

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

**POLICY & RESOURCES COMMITTEE**

**PROPOSED LEGISLATION FOR THE REGULATION OF NOTARIES PUBLIC**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Proposed Legislation for the Regulation of Notaries Public', dated 5<sup>th</sup> May 2022, they are of the opinion:-

1. To agree to enact legislation enabling the regulation of Notaries Public in the Bailiwick by the Master of the Faculties, as set out in section 2.6 of the Policy Letter;
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

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

5<sup>th</sup> May 2022

Dear Sir

**1 Executive Summary**

- 1.1 The purpose of this Policy Letter is to recommend the enactment of primary legislation which would enable the formal, detailed regulation of Notaries Public in the Bailiwick by the appropriate regulatory body. The proposed legislation would confer powers for the making of rules concerning qualification, training, professional conduct and discipline.
- 1.2 The admission and regulation of Notaries Public in the Bailiwick, as in England & Wales, is one of the functions of the Faculty Office of the Archbishop of Canterbury. The judge who presides over the Faculty Office, the Master of the Faculties (“the Master”), is the approved regulator of the profession.
- 1.3 The Policy & Resources Committee (“the Committee”) is bringing forward these proposals in response to concerns raised by the Master that the level of regulation as applies to United Kingdom notaries is not currently replicated in Guernsey. Whilst it is understood that no complaints have been received from a member of the public in relation to the conduct of a notary in the Bailiwick, the expectations of modern regulation require a more sophisticated array of regulatory powers and the ability to exercise these with legal certainty. To address this, it is necessary for the States of Guernsey to make primary legislation to empower the Master to make the appropriate regulatory rules.
- 1.4 If Guernsey falls out of step with international standards of regulation, there is a risk that documents executed in the Bailiwick might no longer be readily accepted for official use in other jurisdictions and would instead be subject to a lengthy procedure to certify their authenticity. The rationale behind the

proposals is therefore to protect Guernsey's efficacy and attractiveness as an international finance centre and as a place to do business more generally. In this respect and noting the role of the Association of Guernsey Notaries (the "Association") in the development of the solution, it is important that these proposals are not regarded as simply adding unnecessary 'red tape'.

- 1.5 The propositions relate to Priority 2 of the Government Work Plan as they seek to ensure compliance with an agreed international convention and also support the maintenance of trade in services.

## **2 Advice from Her Majesty's Procureur**

- 2.1 Her Majesty's Procureur ("HMP") has advised how these matters might be addressed, as set out below, and the Committee fully supports HMP's conclusions.

### **2.2 Background**

- 2.2.1 *A notary public ("notary") is a person authorised to perform certain formalities, including certification of deeds and other documents, the taking of affidavits and depositions and the administering of oaths.*

- 2.2.2 *Since 1533, notaries in England and Wales and in the Bailiwick of Guernsey ("the Bailiwick") have been appointed by the Master of the Faculties ("the Master"), a judicial officer of the Archbishop of Canterbury.*

- 2.2.3 *The jurisdiction of the Master to appoint notaries originally derived from the Ecclesiastical Licences Act 1533<sup>1</sup>; and section 4 of the Public Notaries Act 1843<sup>2</sup> empowered the Master to make rules for the admission and regulation of notaries. In England and Wales, the Master's statutory power to make rules for the regulation of the profession has been confirmed by the Courts and Legal Services Act 1990<sup>3</sup> and the Legal Services Act 2007<sup>4</sup> but notaries in the Bailiwick are still subject only to the limited provision in the 1533 and 1843 Acts.*

- 2.2.4 *In order to become qualified as a notary in the Bailiwick, an individual must have practised as an advocate in the Bailiwick for 5 years and passed an examination set by the Association of Guernsey Notaries ("the Association") with the concurrence of the Master. It is therefore the case that notaries in the Bailiwick are regulated by the Guernsey Bar in their capacity as advocates but not in their capacity as notaries.*

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<sup>1</sup> 1533 c 21

<sup>2</sup> 1843 c 90

<sup>3</sup> 1990 c 41

<sup>4</sup> 2007 c 29

## **2.3 Historical regulation of notaries in Guernsey**

2.3.1 *Historically, notaries in the Bailiwick have been regulated by the Master's inherent jurisdiction to the extent that should there be any complaints in respect of a notary's conduct the Master could revoke their faculty. Further, any complaints of the public could be made to the Association. However, the Association has no authority to discipline notaries or even to investigate any issues of conduct complained of by a client.*

2.3.2 *To date, it is understood, there have been no complaints made by members of the public to the Association or the Master in respect of work carried out by a Guernsey notary. However, clear statute-based regulation by the Master comparable to the rules made under the Courts and Legal Services Act 1990 for England and Wales would ensure that the public is protected against the risk of any dishonesty, negligence or deliberate misfeasance by a local notary.*

## **2.4 International recognition of Guernsey notarial acts**

2.4.1 *In order for notarial acts to be recognised internationally, they must be "legalised", previously a lengthy procedure involving certification by a government official of the country in which the document originated and transmission to the consular officer of the country of destination. However, a significant number of countries have contracted to the Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents ("the Convention"). The Convention essentially simplified the legalisation process by introducing apostilles which are recognised in the other contracting states.*

2.4.2 *The chain of authority in the Bailiwick for apostilles is as follows:*

- i. Article 6 of the Convention provides that "each Contracting State shall designate by reference to their official function, the authorities who are competent to issue the certificate referred to in the first paragraph of Article 3".*
- ii. Article 13 enables any member State to extend the Convention to any of the territories for the international relations of which it is responsible.*
- iii. The Convention was ratified by the United Kingdom on 21<sup>st</sup> August, 1964 and entered into force on 24 January, 1965. The Convention was extended to the Channel Islands at the same time. The Convention was subsequently registered in Guernsey on the 1<sup>st</sup> June, 1965.*
- iv. Authority was transferred from the UK Government to the Lieutenant-Governor and Government House has subsequently delegated responsibility for undertaking the legalisation process to HM Greffier.*

- v. *The Hague Convention website lists the Greffe as the current Designated Competent Authority for the Bailiwick under Article 6.*

## **2.5 Need for official regulation by the Master**

- 2.5.1 *There is a risk that the UK Government could withdraw the Article 13 extension from Guernsey, should the same level of regulation as applies to United Kingdom notaries not be replicated in Guernsey. A further risk is that another Member State might, despite the clear extension of the Convention to the Bailiwick and the designation of the Greffe as the Authority for these purposes, decide not to recognise our apostilles due to the lack of clear regulation and oversight by the Master.*
- 2.5.2 *Should the extension of the Convention to Guernsey be withdrawn, or should a Member State decide not to recognise Guernsey apostilles, there would be a serious detrimental effect on Guernsey as a financial centre. In the absence of a simple and efficient procedure for certifying the authenticity of notarial seals and signatures, documents executed in the Bailiwick will not readily be accepted for official use in other countries.*
- 2.5.3 *Aside from the Convention, the expectations of modern regulation now require that the Master have a more sophisticated array of powers and that they are exercised with legal certainty. If a breach were to occur, for example in the field of anti-money laundering, and the Master were not to have a modern regulatory “toolkit” for investigating, monitoring and intervening, the regulation of notaries on Guernsey could fall into disrepute.*

## **2.6 Future regulation of notaries in Guernsey**

- 2.6.1 *It is recommended, for the reasons given, that notaries in the Bailiwick should have formal, detailed regulation, as in England and Wales, including rules governing professional conduct, qualification, training and discipline.*
- 2.6.2 *On 1<sup>st</sup> March 2018 the former Master of Faculties, Charles George, issued the following interim rules to have effect in the Bailiwick:*
  - i. *The Notaries (Guernsey) Interim Qualification and Admission Rules 2018;*
  - ii. *Notaries (Guernsey) Interim Contingency Fund Rules 2018;*
  - iii. *Notaries (Guernsey) Interim Conduct and Discipline Rules 2018; and*
  - iv. *Notaries (Guernsey) Interim Practice Rules 2018.*
- 2.6.3 *The Interim Rules, which were made under the Master's inherent authority and the 1843 Act, were due to cease to have effect on 31<sup>st</sup> December 2020; however, the current Master, Morag Ellis QC, has extended the period of*

*validity of the Interim Rules pending the enactment of permanent provision as proposed in this letter.*

2.6.4 *In order for similar rules to be re-enacted in permanent form it is necessary for the States of Guernsey to approve primary legislation to empower the Master to make rules regulating the training, qualification and professional conduct of notaries in the Bailiwick.*

2.6.5 *The Law would expressly authorise the Master to make rules concerning training and qualification, regulating the practice, conduct and discipline of notaries, for the keeping of records and the proper handling of client monies and other matters. It would also give the Master (among other things) an express power to suspend, to fine and to recover the costs of investigations. It would apply to all notaries in the Bailiwick whether appointed before or after the commencement of the Law. Rules made under this power would be made after consultation with the Association.*

2.6.6 *The proposals are supported by the Association.*

### **3 Consultation**

3.1 The Policy & Resources Committee, as the senior committee which has historically had policy responsibility for the regulation of advocates and the Guernsey Bar<sup>5</sup>, has sponsored these policy proposals. However, because this matter is especially relevant to the efficient functioning of the financial, legal and professional services sectors, and having regard to the mandate of the Committee *for* Economic Development, which includes advising the States on matters including regulation in the economy and the reputation of the Island as a centre for commerce, the views of that committee were sought. The Committee *for* Economic Development has confirmed its support for the proposals.

3.2 Further, as the proposed primary legislation would be Bailiwick-wide, the Policy & Finance committees in Sark and Alderney have also been consulted. Both committees were content with the proposals.

3.3 The proposals set out in the advice from HMP reflect significant consultation undertaken by the Law Officers of the Crown with the Association and, through it, the Faculty Office. During an extended period of consultation in quarter 4 2021, the Association sought clarification from the Faculty Office on a number of matters. The proposals were subsequently endorsed by the Association at its Annual General Meeting in January 2022 and the Association has requested

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<sup>5</sup> [Billet d'Etat No. XIX of 2007](#)

continued involvement during the drafting of the legislation. As set out in paragraph 2.6.5, rules made by the Master under the powers conferred would be made after consultation with the Association.

#### **4 Compliance with Rule 4**

4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

4.2 In accordance with Rule 4(1):

- a) The propositions contribute to the States' objectives and policy plans by ensuring compliance with international standards and supporting the maintenance of trade in services, which are two established workstreams under Priority 2 of the Government Work Plan.
- b) In preparing the propositions, consultation has been undertaken with the Committee *for* Economic Development and with the Policy & Finance committees in Sark and Alderney.
- c) The propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no financial implications to the States of carrying the proposal into effect.

4.3 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's duties and powers to advise the States and to develop and implement policies and programmes relating to the execution of international agreements to which the Island is invited to acquiesce.
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache  
President

H J Soulsby  
Vice President

M A J Helyar  
J P Le Tocq  
D J Mahoney