

PROJET DE LOI

ENTITLED

The Public Trustee (Bailiwick of Guernsey) Law, 2002 *

[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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No. III of 2003, Ordres en Conseil Vol. XLIII, p. 49; as amended by the Government of Alderney (Amendment) Law, 2000 (No. I of 2000, Ordres en Conseil Vol. XL, p. 15); the Trusts (Guernsey) Law, 2007 (No. III of 2007); the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009 (No. XIII of 2010); the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Public Trustee (Amendment) Ordinance, 2004 (No. XVIII of 2004); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XXXIX of 2015); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018 (No. XXVI of 2018). See also the Law Reform (Age of Majority and Guardianship of Minors) (Guernsey) Law, 1978 (Ordres en Conseil Vol. XXVI, p. 264); the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207); the Law Reform (Age of Majority) (Sark) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 378); the Age of Majority (Alderney) Law, 2001 (No. XXV of 2001, Ordres en Conseil Vol. XLI, p. 738); the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009 (No. XXXIII of 2009, Recueil d'Ordonnances Tome XXXIII, p. 617); the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009 (No. VII of 2010); the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX of 2015).

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SCHEDULE Office of the Public Trustee.

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THE STATES, in pursuance of their Resolution of the 31st July, 2002^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

PART I

OFFICE OF THE PUBLIC TRUSTEE

Establishment of Office of Public Trustee.

1. (1) There shall be established an office to be known as the Office of the Public Trustee, and the holder of that office shall be known as the Public Trustee.

(2) The States shall, on the recommendation of the States [Committee for Economic Development] ("**the** Committee"), appoint the Public Trustee who shall exercise the functions assigned or transferred to him by or under this Law and any other enactment.

(3) The Office of the Public Trustee is not a committee, servant or agent of the States and, except to the extent provided otherwise in this Law or any other enactment –

(a) is not subject to any rule of law relating to committees

^a Article IX of Billet d'État No. XIX of 2002.

of the States, and

- (b) does not have any of the rights or privileges vested in committees of the States.

(4) The Public Trustee shall hold office for a term not exceeding five years and a person may, on the recommendation of the Committee pursuant to subsection (2), be appointed to that office by the States for more than one term of office.

(5) The Public Trustee may resign his office at any time by notice in writing addressed to the Committee; but the resignation may not take effect until a successor takes office as Public Trustee.

(6) The States may remove any person from the office of Public Trustee on the grounds of permanent incapacity, misbehaviour or gross incompetence, in each case on the recommendation of the Committee.

(7) Subject to subsections (4), (5), (6) and (8), the Public Trustee shall hold and vacate his office in accordance with the terms and conditions of his appointment which shall be determined by the Committee.

(8) The provisions of the Schedule to this Law shall have effect with respect to the Office of the Public Trustee.

NOTES

In section 1, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016.¹

The following case has referred to this Law:

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017).

PART II
FUNCTIONS OF THE PUBLIC TRUSTEE

Functions of Public Trustee.

2. (1) The functions of the Public Trustee shall be –
- (a) to act, subject to the provisions as to his appointment as trustee set out in section 3, as trustee of a trust described in section 4 where –
 - (i) the trust has no trustee lawfully able to act,
 - (ii) in the case of a trust the proper law of which is the law of Guernsey, the provisions of section 13 of the Trusts (Guernsey) Law, 1989^b ("number of trustees") are not satisfied, or
 - (iii) it is necessary or desirable for him so to act –
 - (A) for the purposes of preserving the trust assets or otherwise in the interests of the beneficiaries of the trust, or
 - (B) for the protection or enhancement of the reputation of the Bailiwick, [or

^b Ordres en Conseil Vol. XXXI, p. 217; Vol. XXXII, p. 385.

- (iv) all or any of the beneficiaries of the trust cannot be identified, ascertained or found,]
- (b) subject to subsection (2), to determine after consultation with the Committee –
 - (i) the fees payable (whether generally or in any particular case) in respect of the exercise of his functions,
 - (ii) the interest payable in the event of default in the due payment of fees, and
 - (iii) the persons by whom such fees and interest are to be payable,
- (c) such other functions as may be assigned or transferred to him –
 - (i) by or under this Law and any other enactment, and
 - (ii) by Ordinance of the States made under and for the purposes of this section.

(2) For the purposes of subsection (1)(b), the fees and interest which may be recovered by the Public Trustee in any particular case shall not exceed the amount of the costs (including the cost of any fees or remuneration payable to the Public Trustee and his officers and servants), fees, expenditure and liabilities actually and reasonably incurred by the Public Trustee in connection with the exercise of his functions in that particular case.

(3) The Public Trustee may act as trustee alone or jointly with other persons.

(4) The Public Trustee may in his absolute discretion decline to act as trustee of any trust or otherwise to exercise any of his functions.

NOTES

In section 2, the words in square brackets in paragraph (a) of subsection (1) were inserted by the Public Trustee (Amendment) Ordinance, 2004, section 1, with effect from 1st June, 2004.

The Trusts (Guernsey) Law, 1989 has since been repealed by the Trusts (Guernsey) Law, 2007, section 83(1)(a), with effect from 17th March, 2008, subject to the transitional provisions and savings in, respectively, subsections (2)-(4) of section 83 and section 84 of the 2007 Law.

The following case has referred to section 2:

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017).

Appointment of Public Trustee as trustee.

3. (1) The Public Trustee may be appointed to act as trustee of a trust as follows –

- (a) by agreement with the person or persons who have the power, under the terms of the trust, to appoint new or additional trustees,
- (b) subject to the provisions of section 12, by an instrument under his own hand, or
- (c) by order of the Court made on the application of the

Public Trustee, the Commission, a trustee, settlor or beneficiary of the trust or, with leave of the Court, any other person (and such an application may, with the approval of the Court, and on such terms as the Court may direct, be made ex parte),

and in paragraph (c) "**the Court**" means –

- (i) in the case of a trust in respect of which the Court of Alderney (but not the Royal Court) has jurisdiction, the Court of Alderney,
- (ii) in the case of a trust in respect of which the Court of the Seneschal of Sark (but not the Royal Court) has jurisdiction, the Court of the Seneschal of Sark,
- (iii) in any other case, the Royal Court.

(2) Where the appointment of the Public Trustee as trustee in accordance with subsection (1) is subsequently terminated or annulled (whether by agreement, order of the Court or otherwise), the termination or annulment shall be without prejudice to the validity of anything done by or in relation to the Public Trustee as trustee prior to the termination or annulment.

(3) An appointment of the Public Trustee as trustee by the Court in accordance with subsection (1)(c) may be made on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit.

(4) The appointment of the Public Trustee as trustee of a trust in

accordance with subsection (1) shall have effect notwithstanding any provision (whether in relation to the appointment of trustees or otherwise) of –

- (a) the terms of the trust, or
- (b) any enactment or rule of law.

NOTE

The following case has referred to section 3:

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017).

Trusts in respect of which Public Trustee may act.

4. The trusts referred to in section 2(1)(a) are (notwithstanding anything to the contrary in the terms of the trust) –

- (a) a trust the proper law of which is the law of any part of the Bailiwick (and for the purposes of this paragraph, in determining the proper law of a trust, any change in the proper law pursuant to –
 - (i) any term of the trust by virtue of which the proper law of the trust is to change in any particular circumstance or on the happening of any particular event, or
 - (ii) the exercise of any power contained in the terms of the trust to change the proper law of the trust,

shall be disregarded),

- (b) any other trust –
 - (i) a trustee of which is resident in the Bailiwick,
 - (ii) a trustee of which is a company the memorandum and articles of which are registered in the Register of Companies kept under the Companies (Guernsey) Law, 1994^c or the Companies (Alderney) Law, 1994^d;
 - (iii) of which there is no trustee but the last trustee of which was, immediately prior to ceasing to hold office, a trustee of a description set out in subparagraph (i) or (ii),
 - (iv) any property of which is situated in or administered in the Bailiwick,
 - (v) the terms of which provide that a court in the Bailiwick is to have jurisdiction, or
 - (vi) a trustee of which –
 - (A) is or has been, or has applied to the Commission to be, a licensed fiduciary

^c Order in Council No. XXIII of 1994; there are amendments not relevant to this enactment.

^d Order in Council No. XXIV of 1994; there are amendments not relevant to this enactment.

within the meaning of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^e; or

(B) is not a licensed fiduciary within the meaning of that Law and is acting as trustee in contravention of section 1 of that Law,

(c) such other trusts or class or description of trusts as may be prescribed by Ordinance of the States made under and for the purposes of this section.

NOTES

The following case has referred to section 4:

Kleinwort Benson (Guernsey) Limited v. Aras Investment Management Limited and Active Fund Services Limited (2017) (Unreported, Royal Court, 17th March) (Guernsey Judgment No. 30/2017).

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 has since been repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.

^e Order in Council No. I of 2001.

Ancillary powers of Public Trustee.

5. (1) The Public Trustee may, having regard to the provisions of section 2, do anything that appears to him to be necessary or expedient for the purpose of exercising his functions and, without prejudice to the generality of the foregoing, he shall have power –

- (a) to request the production of and otherwise obtain such documents, accounts or information from such persons and within such time periods or at such intervals as he thinks fit,
- (b) subject to any provision to the contrary in this Law or any other enactment, to publish information, reports and other documents,
- (c) to appoint any person or body to advise him in relation to the exercise of any of his functions.

(2) The Public Trustee may, having regard to the provisions of section 2, for the purposes of exercising his functions –

- (a) acquire, lease, encumber, use, dispose of, exchange, invest or otherwise deal with any movable or immovable property and any interest in it and raise capital from banks and other financial institutions whether in the Bailiwick or elsewhere by way of bond, mortgage, overdraft or otherwise, with or without security, 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 Public Trustee may sue and be sued as Public Trustee.

Annual reports.

6. (1) The Public Trustee shall, as soon as practicable in each calendar year, submit to the Committee –

- (a) a report on the exercise of his functions in the preceding year, and
 - (b) the audited accounts of the Office of the Public Trustee together with the auditors' report thereon.
- (2) The Committee –
 - (a) shall submit –
 - (i) the Public Trustee's report made under subsection (1)(a), and
 - (ii) the audited accounts and auditors' report thereon referred to in subsection (1)(b),
 - to the States, and
 - (b) may at the same time submit their own report to the States –

- (i) covering the period of the Public Trustee's report,
- (ii) covering the matters described in subsection (1)(a), and
- (iii) containing the Committee's comments (if any) on the audited accounts and auditors' report thereon referred to in subsection (1)(b).

PART III FINANCIAL PROVISIONS

The Public Trustee Fund.

7. (1) The Public Trustee shall establish a fund to be known as the Public Trustee Fund (referred to in this Law as the "**Fund**") which shall vest in the Public Trustee and which may be applied for the purposes of –

- (a) paying fees or remuneration to the Public Trustee and his officers and servants, and
- (b) meeting all other costs, fees, expenditure and liabilities properly incurred in exercising his functions.

(2) The Public Trustee may open, operate and close bank accounts for the Fund.

(3) There shall, subject to subsection (4), be paid into the Fund –

- (a) all fees and other payments received by the Public Trustee in the performance of his functions,

- (b) any grants and loans obtained from the Committee under section 8,
 - (c) any money borrowed by the Public Trustee under the powers conferred on him by section 5, and
 - (d) any other money, and any income, profit or proceeds derived from or representing any money or property, which is lawfully vested in the Public Trustee from time to time and which may properly be paid into the Fund and applied for the purposes mentioned in subsection (1).
- (4) Assets of trusts in respect of which the Public Trustee has been appointed to act as trustee shall not be paid into the Fund.

Grants and loans to Public Trustee.

8. (1) The Committee may, after consultation with the Public Trustee, and on such terms and conditions (whether as to repayment, payment of interest or otherwise) as the Committee thinks fit, make grants or loans from the States General Revenue Account towards the costs, expenditure and liabilities of the Public Trustee incurred in exercising his functions.

(2) The Committee shall, before making any grant or loan under subsection (1), satisfy itself that the costs, expenditure and liabilities or estimated costs, expenditure and liabilities of the Office of the Public Trustee in any year have exceeded or are likely to exceed the income or estimated income of that Office in that year.

Investment of surplus funds.

9. The Public Trustee may invest any monies of the Fund which are not immediately required by him in any investment approved for the purpose by the Committee in writing.

Exemption from income tax.

10. The Fund and the income thereof is not subject to income tax under the Income Tax (Guernsey) Law, 1975^f.

Accounts and audit.

11. (1) The Public Trustee shall –

- (a) keep proper accounts and proper records in relation to those accounts, and
- (b) prepare in respect of each year a statement of account giving a true and fair view of the state of affairs of the Office of the Public Trustee.

(2) The accounts of the Office of the Public Trustee –

- (a) shall be audited annually by auditors appointed by the Public Trustee with the approval of the Committee,
- (b) shall, in accordance with section 6(1)(b), be submitted to the Committee, and
- (c) shall, together with the auditors' report thereon, be submitted by the Committee to the States with the

^f Ordres en Conseil Vol. XXV, p. 124; there are amendments which are not material to this Law.

Public Trustee's report made under section 6(1)(a).

(3) For the purposes of subsection (2) the accounts of the Office of the Public Trustee –

- (a) shall include the accounts relating to the Fund, but
- (b) shall not include the accounts relating to trusts in respect of which the Public Trustee has been appointed to act as trustee.

PART IV APPEALS, ETC

Right of appeal.

12. (1) A person aggrieved by a decision of the Public Trustee made in the exercise of his functions, being a decision of a description set out in subsection (2), may (subject to the provisions of any enactment to the contrary) appeal against the decision to the Court on any of the grounds set out in subsection (3).

(2) The decisions of the Public Trustee against which an appeal shall lie under this section are, subject to the provisions of any enactment to the contrary, decisions of the following descriptions –

- (a) a decision of the Public Trustee to appoint himself trustee by instrument under his own hand under section 3(1)(b),
- (b) a decision of the Public Trustee to serve a notice under section 15(1) or (2),

- (c) any other description of decision specified by Ordinance of the States for the purposes of this section,

but no appeal shall lie under this section in respect of anything done or omitted to be done by the Public Trustee as trustee of a trust in respect of which he has been appointed to act as trustee.

- (3) The grounds of an appeal under this section shall be –

- (a) that the decision was *ultra vires* or that some other error of law has been made,
- (b) that a material error as to the facts has been made,
- (c) that there was a material procedural error, or
- (d) that there was some other material irregularity, including unreasonableness, bad faith or lack of proportionality.

- (4) An appeal under this section shall be instituted –

- (a) within a period of 28 days immediately following the date of the Public Trustee's decision (or such other period as the Court may in any particular case allow in the interests of justice),
- (b) by summons served on the Public Trustee stating the grounds and material facts on which the appellant relies.

(5) On an appeal under this section, the Court may –

- (a) dismiss the appeal, or
- (b) quash the decision of the Public Trustee,

and, where the Court quashes the decision of the Public Trustee, it may remit the matter to him with a direction to reconsider it and reach a decision in accordance with the findings of the Court.

(6) The effect of a decision to which an appeal under this section relates shall not, except where the Court orders otherwise, be suspended in consequence of the bringing of the appeal.

(7) The Public Trustee may, where an appeal under this section is not determined by the Court within a period of six months immediately following the date of the summons by which the appeal was instituted, apply to the Court, by summons served on the appellant, for an order that the appeal be dismissed for want of prosecution; and upon hearing such an application the Court may –

- (a) dismiss the appeal or dismiss the application (in either case upon such terms and conditions as the Court may direct), or
- (b) make such other order as the Court considers just.

(8) In this section "**the Court**" –

- (a) in relation to a decision described in subsection (2)(a), has the same meaning as in section 3(1)(c),

- (b) in relation to a decision described in subsection (2)(b) –
 - (i) where the appellant is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, but not of the Royal Court, means the Court of Alderney or, as the case may be, the Court of the Seneschal of Sark,
 - (ii) in any other case, means the Royal Court,
- (c) in relation to a decision described in subsection (2)(c), has the meaning given by the Ordinance or, if none, means the Royal Court.

(9) An appeal from a decision of the Royal Court made on an appeal under this section (including a decision made on an appeal from the Court of Alderney or the Court of the Seneschal of Sark) shall lie to the Court of Appeal in accordance with the provisions of the Court of Appeal (Guernsey) Law, 1961^g and any rules of court made thereunder.

(10) This section does not confer a right of appeal on a question of law which has been referred to the Royal Court under section 13.

(11) In this section references to a decision of the Public Trustee includes references to an act or omission by him.

^g Ordres en Conseil Vol. XVIII, p. 315; there are amendments not material to this enactment.

Reference of points of law to Royal Court.

13. (1) A question of law arising in connection with the performance by the Public Trustee of his functions may be referred by the Public Trustee for decision to the Royal Court in such manner and within such period as may be prescribed by order of the Royal Court.

(2) An appeal from a decision of the Royal Court made on a reference under this section shall lie to the Court of Appeal in accordance with the provisions of the Court of Appeal (Guernsey) Law, 1961 and any rules of court made thereunder.

PART V

ENFORCEMENT & OFFENCES

Power to obtain injunctions.

14. (1) If on the application of the Public Trustee the Court is satisfied that –

- (a) there is a reasonable likelihood that a person will contravene any duty, requirement, restriction or prohibition imposed by, or any other provision of, any enactment or rule of law –
 - (i) concerning any trust in respect of which the Public Trustee is appointed to act as trustee, or
 - (ii) in respect of which the Public Trustee has functions or which those functions touch upon or concern, or
- (b) a person may have been guilty of such a contravention

and there is a reasonable likelihood that the contravention will continue or be repeated,

the Court may grant an injunction restraining the contravention and requiring that person to do or not to do any thing.

(2) An injunction under subsection (1) may be granted on such terms and conditions, and may contain such incidental, ancillary, consequential or supplementary provision, as the Court thinks fit.

(3) An application by the Public Trustee for an injunction under this section may, with the approval of the Court, and on such terms as the Court may direct, be made *ex parte*.

(4) In this section "**the Court**" means –

(a) where the person against whom the injunction under this section is sought is within the jurisdiction of the Court of Alderney or the Court of the Seneschal of Sark, but not of the Royal Court, the Court of Alderney or, as the case may be, the Court of the Seneschal of Sark,

(b) in any other case, the Royal Court.

(5) The powers conferred upon the Royal Court by this section are in addition to and not in derogation from the powers conferred by the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1987^h; and the provisions of Parts I and V of that Law (apart from section 1(1) and (7)) shall apply in relation to injunctions

^h Ordres en Conseil Vol. XXX, p. 145.

of the Royal Court under this section.

Power of Public Trustee to investigate.

15. (1) The Public Trustee may, by notice in writing served on any person, require him to provide the Public Trustee, 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 Public Trustee may reasonably require –

- (a) for the purpose of determining whether the Public Trustee should be appointed, in accordance with the provisions of this Law, to act as trustee of any trust, or
- (b) otherwise for the performance of his functions.

(2) The Public Trustee may, by notice in writing served on any person –

- (a) require him to produce, within such time and at such place as may be specified in the notice, such documents or documents of such description as may be so specified,
- (b) require him to furnish forthwith, to any of the Public Trustee's officers, servants or agents authorised for the purposes of this paragraph, on production of evidence of such authority, such information and documents as the officer, servant or agent may specify,

being information or documents reasonably required by the Public Trustee for the purposes set out in paragraphs (a) and (b) of subsection (1).

(3) The power conferred by this section to require a person to produce any documents includes power –

- (a) if the documents are produced, to take copies of them or extracts from them and to require that person or any other person appearing likely to have knowledge of them or their contents to provide an explanation of them, 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.

(4) A person who without reasonable excuse fails to comply with a requirement imposed on him by or under this section is guilty of an offence and liable –

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

[(5) A statement made by a person in response to a requirement imposed by or under this section –

- (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 subsection (4) or section 19(1),

(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.]

(6) Nothing in this section shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(7) Where a person claims a lien on a document its production under this section shall be without prejudice to his lien.

(8) A requirement imposed by or under this section shall have

effect notwithstanding any obligation as to confidentiality or other restriction upon 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.

(9) A notice under subsection (1) or (2) shall give particulars of the right of appeal conferred by section 12.

NOTE

In section 15, subsection (5) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Power of Bailiff to grant warrant.

16. (1) If the Bailiff (within the meaning of subsection (2)) is satisfied by information on oath –

- (a) that a notice has been served under section 15 on any person and that there are reasonable grounds for suspecting –
 - (i) that there has been a failure to comply with any requirement imposed by or under the notice,
 - (ii) that there has been a failure by that person to comply with any other requirement imposed by or under section 15, or
 - (iii) the accuracy or completeness of any information or documents furnished pursuant to any requirement mentioned in subparagraph (i)

or (ii),

- (b) that it is not practicable to serve a notice under section 15, or
- (c) that there are reasonable grounds for suspecting that if such a notice were served –
 - (i) it would not be complied with,
 - (ii) any documents to which it would relate would be removed, tampered with or destroyed, or
 - (iii) the service of the notice might seriously prejudice the performance by the Public Trustee of his functions,

he may grant a warrant conferring the powers set out in section 17.

(2) In this section the expression "**Bailiff**" means –

- (a) where the warrant is to be executed in Alderney, the Chairman of the Court of Alderney or (if he is unavailable) a Jurat thereof,
- (b) where the warrant is to be executed in Sark, the Seneschal or his deputy,
- (c) in any other case, the Bailiff, Deputy-Bailiff, Lieutenant-Bailiff or Juge Délégué.

Powers conferred by Bailiff's warrant.

17. (1) A warrant granted under section 16(1) shall authorise any officer of police, together with any other person named in the warrant (including, without limitation, the Public Trustee and any of his officers, servants or agents) –

(a) to enter any premises specified in the warrant, being premises –

(i) which are occupied by the person upon whom the notice under section 15 was or could be served,

(ii) upon which the documents to which the notice under section 15 relates are reasonably believed to be, or

(iii) where no notice under section 15 has been served, upon which the documents to which the notice would relate are reasonably believed to be,

using such force as is reasonably necessary for the purpose,

(b) to search the premises and, in relation to any documents –

(i) which were required by the notice under section 15, or

(ii) where no notice under section 15 has been

served, which are of a class or description specified in the warrant and which could have been required by a notice under section 15,

to take possession of them or to take any other steps which may appear to be necessary for preserving them or preventing interference with them,

- (c) to take copies of or extracts from any such documents,
- (d) to require any person named in, or of a class or description specified in, the warrant –
 - (i) to answer any questions which could have been put to him under section 15,
 - (ii) to state to the best of his knowledge and belief the whereabouts of any documents described in paragraph (b),
 - (iii) to make an explanation of any such documents.

(2) A warrant granted under section 16 shall cease to be valid on the expiration of 28 days immediately following the day on which it was issued.

(3) Any documents of which possession is taken under the powers conferred by a warrant granted under section 16 may be retained –

- (a) for a period of three months or such longer period as the Bailiff may, when issuing the warrant or at any time thereafter, direct, or

- (b) if within that period proceedings to which the documents are relevant are commenced against any person, until the conclusion of those proceedings.

(4) A person who without reasonable excuse obstructs or fails to comply with any requirement of a person exercising or purporting to exercise any power conferred by a warrant granted under section 16 is guilty of an offence and liable –

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

[(5) A statement made by a person in response to a requirement imposed under a warrant granted under section 16 –

- (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 subsection (4) or section 19(1),
 - (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.]

(6) Nothing in a warrant granted under section 16 shall compel the production or divulgence by an advocate or other legal adviser of a communication subject to legal professional privilege; but an advocate or other legal adviser may be required to give the name and address of any client.

(7) Where a person claims a lien on a document its production under a warrant granted under section 16 shall be without prejudice to his lien.

(8) A requirement imposed under a warrant granted under section 16 shall have effect notwithstanding any obligation as to confidentiality or other restriction upon 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.

NOTE

In section 17, subsection (5) was substituted by the Statements Obtained Under Compulsion (Restriction of Use) (Bailiwick of Guernsey) Law, 2009, section 1, Schedule, with effect from 5th August, 2010.

Falsification, etc, of documents during investigation.

18. (1) A person –

(a) upon whom a notice under section 15 has been served or who knows or has reasonable grounds to suspect –

(i) that such a notice is likely to be served on him, or

(ii) that an inquiry or investigation is being or is likely to be carried out under section 15, and

(b) who falsifies, conceals, destroys, removes or otherwise disposes of, or causes or permits to be falsified, concealed, destroyed, removed or otherwise disposed of, documents which he knows or has reasonable grounds to suspect –

(i) are or would be specified in such a notice, or

(ii) are or would be relevant to such an inquiry or investigation,

is guilty of an offence unless he proves that he had no intention of concealing facts disclosed by the documents from the Public Trustee or other persons carrying out such an inquiry or investigation.

- (2) A person guilty of an offence under subsection (1) is liable –
 - (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both,
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

False or misleading information.

- 19.** (1) A person who –
- (a) in making any statement or providing any information or document to –
 - (i) the Public Trustee or any officer, servant or agent of his when acting in the exercise of his functions, or
 - (ii) any person acting under a warrant granted under section 16, or
 - (b) otherwise than as mentioned in paragraph (a) but in circumstances in which the person making the statement or providing the information or document knows or could reasonably be expected to know that the statement, information or document would or might be used by the Public Trustee for the purpose of exercising his functions –

- (i) makes a statement which he knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (ii) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (iii) 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
- (iv) 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,

shall be guilty of an offence.

- (2) A person guilty of an offence under subsection (1) is liable –
 - (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, or to imprisonment for a term not exceeding 3 months, or to both,
 - (b) on conviction on indictment, to a fine, or to imprisonment for a term not exceeding 2 years, or to both.

Confidentiality.

20. (1) Subject to the provisions of subsection (3) –

- (a) no person who under or for the purposes of this Law receives any document or information relating to the business or other affairs of any person,
- (b) no person who obtains any such document or information directly or indirectly from a person who has so received it,

shall disclose the document or information without the consent of the person to whom it relates and (if different) the person from whom it was so obtained.

(2) A person who discloses any document or information in contravention of this section shall be guilty of an offence and liable –

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

(3) Subsection (1) does not preclude –

- (a) the disclosure of –
 - (i) information which at the time of disclosure is or has already been made available to the public

from other sources, or

- (ii) information in the form of a summary or collection of information so framed as not to enable information relating to any particular person to be ascertained from it,
- (b) the disclosure of information for the purpose of enabling or assisting the Public Trustee to discharge his functions,
- (c) where, in order to enable or assist him to discharge his functions, the Public Trustee considers it necessary to seek advice from a qualified person on any matter of law, accountancy or valuation or any other matter requiring the exercise of professional skill, the disclosure by the Public Trustee to that person of such information as appears to the Public Trustee to be necessary to ensure that that person is properly informed as to the matters on which his advice is sought,
- (d) the disclosure by the Public Trustee of information in the interests of the beneficiaries of a trust in respect of which the Public Trustee has been appointed to act as trustee,
- (e) the disclosure of information for the purpose of enabling or assisting the Commission (whether for the purposes of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc

(Bailiwick of Guernsey) Law, 2000ⁱ or otherwise) or a relevant supervisory authority in a place outside the Bailiwick to exercise their respective functions,

(f) the disclosure of information in compliance with, or for the purposes of enabling or assisting a person to comply with, any requirement imposed by or under this Law or any Ordinance, regulation or rule made under it,

(g) the disclosure of information –

(i) for the purposes of the investigation, prevention or detection of crime, or

(ii) with a view to the instigation of or otherwise for the purposes of any criminal proceedings,

whether under this Law or otherwise,

(h) the disclosure of information in connection with any other proceedings arising out of this Law,

(i) the disclosure of information with a view to the instigation of, or otherwise for the purposes of, any disciplinary proceedings relating to the exercise of his professional duties by any person,

(j) the disclosure by the Public Trustee to Her Majesty's Procureur or an officer of police of information

ⁱ Order in Council No. I of 2001.

obtained under section 15 or 17 or information in the possession of the Public Trustee as to any suspected offence in relation to which the powers conferred by those sections are exercisable,

- (k) where information is disclosed to an officer of police under paragraph (j), the disclosure of that information by an officer of police for the purposes of an investigation or prosecution either in the Bailiwick or, with the prior consent of Her Majesty's Procureur to such disclosure, elsewhere,
- (l) the disclosure of information to a person or body responsible for a scheme for compensating clients, investors or beneficiaries (whether in the Bailiwick or elsewhere) –
 - (i) if it appears to the Public Trustee that the disclosure would enable or assist the recipient of the information or the Public Trustee to discharge their respective functions, and
 - (ii) if the recipient has given to the Public Trustee a written undertaking that the information will not be further disclosed without the prior consent of the Public Trustee,
- (m) the disclosure of information in connection with the discharge of any international obligation to which the Bailiwick may from time to time be subject,

- (n) the disclosure of information to assist, in the public interest, any authority that appears to the Public Trustee to exercise, in a place outside the Bailiwick, functions corresponding to his, or
- (o) the disclosure of information to comply with an order of a court.

(4) Without prejudice to subsections (1), (2) and (3), any document or information communicated to the Public Trustee by a committee of the States or by the Commission shall, if that committee or (as the case may be) the Commission so requests, be regarded as confidential by the Public Trustee and by his officers and servants; and no such document or information shall be disclosed except –

- (a) in compliance with an order of a court, or
- (b) with the leave of that committee or (as the case may be) the Commission, for any reason set out in paragraph (b), (e), (g), (m) or (n) of subsection (3).

NOTE

The Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 has since been repealed by the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.

Criminal liabilities of directors, etc.

21. (1) Where an offence under this Law is committed by a body corporate and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of, any director, manager, secretary or

other similar officer of the body corporate, or any person purporting to act in any such capacity, he as well as the body corporate shall be guilty of the offence and may be proceeded against and punished accordingly.

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

Defence of due diligence.

22. In any proceedings for an offence under this Law it shall be a defence for the accused to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of such an offence by himself and by any person under his control.

PART VI
MISCELLANEOUS

Exclusion of liability.

23. No liability shall be incurred by –

- (a) the States or any committee thereof,
- (b) the Public Trustee or any person –
 - (i) to whom the Public Trustee has, under paragraph 3 of the Schedule, delegated any function, or
 - (ii) appointed as Deputy Public Trustee under paragraph 4 of the Schedule, or

- (c) any officer, servant or member of the States or officer or servant of the Public Trustee,

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, unless the thing was done or omitted to be done in bad faith.

Interpretation.

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

"accountant" and **"auditor"** mean a person who is qualified for appointment as an auditor pursuant to section 63(1)(a) or (b) or section 63(6) (as read in conjunction with any Ordinance thereunder) of the Companies (Guernsey) Law, 1994^j;

"advocate" means an Advocate of the Royal Court of Guernsey,

"Bailiwick" means the Bailiwick of Guernsey,

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

"Commission" means the Guernsey Financial Services Commission,

"Committee" means the States [Committee for Economic Development],

"contravention" includes failure to comply, and cognate expressions shall be construed accordingly,

^j Order in Council No. XXXIII of 1994; No. XIV of 1996.

"Court" has the meaning given by sections 3, 12 and 14,

"documents" means information recorded in any form (including, without limitation, in an electronic form) and, in relation to information recorded otherwise in legible form, references to its production, howsoever expressed, include references to the production of a copy of the information in legible form,

"functions" means duties, powers and other functions assigned or transferred by or under this Law and any other enactment and includes, in relation to the Public Trustee, his functions as trustee of a trust in respect of which he is or may be appointed to act as trustee,

"Fund" means the Public Trustee Fund established under section 7(1),

"Office of the Public Trustee" means the Office of the Public Trustee established under section 1(1),

"officer of police" means a member of the salaried police force of the Island of Guernsey and –

- (a) in relation to Guernsey, Herm and Jethou, and within the limits of his jurisdiction, a member of the special constabulary of the Island of Guernsey,
- (b) in relation to Alderney, a member of any police force which may be established by the States of Alderney and, within the limits of his jurisdiction, a special constable appointed [or deemed to be appointed

pursuant to the provisions of an Ordinance made under section 46A] of the Government of Alderney Law, 1987^k;

- (c) in relation to Sark, the Constable and the Vingtenier,

"Public Trustee" means the holder of the Office of the Public Trustee,

"Regulation of Fiduciaries Law" means the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000^l,

"regulatory Laws" means –

- (a) the Protection of Investors (Bailiwick of Guernsey) Law, 1987^m;
- (b) the Insurance Business (Guernsey) Law, 1986ⁿ;
- (c) the Banking Supervision (Bailiwick of Guernsey) Law, 1994^o;

^k Ordres en Conseil Vol. XXX, p. 37; Vol. XXXI, pp. 83 and 306; No. XI of 1993; No. IX of 1995; No. IV of 1998; and No. I of 2000; section 15 has been prospectively repealed and replaced by the Government of Alderney (Amendment) Law, 2000.

^l Order in Council No. I of 2001.

^m Ordres en Conseil Vol. XXX, p. 281.

ⁿ Ordres en Conseil Vol. XXIX, p. 214.

^o Order in Council No. XIII of 1994.

- (d) the Regulation of Fiduciaries Law, and
- (e) any other enactment or statutory instrument prescribed for the purposes of this section by regulations of the Committee made after consultation with the Public Trustee and with the agreement of the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark,

"relevant supervisory authority", in relation to a place outside the Bailiwick, means an authority discharging in that place –

- (a) functions corresponding to any functions of the Commission under the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^P or under the regulatory Laws, or
- (b) such other functions as the Committee may, after consultation with the Public Trustee, and with the agreement of the Policy and Finance Committee of the States of Alderney and the [Policy and Finance Committee] of the Chief Pleas of Sark, by regulation prescribe,

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

"servant" includes a person employed under a contract of service or

^P Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1987; and No. I of 1998.

apprenticeship (whether written or oral, express or implied) and a person engaged on a consultancy or secondment basis,

"States" means the States of Guernsey,

"terms of a trust" means the written or oral terms of a trust and any other terms applicable under its proper law.

(2) The Interpretation (Guernsey) Law, 1948^q applies to the interpretation of this Law (and of any Ordinance made under it) throughout the Bailiwick.

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

(4) References in this Law to the Policy and Finance Committee of the States of Alderney and to the [Policy and Finance Committee] of the Chief Pleas of Sark are references to the committees of those islands for the time being exercising the functions respectively conferred by this Law on the said Policy and Finance Committee or (as the case may be) on the said [Policy and Finance Committee].

(5) In this Law any words importing the neuter gender shall include the masculine and the feminine, and any words importing the masculine gender shall include the feminine and the neuter.

NOTES

In section 24,

^q Ordres en Conseil Vol. XIII, p. 355.

the words in square brackets in the definition of the expression "Committee" in subsection (1) were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 1(a), with effect from 1st May, 2016;²

the words in square brackets in paragraph (b) of the definition of the expression "officer of police" in subsection (1) were substituted by the Government of Alderney (Amendment) Law, 2000, section 2, with effect from 19th June, 2002;

the words "Policy and Finance Committee" in square brackets, wherever occurring, were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.³

The functions, rights and liabilities of the Commerce and Employment Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Economic Development and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 1(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.⁴

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁵

In accordance with the provisions of the Police Force (Guernsey) Law, 1986, section 2(2), with effect from 19th August, 1986, the reference herein to a member of the salaried police force of the Island of Guernsey shall include a reference to a member of a force present in the Island by virtue of an agreement made under section 1 of the 1986 Law.

The Companies (Guernsey) Law, 1994 has since been repealed by the Companies (Guernsey) Law, 2008, section 543, Schedule 5, paragraph 4(1)(a), with effect from 1st July, 2008, subject to the savings and transitional provisions in, first, section 541 of and Schedule 4 (paragraphs 2 and 4 of which entered into force on 12th June, 2008) to the 2008 Law, second, the Companies (Transitional Provisions) Regulations, 2008, third, the Companies (Transitional Provisions) (No. 2) Regulations, 2008 and, fourth, the Companies (Transitional Provisions) (No. 3) Regulations, 2008.

The Government of Alderney Law, 1987 has since been repealed by the Government of Alderney Law, 2004, section 63(1), Schedule 3, with effect from 1st May, 2005, subject to the savings and transitional provisions in

section 63(2) and section 64 of the 2004 Law.

The Insurance Business (Guernsey) Law, 1986 has since been repealed by the Insurance Business (Bailiwick of Guernsey) Law, 2002, section 100(1), Schedule 6, Part I, with effect from 5th November, 2002, subject to the savings in, first, section 102 of the 2002 Law and, second, section 78 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002.

The Protection of Investors (Bailiwick of Guernsey) Law, 1987, the Banking Supervision (Bailiwick of Guernsey) Law, 1994 and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 have all since been repealed by, respectively, the Protection of Investors (Bailiwick of Guernsey) Law, 2020, section 80(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 81 of the 2020 Law; the Banking Supervision (Bailiwick of Guernsey) Law, 2020, section 67(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 68 of the 2020 Law; and the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2020, section 62(a), with effect from 1st November, 2021, subject to the savings and transitional provisions in section 60 of the 2020 Law.

The Interpretation (Guernsey) Law, 1948 has since been repealed by the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, section 28(a), with effect from 1st October, 2018.

Amendments to legislation.

25. (1) ...

(2) In section 21(2) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987^g –

(a) after paragraph (d) insert the following paragraph –

"(e) to enable –

^g Ordres en Conseil Vol. XXX, p. 243; No. XX of 1991; No. XIII of 1994; No. II of 1997; and No. I of 1998. The Law was also amended by the Financial Services Commission (Bailiwick of Guernsey) (Amendment) Law, 2002.

- (i) the Public Trustee (the office of which was established by section 1 of the Public Trustee (Bailiwick of Guernsey) Law, 2002), and
- (ii) any authority which appears to the Commission to exercise, in a place outside the Bailiwick, functions corresponding to any of those of the Public Trustee,

to carry out their functions or to investigate matters of relevance to their functions, or",

- (b) reletter the existing paragraph (e) of section 21(2) as paragraph (f).

NOTE

In section 25, subsection (1) was repealed by the Trusts (Guernsey) Law, 2007, section 83(1)(c), with effect from 17th March, 2008, subject to the transitional provisions and savings in, respectively, subsections (2)-(4) of section 83 and section 84 of the 2007 Law.

General provisions as to subordinate legislation.

- 26.** (1) Any Ordinance, regulation or order under this Law –
- (a) may be amended or repealed by a subsequent Ordinance, regulation or order, 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) as to the creation, trial and punishment of offences,

(ii) making consequential amendments to this Law and any other enactment,

(iii) authorising the Committee to make regulations in relation to any matter in relation to which the Ordinance can make provision.

(2) Any power conferred by this Law to make any Ordinance, regulation or order may be exercised –

(a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,

(b) so as to make, as respects the cases in relation to which it is exercised –

(i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),

- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) The Committee (and any other committee of the States) shall, before recommending the States to agree to make an Ordinance under section 2(1)(c), 4(c) or 12(2)(c), consult the [Policy and Finance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection shall not invalidate any Ordinance made under those sections.

(4) The requirement imposed by subsection (3) to consult the [Policy and Finance Committee] of the Chief Pleas of Sark and the Policy and Finance Committee of the States of Alderney shall include a requirement to inform the States of the views of those committees when making any recommendation to the States as to the matter consulted upon.

NOTES

In section 26, the words "Policy and Performance Committee" in square brackets, wherever occurring, were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.⁶

The functions, rights and liabilities of the Sark Policy and Performance Committee and of its Chairman arising under or by virtue of this Law were transferred to and vested in, respectively, the Sark Policy and Finance Committee and its Chairman by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 1, Schedule, with effect from 24th October, 2018, subject to the savings and transitional provisions in section 3 of the 2018 Ordinance.⁷

Service of documents.

27. (1) Any document other than a summons to be given or served under or for the purposes of this Law may be given or served –

- (a) on 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,
- (b) on a body corporate with a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, that office,
- (c) on a body corporate without a registered office in the Bailiwick, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in the Bailiwick or, if there is no such place, its registered or principal office outside the Bailiwick,
- (d) on an unincorporated body, by being given to or served on any partner, member, manager or officer thereof in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in the Bailiwick or, if there is no such place, its principal or last known principal place of business elsewhere,
- (e) on the Public Trustee, by being left at, or sent by post or transmitted to, the principal offices of the Public Trustee in Guernsey,

and in this section –

- (i) the expression "**by post**" means by registered post, recorded delivery service or ordinary letter post, and
- (ii) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce a document containing the text of the communication: in which event the document shall be regarded as served when it is received.

(2) If a person notifies the Public Trustee of an address for service within the Bailiwick for the purposes of this Law, any document to be given to or served upon him may be given or served by being left at, or sent by post or transmitted to, that address.

(3) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served by being published in La Gazette Officielle on two occasions falling in successive weeks, and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

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

(5) Notwithstanding the provisions of subsections (1) to (4) and of any other enactment or rule of law in relation to the service of documents, no

document to be given to or served on the Public Trustee under or for the purposes of this Law shall be deemed to have been given or served until it is received.

(6) If a person upon whom a document is to be served under this Law is a minor or person under legal disability, the document shall be served on his guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court (or the Court of Alderney or the Court of the Seneschal of Sark, if appropriate) for the appointment of a person to act as guardian for the purposes of this Law.

(7) A document sent by post shall, unless the contrary is shown, be deemed for the purposes 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 within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958, as amended^t.

(8) Service of any document sent by post shall be proved by showing the date of posting, the address thereon and the fact of prepayment.

NOTES

In accordance with the provisions of, first, the Law Reform (Age of Majority

^t Ordres en Conseil Vol. XVII, p. 384; Vol. XXIV, p. 84; No. XI of 1993; and No. XIV of 1994.

and Guardianship of Minors) (Guernsey) Law, 1978, section 1(1), section 1(2) and section 3, with effect from 1st July, 1978 and subject to the saving provision in section 1(6) of the 1978 Law, second, the Law Reform (Age of Majority) (Sark) Law, 1986, section 1(1), section 1(2) and section 3, with effect from 3rd February, 1987 and subject to the savings in section 1(3) of, and the Schedule to, the 1986 Law and, third, the Age of Majority (Alderney) Law, 2001, section 1(1), section 1(3) and section 3, with effect from 14th December, 2001 and subject to the transitional and savings provisions in section 1(5) of, and the Schedule to, the 2001 Law, the reference in this section to a "minor" shall be construed as a reference to a person under the age of 18 years.

In accordance with the provisions of the Children (Consequential Amendments etc.) (Guernsey and Alderney) Ordinance, 2009, section 2, with effect from 4th January, 2010, and having regard to the references in this section to "guardian", a guardian or person referred to as such has parental responsibility in respect of a child if the conditions in paragraph (a) or paragraph (b) of that section of that section are satisfied.

Citation and commencement.

28. (1) This Law may be cited as the Public Trustee (Bailiwick of Guernsey) Law, 2002.

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

NOTE

The Law was brought into force on 1st June, 2004 by the Public Trustee (Bailiwick of Guernsey) Law, 2002 (Commencement) Ordinance, 2004, section 1.

SCHEDULE
OFFICE OF THE PUBLIC TRUSTEE

Section 1(8)

Salary or fees of Public Trustee.

1. The Public Trustee shall be paid such salary or fees, emoluments and other allowances from the Fund as the Committee may determine.

Appointment of staff.

2. (1) The Public Trustee may –

- (a) appoint such officers and servants, and
- (b) appoint and instruct such other persons,

upon such terms and conditions (whether as to remuneration, expenses, pensions or otherwise) as he thinks necessary for the exercise of his functions, subject to the approval of the Committee as to the maximum number of officers and servants that may, from time to time, be engaged by him.

(2) The Public Trustee may 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 servants.

Delegation of functions.

3. (1) The Public Trustee 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 (including, without limitation, any of his officers or servants) named or described in the instrument, other than –

- (a) this power of delegation,

- (b) his obligation under section 6(1) to submit an annual report to the Committee.

(2) A function exercised by a delegate pursuant to an arrangement made under this paragraph is for all purposes exercised by the Public Trustee; 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 Public Trustee.

(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 Public Trustee, 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 Public Trustee while the arrangement subsists.

Appointment of Deputy Public Trustee.

4. Without prejudice to the generality of paragraph 3, the Public Trustee may appoint any person (including, without limitation, any of his officers or servants) as Deputy Public Trustee with full authority to exercise the Public Trustee's functions during any period during which the Public Trustee is unavailable; and the provisions of paragraphs 3(2) and 3(3) shall apply in relation to an appointment under this paragraph as they apply to an arrangement under paragraph 3(1).

Disclosure of interests.

5. (1) The Public Trustee shall, if he has any direct or indirect personal interest in the outcome of any matter of which he is seized 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 Public Trustee 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.

Official seal.

6. (1) The Public Trustee shall have an official seal for the authentication of documents required for the purpose of exercising his functions.

(2) Any document –

- (a) sealed with the official seal of the Public Trustee, and
- (b) signed by the Public Trustee or by any person to whom, pursuant to paragraph 3, he has delegated authority to affix his official seal,

shall be deemed to have been duly executed by or on behalf of the Public Trustee and shall be effective in law to bind him.

Proof of documents.

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

- (a) issued by or on behalf of the Public Trustee or the Deputy Public Trustee appointed under paragraph 4, or

- (b) signed by the Public Trustee, by any of his officers or servants, by the Deputy Public Trustee appointed under paragraph 4 or by any person to whom, pursuant to paragraph 3, he has delegated authority to sign documents of that description.
- (2) The document –
 - (a) shall be received in evidence,
 - (b) shall, unless the contrary is proved, be deemed –
 - (i) to be the document which it purports to be, and
 - (ii) to have been issued by or on behalf of the Public Trustee or Deputy Public Trustee 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) shall be evidence of the matters stated therein.

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

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

³ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁴ The functions, rights and liabilities of the Commerce and Employment Department 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(c), Schedule 2, paragraph 1(c), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.

⁵ The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁶ These words were previously substituted by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 3, with effect from 25th June, 2015. See also the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.

⁷ The functions, rights and liabilities of the Sark Policy and Performance Committee and its Chairman arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Sark General Purposes and Finance Committee and its Chairman by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, with effect from 25th June, 2015, subject to the savings and transitional provisions in section 2 of the 2015 Ordinance. Previous transfers of functions were made by the Sark General Purposes and Finance Committee (Transfer of Functions) (Guernsey) Ordinance, 2009; and the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015.