

# PROJET DE LOI

ENTITLED

## **The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 \***

[CONSOLIDATED TEXT]

### **NOTE**

*This consolidated version of the enactment incorporates all amendments listed in the footnote below. It has been prepared for the Guernsey Law website and is believed to be accurate and up to date, but it is not authoritative and has no legal effect. No warranty is given that the text is free of errors and omissions, and no liability is accepted for any loss arising from its use. The authoritative text of the enactment and of the amending instruments may be obtained from Her Majesty's Greffier, Royal Court House, Guernsey, GY1 2PB.*

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Ordres en Conseil Vol. XXXIII, p. 478; as amended by the: Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016). See also the: Direct Taxes (Sark) Law, 2002 (No. VII of 2003); Legal Aid (Bailiwick of Guernsey) Law, 2003 (No. VI of 2004, Ordres en Conseil Vol. XLIV(1), p. 104); Companies (Guernsey) Law, 2008 (No. VIII of 2008); Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (No. XXVI of 2008); Aviation (Bailiwick of Guernsey) Law, 2008 (No. XXVIII of 2008); Charities and Non Profit Organisations (Registration) (Sark) Law, 2010 (No. VI of 2010); Aviation Registry (Guernsey) Law, 2013 (No. XIII of 2013); Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005 (No. XXIX of 2005, Recueil d'Ordonnances Tome XXX, p. 581); Tobacco Products (Guernsey) Ordinance, 2014 (No. LI of 2014); Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 (No. L of 2015); Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017 (Sark Ordinance No. VI of 2017); European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016 (No. XXI of 2016); European Communities (Food and Feed Controls) (Alderney) Ordinance, 2019 (Alderney Ordinance No. II of 2019); European Communities (Food and Feed Controls) (Sark) Ordinance, 2019 (Sark Ordinance No. IX of 2019); European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019 (No. XL of 2019).

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## **The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991**

### ARRANGEMENT OF SECTIONS

1. Transfer of functions of Committees etc.
2. Renaming of public offices.
3. Ordinances.
4. Performance of functions by officers.
5. Interpretation.
6. Citation.

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## **The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991**

**THE STATES**, in pursuance of their Resolutions of 27<sup>th</sup> April 1988<sup>a</sup> and 13<sup>th</sup> December 1990<sup>b</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 Bailiwick of Guernsey.

### **Transfer of functions of Committees etc.**

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

- (a) confers a function on a named Committee of the States,  
or
- (b) empowers the States to confer a function on a named  
Committee of the States,

so as to transfer that function to, or as the case may be so as to empower the States to confer that function on, a Committee of a different name (whether formed for the purpose or existing at the time).

(2) This section applies in relation to the Financial Services

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<sup>a</sup> On Article LIV of Billet d'État No. X of 1988.

<sup>b</sup> On Article XX of Billet d'État No. XXIV of 1990.

Commission in the same way that it applies in relation to a Committee of the States.

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**NOTE**

*The following Ordinances have been made under section 1:*

*Building Control (Transfer of Functions) Ordinance, 1992;*  
*Catering (Transfer of Functions) (Sark) Ordinance, 1992;*  
*Island Traffic Committee (Transfer of Functions) (No. 2) Ordinance,*  
*1992;*  
*Guernsey Social Security Authority (Transfer of Functions)*  
*Ordinance, 1993;*  
*Heritage Committee Ordinance, 1994;*  
*Board of Employment, Industry and Commerce (Transfer of*  
*Functions) Ordinance, 1996;*  
*States Committees and States Engineer (Transfer of Functions)*  
*(Alderney) Ordinance, 1999;*  
*States Committees (Transfer of Functions) (Alderney) Ordinance,*  
*1997;*  
*States Committees (Transfer of Functions) (Alderney) (Amendment)*  
*Ordinance, 1999;*  
*Sark General Purposes and Advisory Committee (Transfer of*  
*Functions) Ordinance, 2001;*  
*States Agricultural and Milk Marketing Board (Transfer of*  
*Functions) Ordinance, 2001;*  
*States Committees (Transfer of Functions) (Alderney) (Amendment)*  
*Ordinance, 2001;*  
*Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2003;*  
*Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2003 (Commencement) Ordinance, 2004;*  
*Parole Review Committee (Amendment) Ordinance, 2004;*  
*Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey) (No.*  
*2) Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey) (No.*  
*3) Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2007;*  
*House Committee (Transfer of Functions) Ordinance, 2008;*  
*Sark General Purposes and Finance Committee (Transfer of*  
*Functions) (Guernsey) Ordinance, 2009;*  
*Sark General Purposes and Finance Committee (Transfer of*  
*Functions) Ordinance, 2009;*  
*Fees, Charges and Penalties (Guernsey) (Amendment) Ordinance,*  
*2010;*  
*Machinery of Government (Transfer of Functions) (Guernsey)*

*Ordinance, 2011;*  
    *Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2012;*  
    *Control of Borrowing (Repeal) (Bailiwick of Guernsey) Ordinance,*  
*2013;*  
    *Sark General Purposes and Advisory and Finance and Commerce*  
*Committees (Transfer of Functions) Ordinance, 2015;*  
    *Sark General Purposes and Advisory and Finance and Commerce*  
*Committees (Transfer of Functions) (Guernsey) Ordinance, 2015;*  
    *Guernsey Financial Services Commission (Transfer of Functions)*  
*(Fees) (Bailiwick of Guernsey) Ordinance, 2015;*  
    *Machinery of Government (Transfer of Functions) (Guernsey)*  
*(Amendment) Ordinance, 2015;*  
    *Sark General Purposes and Finance Committee (Transfer of*  
*Functions) Ordinance, 2015;*  
    *Organisation of States' Affairs (Transfer of Functions) Ordinance,*  
*2016;*  
    *Sark Machinery of Government (Transfer of Functions) Ordinance,*  
*2017;*  
    *Sark Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2017;*  
    *Sark Machinery of Government (Transfer of Functions) Ordinance,*  
*2018;*  
    *Sark Machinery of Government (Transfer of Functions) (Guernsey)*  
*Ordinance, 2018;*  
    *Sark Policy and Performance Committee and Sark Finance and*  
*Resources Committee (Transfer of Functions) Ordinance, 2018;*  
    *Organisation of States' Affairs (Transfer of Functions and*  
*Consequential Matters) Ordinance, 2019;*  
    *Machinery of Government (Transfer of Functions) Ordinance, 2020;*  
    *Child Protection (Transfer of Functions) (Sark) Ordinance, 2022.*

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### **Renaming of public offices.**

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

- (a) confers a function on the holder of a named public office, or
- (b) empowers the States, or a Committee, to confer a function on the holder of a named public office,

so as to change the name of the public office on the holder of which that function is, or may be, conferred.

(2) This section does not empower the States to change by Ordinance the functions assigned by a relevant enactment to the holder of a public office, but only the name of that office.

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**NOTE**

*The following Ordinances have been made under section 2:*

*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003;*

*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (Commencement) Ordinance, 2004;*

*Parole Review Committee (Amendment) Ordinance, 2004;*

*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2006;*

*Machinery of Government (Transfer of Functions) (Guernsey) (No. 2) Ordinance, 2006;*

*Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006;*

*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007;*

*States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008;*

*Administrator of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2009;*

*Fees, Charges and Penalties (Guernsey) (Amendment) Ordinance, 2010;*

*Guernsey Competition and Regulatory Authority Ordinance, 2012;*

*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012;*

*Control of Borrowing (Repeal) (Bailiwick of Guernsey) Ordinance, 2013;*

*Noise Abatement (Amendment) Ordinance, 2015;*

*Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016;*

*Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018;*

*Organisation of States' Affairs (Transfer of Functions and Consequential Matters) Ordinance, 2019.*

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**Ordinances.**

3. An Ordinance under section 1 or section 2 of this Law may –
- (a) contain transitional provisions and savings,
  - (b) be varied by a subsequent Ordinance under that section.

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**NOTE**

*The following Ordinances have been made under section 3:*

*Building Control (Transfer of Functions) Ordinance, 1992;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (Commencement) Ordinance, 2004;*  
*Parole Review Committee (Amendment) Ordinance, 2004;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey) (No. 2) Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey) (No. 3) Ordinance, 2006;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2007;*  
*States Treasurer (Transfer of Functions) (Guernsey) Ordinance, 2008;*  
*Administrator of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2009;*  
*Fees, Charges and Penalties (Guernsey) (Amendment) Ordinance, 2010;*  
*Guernsey Competition and Regulatory Authority Ordinance, 2012;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2011;*  
*Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2012;*  
*Control of Borrowing (Repeal) (Bailiwick of Guernsey) Ordinance, 2013;*  
*Guernsey Financial Services Commission (Transfer of Functions) (Fees) (Bailiwick of Guernsey) Ordinance, 2015;*  
*Machinery of Government (Transfer of Functions) (Guernsey) (Amendment) Ordinance, 2015;*  
*Noise Abatement (Amendment) Ordinance, 2015;*  
*Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016;*

*Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2017;*

*Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018;*

*Sark Machinery of Government (Transfer of Functions) Ordinance, 2018;*

*Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018;*

*Organisation of States' Affairs (Transfer of Functions and Consequential Matters) Ordinance, 2019;*

*Machinery of Government (Transfer of Functions) Ordinance, 2020.*

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**Performance of functions by officers.**

4. (1) Subject to subsection (4) of this section –

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

(2) A function performed by an officer pursuant to an arrangement made under this section is for all purposes performed by the Committee or office holder concerned; and every decision taken or other thing done by an officer pursuant to such an arrangement has the same effect as if taken or done at a quorate meeting of the Committee concerned, or personally by the office holder concerned, as the case may be.

(3) An arrangement under this section for the performance of a function by an officer –

- (a) may be varied or terminated at any time by the Committee or office holder concerned, but without



prejudice to anything done pursuant to the arrangement or to the making of a new arrangement,

- (b) does not prevent the performance of the function by the Committee or office holder concerned whilst the arrangement subsists.

(4) This section does not empower –

- (a) a Committee to arrange for any legislative function to be performed by an officer, or
- (b) the holder of a public office to arrange for any judicial function to be performed by an officer.

(5) This section –

- (a) has effect for the removal of any doubt and is not to be construed as impliedly invalidating anything done in conformity with any other enactment or rule of law, either before or after this section comes into force,
- (b) does not permit the making of an arrangement which would clearly be inconsistent with the intention of the function concerned (for example, an arrangement for the holder of a public office to determine, in the name of a Committee, an appeal to that Committee from his own decision).

(6) This section applies in relation to the Financial Services Commission in the same way that it applies in relation to a Committee of the States;

and, for the avoidance of doubt, an employee of the Financial Services Commission is responsible to the States [Policy & Resources Committee], if and to the extent that the Commission and that Committee may so agree, in relation to any function connected with finance business, companies and other forms of business undertakings.

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## NOTES

*In section 4, the words in square brackets in subsection (6) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 10(a), with effect from 1st May, 2016.<sup>1</sup>*

*The functions, rights and liabilities of the Policy Council and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 10(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.<sup>2</sup>*

*In accordance with the provisions of the Direct Taxes (Sark) Law, 2002, section 11(2), Schedule 2, paragraph 4, with effect from 1st May, 2003, for the purposes of this Law and only for those purposes, a person whose services are made available to the Assessor by Chief Pleas pursuant to section 11(4) of the 2002 Law is deemed to be (a) an employee of Chief Pleas, and (b) an officer responsible to the Assessor; and, accordingly, the Assessor may arrange for any of the functions of his office to be performed in his name by such a person to the extent permitted by this section of this Law.*

*In accordance with the provisions of the Legal Aid (Bailiwick of Guernsey) Law, 2003, section 2, First Schedule, paragraph 2(2), with effect from 28th September, 2005 and for the avoidance of doubt, to the extent that the services of a States employee are made available to the Administrator as required by that paragraph, it is hereby declared that for the purposes of this Law (a) that employee is an officer responsible to the Administrator, and (b) the Administrator may arrange for any of the functions of his office to be performed in his name by that employee to the extent permitted by this section of this Law.*

*In accordance with the provisions of the Aviation (Bailiwick of Guernsey) Law, 2008, section 1, Schedule 1, paragraph 12(2), with effect from 1st February, 2009 and for the avoidance of doubt, to the extent that the services of a States employee are made available to the Director of Civil Aviation as required by that paragraph, it is hereby declared that for the purposes of this Law (a) that employee is an officer responsible to the Director, and (b) the Director may arrange for any of the functions of his office to be carried out*

*or performed in his name by that employee to the extent permitted by this section of this Law.*

*In accordance with the provisions of the Tobacco Products (Guernsey) Ordinance, 2014, section 23, with effect from 1st June, 2015, this section has effect in relation to the functions of the States of Guernsey Committee for Health & Social Care and the licensing officer under that Ordinance as if –*

- (a) the reference to "any officer responsible to that Committee" in subsection (1)(a) includes a reference to any employee of the States of Guernsey (whether or not that employee is responsible to the Committee for Health & Social Care), and*
- (b) the office of licensing officer is a public office for the purposes of subsection (1)(b) of this Law.*

*In accordance with the provisions of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, section 6, with effect from 3rd December, 2015, this section has effect in relation to the functions of the Committee for Health & Social Care under that Ordinance as if the reference to "any officer responsible to that Committee" in subsection (1)(a) includes a reference to any employee of the States of Guernsey (whether or not that employee is responsible to the Committee for Health & Social Care).*

*In accordance with the provisions of the Regulation of Health Professions (Medical Practitioners) (Sark) Ordinance, 2017, section 13, with effect from 1st June, 2017, this section has effect in relation to the functions of the States of Guernsey Committee for Health & Social Care (the "Guernsey Committee") under that Ordinance as if the reference to "any officer responsible to that Committee" in subsection (1)(a) includes a reference to any employee of the States of Guernsey or the Chief Pleas of Sark (whether or not that employee is responsible to the Guernsey Committee).*

*In accordance with the provisions of, first, the European Communities (Food and Feed Controls) (Guernsey) Ordinance, 2016, section 39, second, the European Communities (Food and Feed Controls) (Alderney) Ordinance, 2019, section 38 and, third, the European Communities (Food and Feed Controls) (Sark) Ordinance, 2019, section 38, all with effect from 3rd October, 2019, this section has effect in relation to the functions of the States of Guernsey Committee for Health & Social Care under those Ordinances as if the references to "any officer responsible to that Committee" in subsection (1)(a) includes a reference to any authorised officer, whether or not the authorised officer is responsible to the Guernsey Committee.*

*In accordance with the provisions of the European Communities (Official Controls) (Implementation and General Provisions) (Guernsey) Ordinance, 2019, section 3(4), with effect from 14th December 2019, this section has effect in relation to the functions of a Committee as if the reference to "any officer responsible to that Committee" in subsection (1)(a) includes a*

*reference to any Designated Officer appointed by a Committee designated by section 1(1) of the 2019 Ordinance, whether or not the Designated Officer is in fact responsible to that Committee.*

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**Interpretation.**

5. (1) In this Law, unless the context otherwise requires –

**"Committee"** means any Authority, Board, Committee or Council of the States constituted by a Resolution or Law approved by the States,

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

**"function"** includes every power and duty which is or may be given to or imposed on a Committee, the Financial Services Commission, or an office holder, whether by an enactment, resolution of the States, rule of law, custom or otherwise,

**"judicial function"** means a power to hear or determine any question arising in proceedings before a court or tribunal,

**"legislative function"** means a power to make any regulations, rules, order, scheme or other instrument of a legislative character,

**"officer"** means an employee of the States of Guernsey, the States of Alderney, Chief Pleas of Sark or the Financial Services Commission,

**"public office"** means any office, however created, –

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<sup>c</sup> Order in Council No. XIX of 1987.

- (a) to which functions are specifically assigned by an enactment, and
- (b) the holder of which is remunerated out of funds provided by the States of Guernsey, the States of Alderney, the Chief Pleas of Sark or the Financial Services Commission,

and **"office holder"** is to be construed accordingly,

**"relevant enactment"** means any Law, and any Act of Parliament extended to the Bailiwick,

**"the States"** –

- (a) in relation to a function which is or may be conferred on a Committee of the States of Alderney or the holder of a named public office in Alderney, by a relevant enactment which is applicable only in Alderney, means the States of Alderney,
- (b) in relation to a function which is or may be conferred on a Committee of the Chief Pleas of Sark or the holder of a named public office in Sark, by a relevant enactment which is applicable only in Sark, means the Chief Pleas of Sark,
- (c) in any other case, means the States of Guernsey.

(2) The Interpretation (Guernsey) Law, 1948<sup>d</sup> applies to the interpretation of this Law throughout the Bailiwick.

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## NOTES

*In accordance with the provisions of the Intellectual Property (Office of Registrar) (Bailiwick of Guernsey) Ordinance, 2005, section 1(6)(a), with effect from 1st January, 2006, the Office of the Registrar of Intellectual Property is a public office for the purposes of this Law; and, in accordance with the provisions of section 1(6)(b) of the 2005 Ordinance, the Registrar of Intellectual Property is an office holder for those same purposes, with effect from that same date.*

*In accordance with the provisions of the Companies (Guernsey) Law, 2008, section 495(6)(a), with effect from 12th June, 2008, the Office of the Registrar of Companies is a public office for the purposes of this Law; and, in accordance with the provisions of section 495(6)(b) of the 2008 Law, Registrar of Companies is an office holder for those same purposes, with effect from that same date.*

*In accordance with the provisions of the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, section 1A(6)(a), with effect from 3rd November, 2008, the Office of the Registrar of Non Profit Organisations is a public office for the purposes of this Law; and, in accordance with the provisions of section 1A(6)(b) of the 2008 Law, the Registrar of Non Profit Organisations is an office holder for those same purposes, with effect from that same date.*

*In accordance with the provisions of the Charities and Non Profit Organisations (Registration) (Sark) Law, 2010, section 2(6)(a), with effect from 11th May, 2010, the Office of the Registrar of Non Profit Organisations is a public office for the purposes of this Law; and, in accordance with the provisions of section 2(6)(b) of the 2010 Law, the Registrar of Non Profit Organisations is an office holder for those same purposes, with effect from that same date.*

*In accordance with the provisions of the Aviation Registry (Guernsey) Law, 2013, section 1(6)(a), with effect from 21st October, 2013, the Office of the Aircraft Registrar is a public office for the purposes of this Law; and, in accordance with the provisions of section 1(6)(b) of the 2013 Law, the Aircraft Registrar is an office holder for those same purposes, with effect from that same date.*

*The Interpretation (Guernsey) Law, 1948 has since been repealed by the*

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

*Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.*

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**Citation.**

6. This Law may be cited as the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991.

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**NOTE**

*The Law received Royal Sanction on 19th December, 1991 and was registered on the Records of the Island of Guernsey and came into force on 11th February, 1992.*

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<sup>1</sup> These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(a), with effect from 6th May, 2004.

<sup>2</sup> The functions, rights and liabilities of the Policy Council and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(a), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.