be deemed never to have been made.

**General power of Registrar to reject applications etc.**

8. Notwithstanding that the Registrar is not bound to enquire further as to whether the provisions of this Law or any other enactment have been complied with, the Registrar may reject any application, or other matter submitted to him, on such terms and conditions as he thinks fit, if it appears to him that the provisions of this Law or any other enactment in respect of that application or other matter have not been complied with.

**Retention of information on the Register after dissolution, etc.**

9. In the case of a relevant legal person that has been dissolved, terminated or struck off, the Registrar shall retain on the Register information relating to that legal person as at the date of its dissolution, termination or striking off (as the case may be) for the minimum retention period after that date.

SCHEDULE 3  
RESIDENT AGENT PROVISIONS IN FOUNDATIONS LAW

Section 21(8).

"SCHEDULE 1A  
RESIDENT AGENTS

**Resident agents.**

1. (1) Subject to subparagraph (2), every foundation shall have a resident agent who is either -

(a) an individual, resident in Guernsey, who is a foundation official, or

(b) a corporate services provider.

(2) A foundation is exempted from the requirement contained in subparagraph (1) to have a resident agent if the foundation is a member of a class of foundations prescribed for this purpose by the Committee.

(3) A resident agent may request copies of –

(a) the records of the foundation, and

(b) any other information or documents necessary for the resident agent to comply with his duties as a licensed fiduciary,

at any time, by making a request in writing to the Council (see Schedule 1,

paragraph 23 and see also section 22).

- (4) The Committee may, by regulations, amend this paragraph.

**Record of resident agent.**

2. (1) A foundation shall keep a record of its resident agent, which shall comprise -

- (a) in the case of a resident agent who is an individual, his name,
- (b) otherwise, the resident agent's -
  - (i) corporate or firm name, and
  - (ii) address.

(2) A foundation must, within 14 days after the date of the occurrence of -

- (a) any change in its resident agent, or
- (b) any change in the details contained in its record of resident agent,

give notice to the Registrar of the change and of the date on which it occurred.

(3) A foundation which fails to comply with subparagraph (1) or (2) is guilty of an offence.

**Duties of resident agent on registration.**

3. (1) Before an application is made for the registration of a foundation the proposed first resident agent must take reasonable steps to ascertain the identity of the beneficial owners in relation to that foundation, and when such an application is made he must –

- (a) provide a statement of the required particulars of the beneficial owners in relation to the foundation (or, if no beneficial owners have been identified by the resident agent, a statement to that effect) to the Registrar of Beneficial Ownership,
- (b) take reasonable steps to verify the information in the statement, and provide with the statement a statement that the resident agent has taken reasonable steps to verify that information, and
- (c) serve copies of the statements on –
  - (i) the foundation, and
  - (ii) upon request, the proposed first foundation officials.

(2) In this paragraph, "**required particulars**" has the meaning given in section 10 of the Beneficial Ownership Law.

**Restriction of interests for failure to disclose beneficial ownership.**

4. (1) This paragraph applies when, in the opinion of the resident agent of a foundation, a beneficiary of the foundation or a beneficial owner in relation to the foundation has -

- (a) failed, without reasonable excuse, to comply with a notice served under section 9 or 11 of the Beneficial Ownership Law within the time specified in it,
- (b) failed, without reasonable excuse, to comply with the duty under section 15(2) or 16(2) of the Beneficial Ownership Law (in circumstances where those sections apply), or
- (c) made a statement under those sections which is false, deceptive or misleading in a material particular.

(2) This paragraph also applies when, in the opinion of the Registrar of Beneficial Ownership, a beneficiary of a foundation or a beneficial owner in relation to a foundation has failed to comply with a requirement of the Registrar of Beneficial Ownership under paragraph 4 of Schedule 2 to the Beneficial Ownership Law to produce information, or has made a statement under that paragraph which is false, deceptive or misleading in a material particular.

(3) When this paragraph applies by virtue of subparagraph (1), the resident agent must as soon as reasonably practicable notify the Registrar of the opinion referred to in subparagraph (1), and when this paragraph applies by virtue of subparagraph (2), the Registrar of Beneficial Ownership may notify the Registrar



of the failure referred to in subparagraph (2); and a resident agent who fails to comply with a duty under this subparagraph is guilty of an offence.

(4) On the Registrar receiving a notification under subparagraph (3), or when he otherwise has reasonable grounds for believing that a member or beneficial owner has failed to comply with an obligation or duty under the Beneficial Ownership Law or has made a statement which is false, deceptive or misleading in a material particular in purported compliance with such an obligation or duty (whether he has reasonable grounds for that belief because he has received relevant information from the Commission or for some other reason), the Registrar may place such restrictions as he thinks fit on rights attaching to the relevant beneficiary's interest in the foundation; and a foundation which fails to comply with or give effect to restrictions placed on rights attaching to beneficiary's interest under this subparagraph is guilty of an offence.

(5) For the avoidance of doubt, when the Registrar places restrictions on a beneficiary's interests under subparagraph (4) he must notify the beneficiary and the foundation.

(6) Any restriction under subparagraph (4) is removed if the foundation is terminated.

(7) A beneficiary may apply to the Royal Court to set aside any restriction under subparagraph (4).

(8) The Royal Court shall not hear an application under subparagraph (7) unless satisfied that the foundation has been notified of the date and time of the hearing.

(9) The Royal Court may make an order on such terms and conditions as it thinks fit on an application under subparagraph (7).

(10) For the avoidance of doubt, this paragraph is without prejudice to the powers and duties of resident agents under the Beneficial Ownership Law.

**Disclosure of beneficial ownership information by resident agent.**

5. (1) The resident agent shall, on receipt of a certificate described in subparagraph (2), disclose to (as the case may be) -

- (a) Her Majesty's Procureur,
- (b) the Commission,
- (c) a police officer, or
- (d) a customs officer,

any information required by that person which the resident agent is required to hold by virtue of his obligations under this Schedule and any other information he holds in respect of the beneficial ownership of a foundation.

(2) The certificate referred to in subparagraph (1) is a certificate signed by -

- (a) Her Majesty's Procureur,

- (b) the Director General of the Guernsey Financial Services Commission,
- (c) the Chief Officer of the salaried police force of the Island of Guernsey, or
- (d) the Chief Officer of Customs and Excise,

(as the case may be) or any person appointed by any of them for that purpose.

(3) The certificate shall state -

- (a) what information is required,
- (b) that the information is required for the purpose of -
  - (i) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere,
  - (ii) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,
  - (iii) the initiation or bringing to an end of any such investigation or proceedings, or

(iv) facilitating a determination of whether any such investigation or proceedings should be initiated or brought to an end, and

(c) that the person signing it has satisfied himself that the making of the disclosure is proportionate to what is sought to be achieved by it.

(4) Nothing in this paragraph prejudices any power to disclose information which exists apart from this paragraph.

(5) The information that may be disclosed by virtue of this paragraph includes information obtained before this Law came into force.

(6) A resident agent who without reasonable excuse -

(a) fails to comply with this paragraph, or

(b) makes a statement, in response to a certificate under this paragraph, which is misleading in a material particular, false or deceptive,

is guilty of an offence.

**Tipping off.**

6. (1) A resident agent is guilty of an offence if he knows or suspects that a certificate has been issued, or is proposed to be issued, under paragraph 5 in respect of a foundation for which he is a resident agent, and he discloses to any person information or any other matter which may prejudice -

- (a) any criminal or regulatory investigation which is being or may be carried out, whether in Guernsey or elsewhere, or
- (b) any criminal or regulatory proceedings which have been or may be initiated, whether in Guernsey or elsewhere,

which are connected with the issue of that certificate.

(2) Nothing in subparagraph (1) makes it an offence for an Advocate or other legal adviser to disclose any information or other matter -

- (a) to, or to a representative of, a client of his in connection with the giving by him of legal advice to the client, or
- (b) to any person –
  - (i) in contemplation of or in connection with legal proceedings, and
  - (ii) for the purpose of those proceedings.

(3) Subparagraph (2) does not apply in relation to any information or other matter which is disclosed with a view to furthering any criminal purpose.

(4) In proceedings against a person for an offence under this paragraph, it is a defence to prove that he did not know or suspect that the disclosure was likely to be prejudicial in the way mentioned in subparagraph (1).

**Privileged information.**

7. (1) Nothing in this Schedule compels the production or divulgence by an Advocate or other legal adviser of an item subject to legal professional privilege (within the meaning of section 24 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003), but an Advocate or other legal adviser may be required to give the name and address of any client.

(2) A requirement imposed by or under this Schedule has effect notwithstanding any obligation as to confidentiality or other restriction on the disclosure of information imposed by statute, contract or otherwise, and accordingly the obligation or restriction is not contravened by the making of a disclosure pursuant to such a requirement."

SCHEDULE 4  
AMENDMENTS TO OTHER ENACTMENTS

Section 22.

**Amendments to the Financial Services Commission Law.**

1. (1) The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 is amended as follows.

(2) In section 21(2), delete "or" at the end of paragraph (f), for "." " at the end of paragraph (g) substitute ";", and after paragraph (g) insert –

"(h) to enable the Registrar of Beneficial Ownership of Legal Persons, the Registrar of Companies, the Registrar of Limited Liability Partnerships, the Registrar of Foundations, the Greffier, or the Registrar for the purposes of the Companies (Alderney) Law, 1994 -

(i) to carry out their functions relating to the beneficial ownership of legal persons, or

(ii) to investigate matters relating to such functions."

(3) In section 24, in the definition of "prescribed Laws" at the appropriate place insert –

"(hb) the Beneficial Ownership of Legal Persons

(Guernsey) Law, 2017,

(hc) the relevant legal person Laws within the meaning of the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017".

**Amendments to the regulatory Laws, etc.**

2. (1) In the Protection of Investors (Bailiwick of Guernsey) Law, 1987, in paragraph 1 of Schedule 4, after (1)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(2) In the Banking Supervision (Bailiwick of Guernsey Law, 1994, in paragraph 3 of Schedule 3, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(3) In the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000, in paragraph 3 of Schedule 1, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,"

and after (2)(h) insert –

"(ha) his record of compliance with any provision



contained in or made under the Limited Liability Partnerships (Guernsey) Law, 2013 in acting as a corporate services provider or a resident agent within the meaning of that Law,".

(4) In the Insurance Business (Bailiwick of Guernsey) Law, 2002, in paragraph 3 of Schedule 7, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(5) In the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002, in paragraph 3 of Schedule 4, after (2)(f)(via) insert –

"(vib) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(6) In the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008, in the definition of "prescribed Laws" at section 42(1), after paragraph (ga) insert –

"(lb) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

(7) In the Prescribed Businesses (Bailiwick of Guernsey) Law, 2008, in the definition of "relevant enactments" at section 32(1), after paragraph (la) insert –

"(lb) the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

**Amendments to the Proceeds of Crime Law.**

3. (1) The Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999<sup>z</sup> is amended as follows.

(2) After section 49D, insert –

**"Compliance with beneficial ownership obligations.**

49DA. (1) The Committee may by regulation prescribe supervisory authorities in respect of the duties and requirements to be complied with under the Beneficial Ownership Law and other enactments relating to the beneficial ownership of legal persons by regulated persons within the meaning of the Beneficial Ownership Law.

(2) The Committee may by regulation provide for the provisions of section 49B to apply *mutatis mutandis* to, and in respect of, premises in the Bailiwick owned, leased or otherwise controlled or occupied by a regulated person within the meaning of the Beneficial Ownership Law, and the officers, servants and agents of such a person.

(3) For the avoidance of doubt, the power to make

---

<sup>z</sup> Order in Council No. VIII of 1999; amended by No. I of 2000; No. II of 2005; No. XV of 2007; No. XIII of 2010; No. XI of 2011; Recueil d'Ordonnances Tome XXVIII, p. 266; Ordinance No. XII of 2002; No. XXXIII of 2003; No. XLVII of 2007; No. XXXVII of 2008; Nos. XVI and XXXIV of 2010; No. XVII of 2014; No. IX of 2016; G.S.I. No. 56 of 1999; G.S.I. Nos. 4 and 27 of 2002; G.S.I. No. 33 of 2007; G.S.I. Nos. 48 and 73 of 2008; G.S.I. No. 12 of 2010; G.S.I. No. 14 of 2013; and G.S.I. No. 45 of 2016.

regulations under subsection (1) may be exercised in relation to all regulated persons and regulated relevant legal persons, or in relation to all such persons subject to specified exceptions, or in relation to any specified cases or classes of such persons; and the power to make regulations under subsection (2) may be exercised in relation to all regulated persons, or in relation to all such persons subject to specified exceptions, or in relation to any specified cases or classes of such persons."

(3) In section 52, at the appropriate place insert –

**"the Beneficial Ownership Law"** means the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017,".

**THE SAME-SEX MARRIAGE (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS  
AND CONTRARY PROVISIONS) (GUERNSEY) ORDINANCE, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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 Ordinance is made under sections 5(2) and 12 of the Same-Sex Marriage (Guernsey) Law, 2016.

Section 1 of the Law enacts the general principle ("equivalence") that the law of Guernsey, whether statutory or customary, shall have the same effect in relation to the marriage of same-sex couples as it does in relation to the marriage of opposite-sex couples, and all existing Guernsey legislation will be interpreted in this way unless contrary provision is made. Section 5 enables the States by Ordinance to make contrary provision disapplying the application of the general principle of equivalence in relation to existing legislative provisions. Section 12 of the Law also gives the States powers by Ordinance (1) to make consequential and miscellaneous amendments to any enactment for the purpose of implementing the Law and (2) to make provision facilitating equality of all married persons, whether same-sex or opposite sex, and also of unmarried cohabiting couples of whatever gender.

Section 1 of the Ordinance gives effect to Schedule 1 which makes consequential and miscellaneous amendments to various enactments. The majority of the amendments are consequential and arise from the introduction of the possibility that the parties to a marriage might be of the same-sex (e.g. terminology such as "husband and wife" amended to read "spouses"). These amendments may not always be necessary legally, because application of the general principle of equivalence means that the original wording would be read as also referring to same-sex couples: however, it is considered more helpful to the reader to alter the wording of the legislation so that its meaning is clear.

Other miscellaneous amendments, in addition to clarifying the extension of a legislative provision to same-sex couples, also adjust the position as between husbands and wives (e.g. in the Immigration Rules, it is presently a ground for deportation of a

wife if her husband is deported, but not vice versa - the substitution of "spouse" for "wife" by paragraph 20 of Schedule 1 remedies this anomaly, as well as extending that provision to same-sex married couples, in line with the UK Rules).

A further category of amendments extends various provisions relating to cohabiting couples to same-sex cohabiting couples (e.g. the extension of the provisions in the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988 relating to domestic violence orders).

Section 2 of the Ordinance gives effect to Schedule 2 which makes "contrary provision" disapplying the general principle of equivalence described above. Some legislative provisions historically only apply to husbands and wives and have no application in modern times (e.g. the Married Women's Property Law 1928 is substantially disapplied because it was enacted to counter the customary rule of law that upon marriage a woman had no right to own and deal with property separately from her husband, which has no application to same-sex couples). Similarly, some social security provision (e.g. the principle of the increase of an old age pension for a wife in section 61 of the Social Insurance (Guernsey) Law, 1978) is only available to persons who acquired entitlement historically and is therefore of no application to same-sex married couples. In other instances, separate provision is made (e.g. the Loi sur les Empêchements au Mariage à Cause de Parenté etc makes provision for prohibited degrees in marriage, which is dealt with for same-sex couples in section 11 of the 2016 Law; and the Income Tax (Guernsey) Law, 1975 was amended recently to include its own provision for same-sex married and unmarried couples, therefore the application of the 2016 Law is unnecessary).

# **The Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017**

**THE STATES**, in pursuance of their Resolution of the 10<sup>th</sup> December, 2015<sup>a</sup> and in exercise of the powers conferred on them by sections 5(2) and 12 of the Same-Sex Marriage (Guernsey) Law, 2016<sup>b</sup>, hereby order:-

## **Consequential and miscellaneous amendments.**

1. Schedule 1, which makes consequential and miscellaneous amendments for the purpose of carrying the Law into effect, has effect.

## **Contrary provisions.**

2. Sections 1(2) and 2 of the Law do not apply in respect of the enactments specified in column (1) of Schedule 2 to the extent specified in column (2) of that Schedule.

## **Interpretation.**

3. (1) In this Ordinance -

"**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,

---

<sup>a</sup> Article VII of Billet d'État No. XXIII of 2015.

<sup>b</sup> Order in Council No. II of 2017.

**"the Law"** means the Same-Sex Marriage (Guernsey) Law, 2016, 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 Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

**Extent.**

4. This Ordinance has effect in the islands of Guernsey, Herm and Jethou.

**Citation.**

5. This Ordinance may be cited as the Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017.

**Commencement.**

6. This Ordinance shall come into force on the same day as the Law.

SCHEDULE 1  
CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS

Section 1

PART I  
LAWS

**Loi ayant rapport aux Mariages Célébrés dans l'Ile de Guernesey et dans les Iles d'Auregny et de Serk, 1919.<sup>c</sup>**

1. In Article 22 of the Loi ayant rapport aux Mariages Célébrés dans l'Ile de Guernesey et dans les Iles d'Auregny et de Serk, 1919 -

- (a) for "*L'homme dira à la femme*", in each place where those words appear, substitute "*L'une des parties dira à l'autre*",
- (b) for "*La femme dira à l'homme*", in each place where those words appear, substitute "*L'autre partie répondra*",
- (c) for "ma femme" and "mon mari" substitute (in each case) "ma femme ou mon mari (selon le cas)", and
- (d) for "lawful wedded wife" and "lawful wedded husband" substitute (in each case) "lawful wedded wife or husband (as the case may be)".

---

<sup>c</sup> Ordres en Conseil, Vol. VI, p. 57; amended by Vol. XV, p. 200; Vol. XX, p. 267; Vol. XXX, p. 114; Vol. XXXIII, p. 444 and Vol. XXXV(1), p. 398.



**Loi relative à l'Entretien des Enfants Illégitimes, 1927.<sup>d</sup>**

2. In the second paragraph of Article 1 of the Loi relative à l'Entretien des Enfants Illégitimes, 1927, for "husband" substitute "spouse".

**Married Women's Property Law, 1928.<sup>e</sup>**

3. In Article 12 of the Married Women's Property Law, 1928, for "wife", in each place where it appears, and for "husband", in each place where it appears, substitute "spouse".

**Matrimonial Causes Law (Guernsey), 1939.<sup>f</sup>**

4. In the Matrimonial Causes Law (Guernsey), 1939 -

- (a) in Article 2(5), for "Where a wife has been deserted by her husband or where her husband" substitute "Where a husband or wife has been deserted by his or her spouse or where the spouse", and for "husband", in each of the two other places where it appears, substitute "spouse",
- (b) in Article 9(4), for "husband and wife" substitute "parties",

---

<sup>d</sup> Ordres en Conseil, Vol. VIII, p. 130. There are amendments not relevant to this paragraph.

<sup>e</sup> Ordres en Conseil Vol. VIII, p. 213; amended by Vol. XXVII, p. 50.

<sup>f</sup> Ordres en Conseil Vol. XI, p. 318; amended by Vol. XII, p. 278; Vol. XVII, p. 249; Vol. XXII, p. 102; Vol. XXIII, p. 489; Vol. XXVII, p. 99; Vol. XXXI, pp. 171 and 278; Vol. XXXII, p. 85; Vol. XXXVI, p. 639; Vol. XXXVII, p. 308; Orders in Council Nos. XI and XXXI of 2003; No. XIII of 2011; No. XII of 2015; Ordinance No. XXXIII of 2003; No. VII of 2010; Nos. IX and XXX of 2016.

- (c) in Article 16A(5), for "a husband and wife" substitute "the parties to a marriage",
- (d) in Article 23(1), immediately after "exists," insert "subject to paragraph (7) of that Article",
- (e) in Article 23(2), immediately after "Article 16A of this Law," insert "subject to paragraph (7) of that Article as aforesaid",
- (f) in Article 28(1), for "husband or wife" substitute "party to the marriage", and
- (g) in Article 47(3), for the words "the husband to the wife, for or towards her support," substitute "one party to the other, for or towards the support of the other",

**Family Allowances (Guernsey) Law, 1950.<sup>8</sup>**

**5. In the Family Allowances (Guernsey) Law, 1950 -**

- (a) in section 3(1)(a), for "man and his wife" substitute "married couple", and for "his or hers" substitute "or of either of them",

---

<sup>8</sup> Ordres en Conseil Vol. XIV, p. 332; amended by Vol. XV, p. 212; Vol. XVI, p. 280; Vol. XVIII, p. 367; Vol. XIX, p. 286; Vol. XX, pp. 11, 59 and 63; Vol. XXI, p. 34; Vol. XXII, p. 318; Vol. XXIII, pp. 3 and 238; Vol. XXVI, pp. 150 and 292; Vol. XXVIII, p. 406; Vol. XXXI, p. 278; Vol. XXXIX, p. 107; Orders in Council No. III of 2001 and No. IV of 2014; Recueil d'Ordonnances Tome XXI, p. 460; Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. VII of 2010; No. XLII of 2012; G.S.I. No. 7 of 1971.

- (b) for section 3(1)(b), (c) and (d) substitute the following two subsections -

"(b) a person who is not married or who is not living with his spouse (and not cohabiting with another person as if they were married as mentioned in paragraph (c)), any child or children being issue of his, and any child or children being maintained by him or in respect of whom there is a residence order in his favour,

(c) a couple cohabiting as if they were married, any child or children being issue of theirs, or of either of them, and any child or children being maintained by them, or by either of them, or in respect of whom there is a residence order in favour of one of them,"

- (c) in section 3(2), for the words from "the man and his wife" to "(a), (b), (c) or (d) of subsection (1) of this section)" substitute "a married couple or one of them, of the couple cohabiting as if they were married or one of them, or of the person (according as the family falls within paragraph (a), (b) or (c) of subsection (1))",

- (d) in section 3(3), for the words from "a man and his wife" to "subsection (1) of this section," substitute "a couple or a person",
- (e) in section 4(1)(b), for "man" substitute "person",
- (f) for the words in section 4(1)(c), substitute "in the case of the family of a same-sex married couple living together, or of a same-sex couple cohabiting as if they were married, to such spouse, or such cohabiting partner, as the couple shall from time to time nominate",
- (g) for section 4(2) substitute the following -

"(2) Sums to be paid on account of an allowance for the family of a married couple living together shall be receivable by either spouse, and sums to be paid on account of an allowance for the family of a couple cohabiting as if they were married shall be receivable by either cohabiting partner.",

- (h) in section 6(3), for "a man and his wife" substitute "a married couple",
- (i) in section 8(2), for "a man and his wife" substitute "a married couple", for "the wife" substitute "one spouse", and for "husband" substitute "other spouse",
- (j) for section 8(2A) substitute the following -

"(2A) In the case of a sum paid as on account of an allowance for the family of a couple cohabiting as if they were married which one cohabiting partner could under subsection (1) be required to repay, the other may be required to repay it.",

(k) in section 19(1), for "A man and his wife" substitute "A married couple",

(l) in section 22(1) -

(i) for "a man and his wife" substitute "a married couple",

(ii) for "man and woman cohabiting as husband and wife" substitute "couple cohabiting as if they were married",

(iii) in paragraph (a), for "the man or his wife, or the man or woman cohabiting as aforesaid" substitute "one of the spouses, or one of the cohabiting partners", and

(iv) in paragraph (b), for "the man or his wife or the man or woman cohabiting as aforesaid" substitute "one of the spouses or one of the cohabiting partners",

(m) in section 22(2) -

- (i) for "a man and his wife" substitute "a married couple",
  - (ii) for "man", in the second place where it appears, substitute "person", and
  - (iii) the words from "as respects the man" to the end are repealed,
- (n) in section 22(2A), for "man and woman cohabiting as husband and wife" substitute "couple cohabiting as if they were married", and
- (o) in the Schedule, for paragraph 1(2) substitute the following -

"(2) For the purposes of this paragraph, a married couple living together or a couple cohabiting as if they were married shall be treated as one person and amounts contributed by them respectively shall be aggregated accordingly, and references to a person shall be construed as references to such persons as are mentioned in paragraphs (a), (b) or (c) respectively of section 3(1) of this Law, that is to say, a married couple living together, such a person as is mentioned in the said paragraph (b) and a couple cohabiting as if they were married."

**Adoption (Guernsey) Law, 1960.<sup>h</sup>**

6. In the Adoption (Guernsey) Law, 1960 -
- (a) in section 12(2), for "father and mother", in the first place where it appears, substitute "parents", and for "a lawful father and mother" substitute "the lawful parents", and
  - (b) in section 20A(2), after "Marriage (Enabling) (Guernsey) Law, 1961" insert ", or (as the case may be) section 11 of the Same-Sex Marriage (Guernsey) Law, 2016".

**Court of Appeal (Guernsey) Law, 1961.<sup>i</sup>**

7. In section 43 of the Court of Appeal (Guernsey) Law, 1961, for "wife" substitute "spouse".

**Husband and Wife (Joint Accounts) (Guernsey) Law, 1966.<sup>j</sup>**

8. (1) For the title of the Husband and Wife (Joint Accounts) (Guernsey) Law, 1966 substitute "The Married Couples (Joint Accounts) (Guernsey) Law, 1966".

- (2) In the Married Couples (Joint Accounts) (Guernsey) Law, 1966

---

<sup>h</sup> Ordres en Conseil, Vol. XVIII, p. 192; amended by Vol. XXI, p. 34; Vol. XXII, pp. 380 and 521; Vol. XXIII, p. 26; Vol. XXXI, p. 278; Vol. XXXVII, p. 130; Order in Council No. XII of 2000; No. III of 2001; Ordinance No. XXXIII of 2003; No. VII of 2010; No. IX of 2016.

<sup>i</sup> Ordres en Conseil Vol. XVIII, p. 315; amended by Order in Council No. III of 2012; Ordinance No. XXXIII of 2003.

(formerly entitled the Husband and Wife (Joint Accounts) (Guernsey) Law, 1966) -

- (a) in section 1(1), for "husband and wife" substitute "married couple", and
- (b) in section 3, for "Husband and Wife (Joint Accounts) (Guernsey) Law, 1966", substitute "Married Couples (Joint Accounts) (Guernsey) Law, 1966".

(3) For any reference in any enactment to the Husband and Wife (Joint Accounts) (Guernsey) Law, 1966 substitute a reference to the Married Couples (Joint Accounts) (Guernsey) Law, 1966.

**Supplementary Benefit (Guernsey) Law, 1971.<sup>k</sup>**

9. In the Supplementary Benefit (Guernsey) Law, 1971 -

- (a) in the Arrangement of Sections, in the entry relating to section 17, for "wife or husband" substitute "spouse",
- (b) in section 4(3), for "husband and wife" substitute "married couple",
- (c) for section 17 substitute -

---

<sup>j</sup> Ordres en Conseil, Vol. XX, p. 164.

<sup>k</sup> Ordres en Conseil Vol. XXIII, p. 26; amended by Vol. XXVI, p. 292; Vol. XXXI, p. 278; Vol. XXXIX, p. 107; Order in Council No. XIII of 2014; No. VII of 2015; Recueil d'Ordonnances Vol. XXVI, p. 177; Ordinance No. XXXIII of 2003; No. VII of 2010; No. IX of 2016.



**"Liability to maintain spouse and children.**

17. (1) For the purposes of this Law a person shall be liable to maintain his spouse and his children.

(2) The reference in subsection (1) to a person's children shall include, where that person is a man, any child of whom he has been adjudged to be the putative father and, where that person is a woman, any illegitimate children of that woman."

**Social Insurance (Guernsey) Law, 1978.<sup>1</sup>**

10. In the Social Insurance (Guernsey) Law, 1978 -

- (a) in sections 30, 31(3) and 32(3)(a), for "as husband and wife" substitute "as if they were married",
- (b) in section 41(3), for "widow" substitute "surviving spouse",
- (c) in section 69(1)(a)(i), for "wife or her husband" substitute "spouse", and
- (d) in section 111(3) -

---

<sup>1</sup> Ordres en Conseil Vol. XXVI, p. 292; amended by Ordres en Conseil Vol. XXVII, pp. 238, 307 and 392; Vol. XXIX, pp. 24, 148 and 422; Vol. XXXI, p. 278; Vol. XXXII, p. 59; Vol. XXXIV, p. 510; Vol. XXXV(1), p. 161; Vol. XXXVI, pp. 123 and 343; Vol. XXXVIII, p. 59; Vol. XXXIX, p. 107; Order in Council No. X of 2000, No. IX of 2001, No. XXIII of 2002, No. XXIV of 2003, No. XI of 2004, No. XVIII of 2007; Nos. VII and XLII of 2009; No. XVII of 2011; No. XXXVIII of 2012; No. XXX of 2013; No. IX of 2016.

- (i) for "man or woman" in each place where those words appear, substitute "person",
- (ii) in paragraph (a), for the words "man's wife or former wife or the woman's husband or former husband" substitute "person's spouse or former spouse", and
- (iii) in paragraph (b), for the words "man or of his wife or former wife or of the woman or her husband or former husband" substitute "person or of that person's spouse or former spouse".

**Conditions of Employment (Guernsey) Law, 1985.<sup>m</sup>**

11. In section 8 of the Conditions of Employment (Guernsey) Law, 1985, for "husband and wife" substitute "parties to the marriage".

**Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988.<sup>n</sup>**

12. In section 17 of the Domestic Proceedings and Magistrate's Court (Guernsey) Law, 1988, for "a man and a woman" substitute "two persons" and for "as husband and wife" substitute "as if they were married".

---

<sup>m</sup> Ordres en Conseil Vol. XXIX, p. 42; amended by Vol. XXXIV, p. 52; Order in Council No. XIII of 2010; Recueil d'Ordonnances Tome XXVII, p. 139; Ordinance No. XXXIII of 2003; No. XXXI of 2005; No. XXXIX of 2010; No. IX of 2016.

<sup>n</sup> Ordres en Conseil Vol. XXXI, p. 171; section 17 was substituted by Vol. XXXIV, p. 129).

PART II  
ORDINANCES

**Supplementary Benefit (Implementation) Ordinance, 1971.<sup>o</sup>**

13. In the Supplementary Benefit (Implementation) Ordinance, 1971 -

(a) for section 26(2), substitute the following -

"(2) For the purposes of this Ordinance, a person shall be treated as married only where that person is a member of the same household as his spouse, and the expressions "**married couple**" and "**spouse**" shall be construed accordingly.",

(b) in paragraph 2 of the First Schedule -

(i) in each of sub-paragraphs (1) and (3), for "husband and wife" substitute "married couple" and for "man and wife" substitute "if they were married", and

(ii) in sub-paragraph (4), for "the husband or wife" substitute "one of the spouses",

---

<sup>o</sup> Recueil d'Ordonnances Tome XVII, p. 139; amended by Order in Council No. IV of 2014; Recueil d'Ordonnances Tome XVIII, p. 119; Tome XXIV, pp. 471 and 495; Tome XXV, p. 49; Tome XXVI, p. 177; Ordinance No. XXXV of 2004; Nos. VIII and XXV of 2005; No. XLVII of 2006; No. XLV of 2007; Nos. XXVI and XLI of 2012; No. XXXIX of 2013; and Nos. XXV and XLVIII of 2014; No. XLVIII of 2015; and No. IX of 2016.

- (c) for paragraph 17(1) (c) of the First Schedule, substitute the following -

"(c) any maintenance payable to a person in respect of himself or a child by that person's spouse or former spouse,"

and

- (d) in Table 2 and in Table 3 in the Appendix to the First Schedule, for "Husband and wife", in each place where those words appear, substitute "Married couple".

### PART III

#### SUBORDINATE LEGISLATION

#### **Family Allowances (Qualifications) (Guernsey) Regulations, 1977.<sup>P</sup>**

14. In the Family Allowances (Qualifications) (Guernsey) Regulations, 1977 -

- (a) in the Arrangement of Regulations, for the entries relating to regulations 2, 3 and 4 substitute -

"2. Requirements for married couple living together or for couple co-habiting as if they were married.

---

<sup>P</sup> G.S.I. No. 4 of 1977; amended by Ordinance No. XXXIII of 2003 and No. IX of 2016; G.S.I. No. 1 of 1983; No. 6 of 1992; and No. 87 of 2008.

3. Requirements for person not being married or not living together with his spouse.", and

- (b) for regulations 2, 3 and 4 substitute the following two regulations -

**"Requirements for married couple living together or for couple co-habiting as if they were married.**

2. It shall be a condition of the right to any allowance at any date for the family of –

- (a) a married couple living together, where neither of them was born in Guernsey, or
- (b) a couple co-habiting as if they were married, where neither of them was born in Guernsey,

that for at least fifty-two weeks in the aggregate out of the two years immediately preceding that date one of the married couple, or one of the couple co-habiting as aforesaid, has either been present in Guernsey or, when not so present, been a member of the Forces, a mariner, an airman or a medical evacuation case.

**Requirements for a person not being married or not living together with his spouse.**

3. It shall be a condition of the right to any allowance at any date for the family of a person not being married or not living together with his spouse (and not being a person co-habiting with another person as if they were married), if he was not born in Guernsey, that for at least fifty-two

weeks in the aggregate out of the two years immediately preceding that date he has either been present in Guernsey or, when not so present, been a member of the Forces, a mariner, an airman or a medical evacuation case."

**Social Insurance (Residence and Persons Abroad) (Guernsey) Regulations, 1978.<sup>q</sup>**

15. In Regulation 11(i) of the Social Insurance (Residence and Persons Abroad) (Guernsey) Regulations, 1978, for "woman" substitute "person" and for "her husband" substitute "his spouse".

**Carer's Allowance (Guernsey) Regulations, 1986.<sup>r</sup>**

16. In the Carer's Allowance (Guernsey) Regulations, 1986 -

- (a) in Regulation 8(2), for "husband and wife" substitute "if they were married", and
- (b) in Regulation 8(3), for "husband and wife" substitute "married couple".

**Social Insurance (Contributions) Regulations, 2000.<sup>s</sup>**

17. In the Social Insurance (Contributions) Regulations, 2000 -

---

<sup>q</sup> G.S.I. No. 25 of 1978; amended by Recueil d'Ordonnances Tome XXVI, p. 177; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 35 of 1986; Nos. 5 and 27 of 1995; No. 52 of 1999; No. 42 of 2003; No. 50 of 2006; No. 91 of 2009; No. 61 of 2016.

<sup>r</sup> G.S.I. No. 2 of 1986; amended by Order in Council No. IV of 2014; Ordinance No. XXXIII of 2003; G.S.I. No. 32 of 1995; No. 2 of 1997; No. 17 of 2014.

<sup>s</sup> G.S.I. No. 49 of 1999; amended by Order in Council No. IV of 2014; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. Nos. 3 and 43 of 2001; No. 49 of 2002; No. 40 of 2003; No. 37 of 2005; No. 49 of 2006; No. 23 of 2007; No. 65 of 2008; No. 90 of 2009; Nos. 43 and 73 of 2012; No. 10 of 2014; No. 57 of 2016.

- (a) in the Arrangement of Regulations, in the entry relating to Regulation 6, for "husband and wife" substitute "married couple", and
- (b) in Regulation 6, for "husband and wife" (in the heading and in the text) substitute "married couple".

**Social Insurance (Benefits) Regulations, 2003.<sup>t</sup>**

18. In Regulation 39(1)(a) of the Social Insurance (Benefits) Regulations, 2003, for "husband" substitute "spouse".

**Severe Disability Benefit (Guernsey) Regulations, 2003.<sup>u</sup>**

19. In the Severe Disability Benefit (Guernsey) Regulations, 2003 -

- (a) in Regulation 7(2), for "husband and wife" in each place where those words appear substitute "if they were married",
- (b) in Regulation 7(3), for "husband and wife" substitute "married couple", and
- (c) in Regulation 16(a), at the end, insert "or such one of them as the parents may from time to time nominate,".

---

<sup>t</sup> G.S.I. No. 37 of 2003; amended by Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 45 of 2004; Nos. 43 and 47 of 2005; Nos. 35 and 48 of 2006; No. 44 of 2007; No. 66 of 2008; Nos. 37 and 93 of 2009; No. 117 of 2010; Nos. 32 and 54 of 2011; Nos. 16 and 72 of 2012; No. 69 of 2013; No. 78 of 2014; Nos. 48, 74 and 75 of 2016.

<sup>u</sup> G.S.I. No. 43 of 2003 (then entitled the Attendance Allowance (Guernsey) Regulations, 2003); amended by Order in Council No. IV of 2014; Ordinance No. XXXIII of 2003.

**Immigration (Bailiwick of Guernsey) Rules, 2008.**<sup>v</sup>

20. In the Immigration (Bailiwick of Guernsey) Rules, 2008 -

- (a) in paragraph 6, in the definition of "**unmarried partner**", the words "or a marriage" are revoked,
- (b) in paragraphs 363(ii), 365 and 389, for "wife", in each place where it appears, substitute "spouse", and
- (c) in paragraph 365, for "she", in each place where it appears, substitute "he".

---

<sup>v</sup> G.S.I. No. 26 of 2008; amended by G.S.I. No. 18 of 2011; No. 33 of 2013; No. 27 of 2015.



## SCHEDULE 2

### CONTRARY PROVISION TO SECTION 1(2) AND 2 OF THE LAW

Section 2

(1) ENACTMENT	(2) PROVISIONS DISAPPLIED
Loi relative à la Protection des Femmes et des Filles Mineures registered on 1st August 1914 <sup>w</sup>	Article 13
Married Women's Property Law 1928	The whole Law except for the second paragraph of Article 12
Loi sur les Empêchements au Mariage à Cause de Parenté, et sur l'Établissement de la Juridiction Civile dans les Causes Matrimoniales registered on 3rd March 1936 <sup>x</sup>	Whole Law
Matrimonial Causes Law (Guernsey) 1939	Articles 7(2)(c), 19(2), 26(2), 48, 50, 59, 60A
Family Allowances (Guernsey) Law, 1950	Section 4(1)(a) and (d)

---

<sup>w</sup> Ordres en Conseil Vol. V, p. 74; there are amendments not relevant to this provision.

<sup>x</sup> Ordres en Conseil Vol. X, p. 308.

(1) ENACTMENT	(2) PROVISIONS DISAPPLIED
Matrimonial Matters (Evidence) (Guernsey) Law, 1953 <sup>y</sup>	Whole Law
Marriage (Enabling) (Guernsey) Law, 1961 <sup>z</sup>	Whole Law
Legitimacy (Guernsey) Law, 1966 <sup>aa</sup>	Whole Law
Income Tax (Guernsey) Law, 1975 <sup>bb</sup>	Whole Law
Social Insurance (Guernsey) Law, 1975	Sections 31(1)(b)(ii), 33(2)(c), 61, 97

---

<sup>y</sup> Ordres en Conseil Vol. XV, p. 422.

<sup>z</sup> Ordres en Conseil Vol. XVIII, p. 312.

<sup>aa</sup> Ordres en Conseil Vol. XX, p. 267; amended by Vol. XXXIII, p. 444; Ordinance No. XX of 2006.

<sup>bb</sup> Ordres en Conseil Vol. XXV, p. 124; provision for equivalent treatment for same-sex marriages is made in section 47AA, inserted by Ordinance No. LVI of 2015.

(1) ENACTMENT	(2) PROVISIONS DISAPPLIED
Matrimonial Causes (Assisted Persons) (Guernsey) Ordinance, 1952 <sup>cc</sup>	In the Schedule: Regulation 2(2) and (3), Regulation 3(4) and, in Regulation 9, the words "or, where the wife is the assisted person, if and whenever she or her husband"
Social Insurance (Contributions) Regulations, 2000 <sup>dd</sup>	Regulations 58 and 63
Social Insurance (Benefits) (Transitional) Regulations, 2004 <sup>ee</sup>	Regulations 5 to 9

---

<sup>cc</sup> Recueil d'Ordonnances Tome X, p. 288; amended by Tome XVII, p. 74; Tome XXIV, p. 85; Ordinance No. III of 2002.

<sup>dd</sup> G.S.I. No. 49 of 1999. Regulation 63 was substituted by G.S.I. No. 40 of 2003; there are other amendments not relevant to these provisions.

<sup>ee</sup> G.S.I. No. 7 of 2004.

**THE PROTECTION OF INVESTORS (LIMITATION OF LIABILITY)  
(BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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 Ordinance amends the Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) Ordinance, 2014, by substituting references to the Channel Islands Securities Exchange Authority Limited (which is changing its company name) with references to the new name which is The International Stock Exchange Authority Limited (Guernsey company registration number 57527).



## **The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017**

THE STATES, on the representations of the States Policy and Resources Committee, and in exercise of the powers conferred on the States by sections 37 and 43 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987, as amended<sup>a</sup> and all other powers enabling them in that behalf, hereby order:-

### **Amendment of 2014 Ordinance.**

1. The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) Ordinance, 2014<sup>b</sup> is amended as follows.

2. In section 1(1) for the words "the Channel Islands Securities Exchange Authority Limited" substitute the words "The International Stock Exchange Authority Limited (Guernsey company registration number 57527)".

3. After section 1(2) insert the following subsection -

"(3) For the avoidance of doubt, the provisions of this Ordinance apply in respect of TISEAL (Guernsey company registration

---

<sup>a</sup> Ordres en Conseil Vol. XXX, p. 281; as amended by Vol. XXX, p. 243; Vol. XXXI, p. 278; Vol. XXXII, p. 324; Vol. XXXV(1), p. 271; Vol. XXXVI, p. 264; Vol. XXXVII, p. 24; Vol. XLII(1), p. 644; No. XV of 2003; No. XXXII of 2003; No. XVIII of 2008; No. XIII of 2010; No. XX of 2010; Recueil d'Ordonnances Tome XXIV, p. 324; Tome XXVI, p. 333; Tome XXVIII, p. 51; Tome XXVIII, p. 87; Tome XXIX, p. 406; Tome XXXIII, p. 136; Tome XXXIII, p. 472; G.S.I. No. 83 of 2010.

<sup>b</sup> Ordinance No. X of 2014.

number 57527), whatever the registered name of that company may be from time to time."

4. In section 2(1) in the definition of "CISEAL" for the words "Channel Islands Securities Exchange Authority Limited" substitute the words "The International Stock Exchange Authority Limited (Guernsey company registration number 57527)".

5. For the word "CISEAL", wherever appearing, substitute the word "TISEAL".

#### **Interpretation.**

6. (1) The Interpretation (Guernsey) Law, 1948<sup>c</sup> applies to the interpretation of this Ordinance throughout the Bailiwick.

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

#### **Citation.**

7. This Ordinance may be cited as the Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017.

#### **Commencement.**

8. This Ordinance shall come into force on the 26<sup>th</sup> April, 2017.

---

<sup>c</sup> Ordres en Conseil Vol. XIII, p. 355.

**THE ACCESS TO NEIGHBOURING LAND (GUERNSEY) LAW, 2016 (COMMENCEMENT)  
ORDINANCE, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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 Ordinance will bring the Access to Neighbouring Land (Guernsey) Law, 2016 into force on the 1<sup>st</sup> May, 2017.



# **The Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017**

**THE STATES**, in exercise of the powers conferred on them by section 20 of the Access to Neighbouring Land (Guernsey) Law, 2016<sup>a</sup>, hereby order:-

## **Commencement of the Access to Neighbouring Land Law.**

1. The Access to Neighbouring Land (Guernsey) Law, 2016 shall come into force on 1<sup>st</sup> May, 2017.

## **Citation.**

2. This Ordinance may be cited as the Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017.

---

<sup>a</sup> Order in Council No. I of 2017.

**THE SAME-SEX MARRIAGE (GUERNSEY) LAW, 2016  
(COMMENCEMENT) ORDINANCE, 2017**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

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 Ordinance will bring the Same-Sex Marriage (Guernsey) Law, 2016, into force on 2<sup>nd</sup> May 2017.

# **The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement)**

## **Ordinance, 2017**

**THE STATES OF GUERNSEY**, in exercise of the powers conferred on them by section 15 of the Same-Sex Marriage (Guernsey) Law, 2016<sup>a</sup>, hereby order:-

### **Commencement of Law.**

1. The Same-Sex Marriage (Guernsey) Law, 2016 shall come into force on 2<sup>nd</sup> May, 2017.

### **Citation.**

2. This Ordinance may be cited as the Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017.

---

<sup>a</sup> Order in Council No. II of 2017.

## PROPOSTIONS

### COMMITTEE *for* HOME AFFAIRS

#### DATA PROTECTION: EU GENERAL DATA PROTECTION REGULATION

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Data Protection: EU General Data Protection Regulation' dated 13 March 2017, they are of the opinion:-

1. To direct the preparation of legislation for the purposes of implementing provisions equivalent to the GDPR and the Law Enforcement Directive in the Bailiwick;
2. To direct the Committee to report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017.

The above Propositions have 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.

**COMMITTEE *for* HOME AFFAIRS**

**DATA PROTECTION: EU GENERAL DATA PROTECTION REGULATION**

The Presiding Officer  
States of Guernsey  
Royal Court House  
St Peter Port  
Guernsey

13<sup>th</sup> March, 2017

Dear Sir

**1. Executive Summary**

1.1. The purpose of this Policy Letter is to bring forward proposals to the Assembly for the preparation of new Bailiwick of Guernsey Data Protection legislation which is aligned to the EU General Data Protection Regulation ("GDPR") and the Directive relating to the Processing of Personal Data for the purposes of the Prevention of Crime ("Law Enforcement Directive"). The legislation is intended to enable the Bailiwick to demonstrate, in due course, that it is a jurisdiction which provides an adequate level of protection for personal data in accordance with the standards set out in the GDPR and for the purposes of the Law Enforcement Directive.

1.2. Key terms used within this Policy Letter include the following:-

- "Data Controller" means a person who (either alone or jointly or in common with other persons) determines the purposes for which and the manner in which any personal data are, or are to be, processed;
- "Data Processor" means any person (other than an employee of the data controller) who processes the data on behalf of the data controller;
- "Data subject" means an individual who is the subject of the personal data;
- "Personal data" means any information relating to an identified or identifiable natural person;
- "Natural person" means a living individual;
- "Processing" means obtaining, recording or holding information or data or carrying out any operation or set of operations on the information or data;
- "Data breach" means a breach of security leading to the accidental or

unlawful destruction, loss, alteration, unauthorised disclosure of personal data;

- “Special category data” means personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, trade union membership, criminal convictions and offences, genetic or biometric data for the purpose of uniquely identifying an individual, data concerning health or sexual orientation;
- “Data protection adequacy” means that there is a satisfactory level of protection of personal data equivalent to that within EU Member States.

## **2. Background**

- 2.1. In September 2016 the Committee *for* Home Affairs provided the Assembly with an update on the European Union (“EU”) General Data Protection Regulation (“GDPR”) and proposed the reappointment of Mrs. Emma Martins as Data Protection Commissioner for the Bailiwick of Guernsey under the Data Protection (Bailiwick of Guernsey) Law, 2001. Agreement was granted to extend the appointment of the Commissioner until December 2018 to ensure that the expertise of the Office is maintained, and to secure continued pan-Island working.
- 2.2. The Committee *for* Home Affairs also made the commitment to return to the States of Deliberation in the first quarter of 2017 (and has endeavoured to return as soon as was possible) with proposals for new data protection legislation, which would both enhance the Bailiwick of Guernsey’s current data protection regime, ensuring that Bailiwick citizens are afforded the same privacy rights as EU citizens, and also ensure that adequacy is granted by the European Commission to allow the continued free flow of personal data into and out of the Bailiwick from EU Member states.
- 2.3. In view of the tight time-table for drafting the necessary Bailiwick-wide legislation (which is intended to come into force in May 2018, or as soon as possible thereafter), the Committee considers it necessary to submit the general proposals in this Policy Letter in order to obtain the States’ approval for the necessary regulatory legislation to be drafted to implement provisions equivalent to the GDPR and the Law Enforcement Directive in the Bailiwick.

## **3. New Data Protection Legislation**

- 3.1. New EU legislation was published in May 2016 which will replace the existing 1995 Data Protection Directive (“the 1995 Directive”) from May 2018. The legislation

consists of two legal instruments, the General Data Protection Regulation<sup>1</sup> ("GDPR") and a Directive relating to the processing of personal data for the purposes of the prevention of crime<sup>2</sup> ("the Law Enforcement Directive"). Guernsey currently has data protection adequacy recognised by the EU due to the Data Protection (Bailiwick of Guernsey) Law, 2001 which gives effect to the 1995 Directive, and Guernsey will need to obtain equivalence status under the new GDPR if it wishes to continue freely to access EU markets.

- 3.2. The GDPR has the principle of extraterritoriality. In practical terms, this means that the GDPR covers personal data related to any EU citizen, regardless or not of whether it is processed within the EU. As such these EU changes will significantly impact other jurisdictions, including the Channel Islands. The GDPR will generally allow the transfer of EU citizens' data only to jurisdictions where the EU believes adequate standards of data protection are in place, meaning that jurisdictions that process data on EU citizens must achieve or maintain "adequacy status" in order to be assured of being able to continue to process such data.
- 3.3. The GDPR provides the Bailiwick of Guernsey with an opportunity to not only ensure that adequacy standards are met to continue to process the data of EU citizens, but to also afford all Islanders with the equivalent level of privacy rights as EU citizens through the enactment of new data protection legislation.
- 3.4. The Universal Declaration of Human Rights<sup>3</sup> (UDHR) provides a common standard of achievements for all peoples and all nations and encompasses within its principles the right to privacy. This fundamental right to privacy is regarded by many as being particularly important in the digital age. In supporting the digital sector, it is important to ensure that there are appropriate standards which enable the sector to develop successfully whilst providing adequate protection for the privacy of individuals.
- 3.5. To this end, and following extensive consultation with the Island's Business Sectors and colleagues in the States of Jersey, it is recommended that there should be a new Bailiwick of Guernsey Data Protection Law to replicate the GDPR as closely as possible whilst ensuring that any economic advantages are incorporated if

---

<sup>1</sup> [Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

<sup>2</sup> [Directive \(EU\) 2016/680](#) of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA.

<sup>3</sup> Universal Declaration of Human Rights proclaimed by the United Nations General Assembly on 10 December 1948.

appropriate, and so as not to risk the Bailiwick's adequacy status.

3.6. This report provides a summary of key changes that would be required in the new law under the following headings:

1. The Data Protection Principles
2. Data Subject's Rights
3. Controller and Processor Responsibility
4. Breach Notification
5. Transfer of Data Overseas
6. Data Protection Officers
7. Administrative Fines
8. Supervisory Authority

## **1. THE DATA PROTECTION PRINCIPLES**

1. The six data protection principles set out in Chapter II Article 5 of the GDPR are as follows:

Personal data shall be:

- a) Processed lawfully, fairly and in a transparent manner in relation to the data subject (**lawfulness, fairness and transparency**);
- b) Collected for specified, explicit and legitimate purposes and not further processed in a manner that is incompatible with those purposes; further processing for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes shall not be considered to be incompatible with the initial purposes (**purpose limitation**);
- c) Adequate, relevant and limited to what is necessary in relation to the purposes for which they are processed (**data minimisation**);
- d) Accurate and, where necessary, kept up to date; every reasonable step must be taken to ensure that personal data that are inaccurate, having regard to the purposes for which they are processed, are erased or rectified without delay (**accuracy**);
- e) Kept in a form which permits identification of data subjects for no longer than is necessary for the purposes for which the personal data are processed; personal data may be stored for longer periods insofar as the personal data will be processed solely for archiving purposes in the public interest, scientific or historical research purposes or statistical purposes subject to implementation of the appropriate technical and organisational measures required to safeguard the rights and freedoms of the data subject (**storage limitation**);



- f) Processed in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical or organisational measures (**integrity and confidentiality**).
2. In addition to the Chapter II Article 5 principles, the GDPR implements a "principle of accountability" under which the controller shall be responsible for, and be able to demonstrate, compliance (**accountability**).

## **2. DATA SUBJECT'S RIGHTS**

It is proposed to strengthen a data subject's right in relation to both access to data and use of personal data. In accordance with the GDPR increased data subject's rights would include the following provisions:

- Right of access to the personal data being processed;
- Right to rectification of inaccurate personal data;
- Right to erasure of personal data when it is no longer required or when consent is withdrawn (when consent has provided the basis for processing);
- Right to restrict processing when accuracy is contested or when the controller no longer needs the personal data for the purposes of processing;
- Right to data portability and to transmit data to another controller without hindrance;
- Right to object unless the controller demonstrates compelling legitimate grounds.

Exemptions will apply where the controller can demonstrate legitimate grounds which override the data subject interest, rights and freedoms or for the establishment, exercise or defence of legal claims.

## **3. CONTROLLER AND PROCESSOR RESPONSIBILITY**

A significant change within the GDPR is that it places direct obligations on data processors. It is proposed that data processors (entities who process personal data on behalf of a data controller) should be obliged to comply with particular data protection requirements which previously only applied to data controllers (entities who determine why and how personal data are processed). These obligations should include, but are not limited to:

- Accountability of personal data processing activities carried out on behalf of a controller;

- Consultation and cooperation, on request, with the supervisory authority in the performance of its tasks;
- Restrictions on enlisting sub-processors or replacing a processor without the authorisation of the controller;
- Appropriate technical and organisational measures to ensure a level of security appropriate to the risk;
- Breach notification to the controller without undue delay upon becoming aware of a data breach. (Data subjects will also be able to claim compensation for unlawful processing of their personal information).

#### **4. BREACH NOTIFICATION**

Under the current data protection legislation, there is no legal requirement to report to the Data Protection Commissioner a personal data breach. Under any new Bailiwick of Guernsey Data Protection legislation it is proposed that in accordance with the GDPR, a controller will be placed under an obligation to notify the Supervisory Authority (explained below in section 8) of the breach within 72 hours of becoming aware of it.

#### **5. TRANSFER OF DATA OVERSEAS**

In the context of the GDPR Guernsey is regarded as a third country, whereby the transfer of personal data may take place where the European Commission (“the Commission”) has decided that the third country ensures an adequate level of protection. Such transfers then, would not require any specific authorisation.

When assessing the adequacy of the level of protection, the Commission will take into account the rule of law, the existence and effective functioning of the Supervisory Authority and the international commitments of the third country.

In the absence of an adequacy decision a controller or processor would only be able to transfer data to a third country where appropriate safeguards are provided or effective legal remedies for data subjects are available. This would require the implementation of a number of solutions including legally binding and enforceable instruments or binding corporate rules which would place excessive obligations on the organisations involved.

#### **6. DATA PROTECTION OFFICERS**

In accordance with the requirements of the GDPR, new Bailiwick of Guernsey Data Protection legislation would impose upon Bailiwick organisations an obligation to appoint a data protection officer (DPO) if the organisation:

- Is a public authority (except for courts acting in their judicial capacity);

- Carries out large scale systematic monitoring of individuals (for example, online behaviour tracking); or
- Carries out large scale processing of special categories of data or data relating to criminal convictions and offences.

A single data protection officer may be appointed to act for a group of companies or for a group of public authorities, taking into account their structure and size.

Any organisation will be able to appoint a DPO, regardless of whether the GDPR obliges them to do so or not, however an organisation must ensure that it has sufficient staff and skills to discharge the obligations under the GDPR.

The tasks of the DPO are as follows:

- To inform and advise the organisation and its employees about their obligations to comply with the GDPR and other data protection laws;
- To monitor compliance with the GDPR and other data protection laws, including managing internal data protection activities, advising on data protection impact assessments; training staff and conducting internal audits;
- To be the first point of contact for supervisory authorities and for individuals whose data is processed (employees, customers etc).

## **7. ADMINISTRATIVE FINES**

In order to strengthen the enforcement of appropriate levels of data protection in accordance with the GDPR, it is proposed that any new legislation will provide for penalties including administrative fines which may be imposed for infringements of the law. In order to ensure harmonisation of administrative fines across EU Member States and third countries, and to prevent the loss of Guernsey's adequacy status, penalties should be consistent with those of EU Member States and should take account of the nature, gravity and duration of the infringement, the intentional character of the infringement, actions taken to mitigate the damage suffered, degree of responsibility, and previous relevant infringements and the manner in which the Supervisory Authority became aware of the infringement. The imposition of penalties including administrative fines should be subject to appropriate procedural safeguards, including effective judicial safeguards (e.g. appeals).

## **8. SUPERVISORY AUTHORITY**

The current data protection law provides for a general obligation to notify the processing of personal data to the Supervisory Authority, however in many cases

this does not contribute to the improvement of protection of personal data. As such, the GDPR states that general notification requirements should be abolished and replaced by effective procedures and mechanisms which focus instead on those types of processing operations which are likely to result in a high risk to the rights and freedoms of natural persons, by virtue of their nature, scope, context and purpose. With the loss of the revenue accrued from notification fees, Guernsey's Supervisory Authority, the Office of the Data Protection Commissioner (ODPC), will be required to operate with an alternative funding model.

The ODPC implements, and ensures compliance with, the current Data Protection Law. However, while the regulator operates autonomously from the government in practice under the current data protection regime, reform will be required to provide the degree of structural independence expected of a Supervisory Authority pursuant to the GDPR. Further, while the Commissioner is provided with a number of regulatory and enforcement powers within the current Law, additional powers will be required under new data protection legislation in order to provide equivalent protection for data subjects in accordance with the standards set out in the GDPR.

The States of Guernsey and States of Jersey have jointly commissioned a piece of work to analyse the resources that will be required by the ODPC in order to implement and enforce the GDPR effectively. Subject to the outcomes of this work, it is anticipated that the regulator should be able to generate its own income, with a view to becoming either wholly or partly self-funding, once the revenue stream that it currently obtains from general notification fees falls away.

Additionally, the consultant has been asked to recommend a range of value-added services that the ODPC might deliver to organisations in Guernsey and Jersey, beyond its minimum obligations, to encourage best practice for processing personal data in the Islands, ensuring that citizens are educated of their rights, and organisations are supported in meeting their obligations.

- 3.7. It is proposed that the Committee report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017.

#### **4. "Law Enforcement Directive"**

- 4.1. The processing activities by competent authorities for the purpose of the prevention, investigation, detection or prosecution of criminal offences , including the safeguarding against and the prevention of threats to public security and the free movement of such data, is subject to [Directive \(EU\) 2016/680 \("Law Enforcement Directive"\)](#).
- 4.2. Ensuring a consistent and high level of protection of the personal data of natural persons and facilitating the exchange of personal data between competent authorities is crucial in order to ensure effective judicial cooperation in criminal

matters and police cooperation. To that end, it is proposed that the level of protection of the rights and freedoms of natural persons with regard to the processing of personal data by competent authorities should be equivalent to that in EU Member States.

- 4.3. Effective protection of personal data requires the strengthening of the rights of data subjects and of the obligations of those who process personal data, as well as equivalent powers for monitoring and ensuring compliance with the rules for the protection of personal data.
- 4.4. The Directive requires that clear distinction is made between personal data of different categories of data subjects, such as:
  - a) Persons with regard to whom there are serious grounds for believing that they have committed or are about to commit a criminal offence;
  - b) Persons convicted of a criminal offence;
  - c) Victims of a criminal offence or persons with regards to whom certain facts give rise to reasons for believing that he or she could be the victim of a criminal offence; and
  - d) Other parties to a criminal offence, such as persons who might be called on to testify in investigations in connection with criminal offences or subsequent criminal proceedings, persons who can provide information on criminal offences, or contacts or associates of one of the persons referred to in points (a) and (b).
- 4.5. Any processing of personal data must be lawful, fair and transparent in relation to the natural persons concerned, and only processed for specific purposes laid down by law. This does not in itself prevent law-enforcement authorities from carrying out activities such as covert investigations or video surveillance, as long as they are laid down by law and constitute a necessary and proportionate measure with due regard for the legitimate interests of the natural person concerned.
- 4.6. The Directive expresses that natural persons should be made aware of risks, rules, safeguards and rights in relation to the processing of their personal data and how to exercise their rights in relation to the processing. In particular:
  - The specific purposes for which the personal data are processed should be explicit and legitimate and determined at the time of the collection of the personal data;
  - The personal data should be adequate and relevant for the purposes for which they are processed. It should, in particular, be ensured that the personal data collected are not excessive and not kept longer than is necessary for the purpose for which they are processed. In order to ensure

that the data are not kept longer than necessary, time limits should be established by the controller for erasure or for a periodic review;

- The competent authorities should ensure that personal data which are inaccurate, incomplete or no longer up to date are not transmitted or made available.

4.7. Implementation of the rules laid down by the Directive in the Bailiwick of Guernsey will enable Law Enforcement agencies to continue to work cooperatively with EU Members States without the need for additional arrangements and protocols to be established. This will promote the continued flow of information where there is a need for cross-border collaboration.

4.8. Implementation of the Directive will also demonstrate to other non-EU countries that Guernsey is a well-regulated jurisdiction with high data protection standards within Law Enforcement.

4.9. The Directive places an obligation on Member States to ensure that transfers of personal data to a third country take place where the Commission has decided that the third country ensures an adequate level of protection for personal data (see Article 36). Consequently for the purposes of the Directive, the Bailiwick will be subject to an adequacy decision by the European Commission, taking into account:

- The rule of law, respect for human rights and fundamental freedoms, relevant legislation, both general and sectoral, including concerning public security, defence, national security and criminal law, as well as the implementation of such legislation, data protection rules, professional rules and security measures;
- The existence and effective functioning of the independent supervisory authority in the third country or to which an organisation is subject;
- The international commitments the third country or organisation concerned has entered into.

## 5. **Consultation**

5.1. With proposed changes to local data protection legislation, it has been, and will continue to be, absolutely vital to engage with all of the Island's citizens and business sectors. This has been undertaken in a number of different ways and has included the formation of a number of industry working parties, GDPR briefing events, consultancy workshops, extensive one-to-one engagement and public communication through local media outlets.

5.2. The first phase of industry working parties took place in November and December 2016 and focussed specifically on the proposed new data protection legislation.

There is a high level of commitment from the local business sectors who have identified the need for Guernsey to adopt the GDPR. The second phase of industry working parties is due to be held in March 2017, following the completion of the consultancy work, and will focus on the regulatory regime.

- 5.3. The first GDPR briefing event held in October 2016 attained a very high turnout and level of engagement. Briefing events will continue to be scheduled throughout 2017 and 2018 to ensure that the public and business communities are kept apprised as the project progresses. Extensive one-to-one engagement has also been undertaken, including attendance and presentation delivery at a large number of forums.
- 5.4. Consultation has been, and will continue to be, undertaken with the Office of the Policy and Resources Committee and the Office of the Committee for Economic Development.
- 5.5. Consultation with Alderney and Sark is due to commence in conjunction with the legislative drafting process.

## **6. Conclusions**

- 6.1. The GDPR represents the biggest global change in data protection in well over a decade and is a regulation that is relevant to every organisation, irrespective of size or sector. Accountability is at the heart of the changes with an increased expectation that organisations will be able to demonstrate compliance and ensure that the rights of data subjects are met.
- 6.2. Although there will inevitably be an increase in compliance obligations (for all implementing or aligning with the GDPR), this data protection reform provides Guernsey with a number of economic opportunities, particularly in creating a well-regulated, compliant jurisdiction with highly trained and experienced data protection professionals; an environment which is increasingly attractive for those organisations who understand the value of quality regulation. Key to achieving this is by ensuring that adequacy status is granted by the European Commission, through the enactment of new data protection legislation which provides an adequate level of protection in accordance with the GDPR and Law Enforcement Directive and which will allow the continued transfer of personal data between the Bailiwick and EU Member States.

## **7. Recommendations**

- 7.1. In the circumstances of this report, the Committee for Home Affairs recommends the States:-
  - a) To direct the preparation of legislation for the purposes of implementing provisions equivalent to the GDPR and the Law Enforcement Directive in the Bailiwick;

- b) To direct the Committee to report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017.



**ORIGINAL PROPOSITION**

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

**POLICY & RESOURCES COMMITTEE**

**SCHEDULE FOR FUTURE STATES' BUSINESS**

The States are asked to decide:-

Whether, after consideration of the attached Schedule for future States' business, which sets out items for consideration at the Meeting of the 17<sup>th</sup> May 2017 and subsequent States' Meetings, they are of opinion to approve the Schedule.

**STATES OF DELIBERATION**

**SCHEDULE for FUTURE STATES' BUSINESS**  
(For consideration at the ordinary Meeting of the States  
commencing on the 26<sup>th</sup> April, 2017)

*(N.B. The Meeting of the States of Deliberation will follow immediately after the Meeting of the States of Election which has been convened for 9.30 am on 17<sup>th</sup> May.)*

Items for Ordinary Meeting of the States commencing on the 17<sup>th</sup> May, 2017

- (a) communications by the Presiding Officer including *in memoriam* tributes;
- (b) statements;
- (c) questions;
- (d) elections and appointments;

P.2017/36 Election of Members of the Ladies College Board of Governors

- (e) motions to debate an appendix report (1st stage);
- (f) articles adjourned or deferred from previous Meetings of the States;
- (g) all other types of business not otherwise named;

No. 2 of 2017 The Boarding Permit Fees Order, 2017

No. 3 of 2017 The Trade Marks (Register of Trade Mark Agents) Regulations, 2017

No. 4 of 2017 The Registered Designs (Register of Design Right Agents) Regulations, 2017

No. 9 of 2017 The Boarding Permit Fees (No. 2) Order, 2017

No. 15 of 2017 Open Market Housing Register (Fees) Regulations, 2017

P.2017/33 The Income Tax (Guernsey) (Amendment) Ordinance, 2017\*

P.2017/34 Policy & Resources Committee - Document Duty and Anti-Avoidance Duty\*

P.2017/35 Committee for Economic Development – Legislation to Facilitate Electronic Cheque Imaging in the presentment of cheques and other bills of exchange\*

- (h) motions to debate an appendix report (2nd stage);
- (i) Schedule for future States' business.

*Amendments to the proposed Meeting dates and order are permitted only for those items marked with an \*.*

Item for Special Meeting of the States commencing on the 20<sup>th</sup> June, 2017

P. 2017/xx States' Accounts

Item for Special Meeting of the States commencing on the 27<sup>th</sup> June, 2017

P. 2017/xx Policy & Resources Plan – Phase 2

Item for Special Meeting of the States commencing on the 7<sup>th</sup> November, 2017

P. 2017/xx States' Budget

Ordinary Meeting of the States commencing on the 17<sup>th</sup> January, 2018

*(N.B. A Meeting of the States of Election will be convened for this date prior to the meeting of the States of Deliberation.)*

Item for Special Meeting of the States commencing on the 5<sup>th</sup> June, 2018

P. 2018/xx Policy & Resources Plan

Item for Special Meeting of the States commencing on the 26<sup>th</sup> June, 2018

P. 2018/xx States' Accounts

**IN THE STATES OF THE ISLAND OF GUERNSEY  
ON THE 26<sup>th</sup> DAY OF APRIL, 2017**

**The States resolved as follows concerning Billet d'État No VIII  
dated 4<sup>th</sup> April 2017**

***STATUTORY INSTRUMENT LAID BEFORE THE STATES***

No. 5 of 2017

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY) LAW, 2002 (PROSCRIBED  
ORGANISATIONS) (AMENDMENT) REGULATIONS, 2017**

In pursuance of section 3 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002, "The Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (Proscribed Organisations) (Amendment) Regulations, 2017", made by the Policy & Resources Committee on 28<sup>th</sup> February 2017, were laid before the States.

**THE BENEFICIAL OWNERSHIP OF LEGAL PERSONS (GUERNSEY) LAW, 2017**

P.2017/27

I: To approve the draft Projet de Loi entitled "The Beneficial Ownership of Legal Persons (Guernsey) Law, 2017", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

**THE SAME-SEX MARRIAGE (CONSEQUENTIAL AND MISCELLANEOUS AMENDMENTS AND  
CONTRARY PROVISIONS) (GUERNSEY) ORDINANCE, 2017**

P.2017/28

II: To approve the draft Ordinance entitled "The Same-Sex Marriage (Consequential and Miscellaneous Amendments and Contrary Provisions) (Guernsey) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

**THE PROTECTION OF INVESTORS (LIMITATION OF LIABILITY) (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2017**

P.2017/29

III: To approve the draft Ordinance entitled "The Protection of Investors (Limitation of Liability) (Bailiwick of Guernsey) (Amendment) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

**THE ACCESS TO NEIGHBOURING LAND (GUERNSEY) LAW, 2016 (COMMENCEMENT)  
ORDINANCE, 2017  
P.2017/30**

IV: To approve the draft Ordinance entitled "The Access to Neighbouring Land (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

**THE SAME-SEX MARRIAGE (GUERNSEY) LAW, 2016 (COMMENCEMENT) ORDINANCE, 2017  
P.2017/31**

V: To approve the draft Ordinance entitled "The Same-Sex Marriage (Guernsey) Law, 2016 (Commencement) Ordinance, 2017", and to direct that the same shall have effect as an Ordinance of the States.

**COMMITTEE *for* HOME AFFAIRS**

**DATA PROTECTION: EU GENERAL DATA PROTECTION REGULATION  
P.2017/26**

VI: After consideration of the policy letter entitled 'Data Protection: EU General Data Protection Regulation' dated 13 March 2017:-

1. To direct the preparation of legislation for the purposes of implementing provisions equivalent to the GDPR and the Law Enforcement Directive in the Bailiwick;
2. To direct the Committee to report back to the Assembly with detailed proposals in relation to the Data Protection Supervisory Authority and the sources of funding for the Authority in the third quarter of 2017.

**POLICY & RESOURCES COMMITTEE**

**SCHEDULE FOR FUTURE STATES' BUSINESS  
P. 2017/32**

VII: After consideration of the Schedule for future States' business, which sets out items for consideration at the Meeting of the 17<sup>th</sup> May, 2017 and subsequent States' Meetings, to approve the Schedule.

J. TORODE

HER MAJESTY'S GREFFIER