

ORDER IN COUNCIL

XXI
1991

ratifying a Projet de Loi

ENTITLED

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

(Registered on the Records of the Island of Guernsey
on the 11th February, 1992.)



1991

ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

The 11th day of February, 1992 before Sir Charles Frossard, K.B.E., Bailiff; present:—Harry Wilson Bisson, Herbert Nicolle Machon, Geoffrey Ernest Le Page, Stanley Walter John Jehan, Raymond Arthur Heaume, Esquires, Mrs. Dorothy Winifred Le Pelley, Leonard Arthur Moss, John Edward Morris, Charles Anthony Spensley, Kenneth John Rowe, Lawrence Oscar Ozanne and John Richard Rowe Henry, Esquires, Jurats.

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 19th December, 1991, approving and ratifying a *Projet de Loi* entitled “The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991”, THE COURT, after the reading of the said Order in Council and after having heard Her Majesty’s Comptroller thereon, ordered:—

1. That the said Order in Council be registered on the records of this Island and
2. That an extract of this present Act, together with a copy of the said Order in Council, be sent by Her Majesty’s Greffier to the Clerk of the Court of Alderney and to the SÉNÉSCHAL of Sark for registration on the records of those Islands respectively of which Order in Council the tenor followeth:—

At the Court at Buckingham Palace

The 19th day of December 1991

PRESENT,

The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the affairs of Guernsey and Jersey dated the 5th day of December 1991 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble petition of the States of the Island of Guernsey setting forth:—

‘1. That, in pursuance of their Resolutions of the 28th day of April 1988 and the 13th day of December 1990 the States of Deliberation at a meeting held on the 31st day of July 1991 approved a Bill or “Projet de Loi” entitled “The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the States of the Island of Alderney at a meeting held on the 9th day of October 1991 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Alderney. 3. That the Chief Pleas of the Island of Sark at a meeting held on the 2nd day of October 1991 considered the said Bill or “Projet de Loi” when a Resolution was passed agreeing to the application of the same to Sark. 4. That the said Bill or “Projet de Loi” is as set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of

the States of Guernsey entitled “The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991”, and to order that the same shall have force of law in the Bailiwick of Guernsey.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, and it is hereby ordered, that the same shall have force of Law within the Bailiwick of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

G. I. de Deney

PROJET DE LOI

ENTITLED

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

THE STATES, in pursuance of their Resolutions of 27th April 1988(a) and 13th December 1990(b), 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 Commission in the same way that it applies in relation to a Committee of the States.

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- (a) on Article LIV of Billet d'Etat No. X of 1988.
 - (b) on Article XX of Billet d'Etat No. XXIV of 1990.

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.

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.

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

Advisory and Finance 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.

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(c);

"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;

(c) Order in Council No. XIX of 1987.

"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, -

(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(d) applies to the interpretation of this Law throughout the Bailiwick.

Citation.

6. This Law may be cited as the Public

(d) Ordres en Conseil Vol. XIII, p.355.

Functions (Transfer and Performance) (Bailiwick of
Guernsey) Law, 1991.