

# PROJET DE LOI

ENTITLED

## **The Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011 \***

[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. VIII of 2012; as amended by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015 (No. XX 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. \*\* of 2018). See also the Police Force (Guernsey) Law, 1986 (Ordres en Conseil Vol. XXIX, p. 207).

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## **The Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011**

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FIRST SCHEDULE  
SECOND SCHEDULE

The Guernsey Law Enforcement Commission.  
Law Enforcement Functions.

LAW NOT YET IN FORCE

# PROJET DE LOI

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## **The Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011**

**THE STATES**, in pursuance of their Resolutions of the 25<sup>th</sup> day of September, 2008<sup>a</sup>, and the 25<sup>th</sup> day of November, 2010<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.

### *Establishment and functions of the Commission*

#### **The Guernsey Law Enforcement Commission.**

1. (1) There is established by and in accordance with the provisions of this Law a body to be known as the Guernsey Law Enforcement Commission ("**the Commission**").

(2) The First Schedule has effect in relation to the Commission.

#### **Functions of the Commission.**

2. (1) The Commission shall secure the maintenance of efficient and effective law enforcement by law enforcement organisations in the Bailiwick.

(2) In carrying out its functions, the Commission shall –

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<sup>a</sup> Article XII of Billet d'État No. XII of 2008.

<sup>b</sup> Article XIII of Billet d'État No. XXIII of 2010.

- (a) have regard to –
    - (i) any strategic objectives and priorities as determined under section 6,
    - (ii) any performance target approved by [the Committee] under section 7,
    - (iii) any code of practice prescribed under section 8, and
    - (iv) any guidance given to it under section 9, and
  - (b) comply with any directions given to it under section 9.
- (3) Without prejudice to the generality of subsection (1) and subject to subsection (2), the Commission shall –
- (a) allocate and advise in connection with the allocation of monies and other resources, which have been approved by the States for the purposes of law enforcement, to law enforcement organisations,
  - (b) following consultation with the Chief Officers, make proposals to [the Committee] for the funding of, and allocation of resources to, their respective law enforcement organisations,
  - (c) encourage and facilitate collaborative working by law enforcement organisations,

- (d) monitor, and promote improvement of, the performance of law enforcement organisations,
- (e) hold the Chief Officers to account for the performance of their respective law enforcement organisations,
- (f) prepare and submit to [the Committee] on an annual basis a report on law enforcement in the Bailiwick in accordance with section 5,
- (g) consult with such persons as it thinks fit in connection with law enforcement,
- (h) make such recommendations to [the Committee] as it thinks fit for the improvement of law enforcement, and
- (i) where directed by [the Committee] under section 7 –
  - (i) establish performance targets for law enforcement organisations and their Chief Officers, and
  - (ii) report to [the Committee] on whether those targets have been met.

(4) Before making any decision or taking any action in the discharge of its functions that has, or is likely to have, a significant impact on Sark, the Commission shall consult the [Policy and Finance Committee] of the Chief Pleas of Sark.

(5) The States may by Ordinance made under this subsection

confer upon the Commission such additional or alternative functions as it thinks fit.

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## NOTES

*In section 2,*

*the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016;*

*the words "Policy and Finance Committee" in square brackets in subsection (4) were substituted by the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018, section 2, Schedule, with effect from 24th October, 2018.<sup>1</sup>*

*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.<sup>2</sup>*

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## *The Commission and the States*

### **Status of the Commission.**

3. The Commission is not a department of the States, or a servant or agent of the States and, except to the extent that this Law or any other enactment provides otherwise –

- (a) is not subject to any rule of law relating to departments of the States, and
- (b) does not have any of the rights or privileges vested in departments of the States.

### **Duty of [the Committee].**

4. (1) [The Committee] shall provide the Commission with such assistance and information as [the Committee] determines to be reasonably necessary to enable the Commission to carry out its functions.

(2) Without prejudice to the generality of subsection (1), [the Committee] must provide the Commission with such –

- (a) accommodation,
- (b) equipment,
- (c) research, administrative and secretarial services, and
- (d) other facilities,

as the Commission reasonably requests for the proper and effectual discharge of its functions under this Law.

(3) The costs of complying with the requirements of this section shall be paid by [the Committee] from the general revenue account of the States.

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**NOTE**

*In section 4, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Reporting.**

5. (1) The Commission shall, as soon as practicable in each year, make a report to [the Committee] on its activities during the preceding year; and [the Committee] shall, as soon as practicable, submit that report for consideration by the



States.

- (2) The annual report made pursuant to subsection (1) –
  - (a) may set out or refer to any aspect of the Commission's functions, and
  - (b) shall –
    - (i) set out or refer to any guidance or directions given to the Commission under section 9 during the preceding year, and
    - (ii) include any other particulars that [the Committee] requires to be included in the report.

(3) Without prejudice to its duties under subsections (1) and (2), the Commission shall submit to [the Committee], within such period of time or by such date as [the Committee] may reasonably specify, a report in writing on such matter relating to law enforcement as [the Committee] may from time to time request.

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**NOTE**

*In section 5, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Objectives and priorities.**

6. (1) [The Committee] may determine strategic objectives and strategic priorities relating to law enforcement.

(2) [ The Committee] may vary, suspend or revoke a determination under subsection (1).

(3) Before –

- (a) determining any objectives or priorities under subsection (1), or
- (b) varying, suspending or revoking a determination under subsection (2),

[the Committee] shall consult the Commission and the Chief Officers.

(4) [ The Committee] must give written notice to the Commission –

- (a) of any determination under subsection (1), and
- (b) of any variation, suspension or revocation under subsection (2).

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**NOTE**

*In section 6, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Performance targets.**

7. (1) Where a strategic priority or objective has been determined under section 6, [the Committee] may, following consultation with the Chief Officers, direct the Commission to establish a performance target designed to give effect to that

priority or objective.

(2) A direction under this section –

- (a) shall be given as a written direction in accordance with section 9,
- (b) has the same effect as a written direction under that section, and
- (c) may impose conditions with which a performance target must conform.

(3) A law enforcement organisation shall not be under any duty to meet a performance target established under this Law, unless the target has been approved by [the Committee].

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**NOTE**

*In section 7, the words "the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Code of practice.**

8. [ The Committee] may, by regulation, prescribe one or more codes of practice relating to –

- (a) the discharge by the Commission of any of its functions, and
- (b) the conduct of members, servants and agents of the

Commission.

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**NOTE**

*In section 8, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Guidance and directions.**

9. (1) [ The Committee] may, after consulting the Commission, give to the Commission –

- (a) written guidance of a general character, and
- (b) written directions of a general character,

concerning the policies to be followed by the Commission in relation to the discharge of its functions and the manner in which any function of the Commission is to be carried out.

(2) It is the duty of the Commission, in carrying out any of its functions –

- (a) to take into account any guidance given under subsection (1)(a), and
- (b) to act in accordance with any directions given under subsection (1)(b).

(3) Any guidance or directions given under this section –

- (a) may be given only in the public interest, and not to

influence particular cases,

- (b) must be published, provided that the guidance or directions may come into effect as soon as given, and
- (c) may be varied, suspended or revoked by [the Committee].

(4) For the avoidance of doubt, the Commission shall not be deemed to have acted unreasonably or beyond its powers in carrying out any of its statutory functions by reason only of the fact that it has complied with its duty under subsection (2).

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**NOTE**

*In section 9, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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*Powers of the Commission*

**General powers of the Commission.**

**10.** (1) The Commission may, having regard to the provisions of sections 2, 4, 5, 8, 9 and 12 do anything which appears to it to be necessary, expedient, conducive or incidental to the carrying out of its functions.

(2) Without prejudice to the generality of subsection (1) the Commission may –

- (a) obtain such information related to its functions, and consult and seek the advice of such persons or bodies,

as it considers appropriate,

- (b) consult any person or body that appears to the Commission to carry out in a place outside the Bailiwick functions corresponding to any of the functions of the Commission,
- (c) publish, in such manner as it considers appropriate, such information relating to its functions as it thinks fit, and
- (d) following consultation with [the Committee], require a Chief Officer of a law enforcement organisation to arrange for the inspection of that organisation, either by Her Majesty's Inspectorate of Constabulary, or another person or body nominated for that purpose by the Commission.

(3) This section relates only to the capacity of the Commission as a body corporate and does not authorise the disregard by the Commission of any enactment or rule of law.

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**NOTE**

*In section 10, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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**Powers etc. of Chief Officers and officers not affected by Law.**

**11.** (1) No provision of or made under this Law, nor any function carried out in accordance with any such provision amends, restricts or otherwise affects the powers, duties, obligations, responsibilities and privileges of an officer.

(2) For the purposes of subsection (1) –

**"officer"** means –

- (a) in the case of the Guernsey Police –
  - (i) its Chief Officer and any other member of the salaried police force of the Island of Guernsey, and
  - (ii) any member of the special constabulary of the Island of Guernsey,
- (b) in the case of the Guernsey Border Agency, its Chief Officer and any officer acting by or under his authority, and
- (c) such other person as [the Committee] may by regulation prescribe, and

**"powers, duties, obligations, responsibilities and privileges"** –

- (a) includes powers, duties, obligations, responsibilities and privileges howsoever arising or created and whether under customary law or common law, any enactment or otherwise, and
- (b) for the avoidance of doubt, in the case of a Chief Officer, includes such powers, duties, obligations, responsibilities and privileges, as that Officer may

have, to direct and control the operations and resources of the law enforcement organisation for which that Officer is responsible.

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## NOTES

*In section 11, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*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.*

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## Confidentiality

### **Restriction on disclosure of information.**

**12. (1) Information disclosed –**

- (a) to the Commission, or
- (b) to members, servants or agents of the Commission,

by or on behalf of a law enforcement organisation, which is designated under this subsection as confidential by or on behalf of the organisation concerned, shall be regarded as confidential and shall not be disclosed by the Commission or by its members, servants or agents.

**(2) Subject to subsection (1) and section 13, information disclosed**

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- (a) to the Commission, or



- (b) to members, servants or agents of the Commission,

for the purposes of this Law, shall be regarded as confidential and shall not be disclosed by the Commission or by its members, servants or agents.

(3) A person who without reasonable excuse discloses information, or who without reasonable excuse causes or permits the disclosure of information, in contravention of subsection (1) or (2) 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,
- (b) on summary conviction, to imprisonment for a term not exceeding 3 months, to a fine not exceeding level 5 on the uniform scale, or to both.

(4) In proceedings against a person for an offence under subsection (3) where a contravention of subsection (1) is alleged, it shall be a defence for him to show that the law enforcement organisation which designated the information concerned, consented to the disclosure of that information.

(5) In proceedings against a person for an offence under subsection (3) it shall be a defence for him to show –

- (a) that he took all reasonable steps and exercised all due diligence to avoid committing the offence, or
- (b) that he did not know and had no reason to suspect that the information in question was to be regarded as

confidential.

**Cases where disclosure is permitted.**

**13.** Section 12(2) does not preclude –

- (a) the disclosure of information which at the time of disclosure is or has already been made available to the public from other sources,
- (b) the disclosure of information for the purpose of enabling or assisting the Commission to discharge its functions conferred by or under this Law,
- (c) where –
  - (i) information is disclosed by or on behalf of a law enforcement organisation, and
  - (ii) the organisation concerned, or a person acting on its behalf, consents to the disclosure of that information,

the disclosure of that information in accordance with any conditions attached to the relevant consent,

- (d) where, in order to enable or assist it to discharge its functions conferred by or under this Law, the Commission considers it necessary to seek advice from a qualified person on any matter of law, accountancy, valuation (actuarial or otherwise), public relations or any other matter requiring the exercise of professional

skill, the disclosure by the Commission to that person of such information as appears to the Commission to be necessary to ensure that he is properly informed as to the matters on which his advice is sought,

- (e) 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,
- (f) the disclosure of information in connection with any other proceedings arising out of this Law,
- (g) the disclosure of information where required by any direction or order of any division of the Royal Court, or
- (h) the disclosure of information in accordance with any code of practice prescribed under section 8.

**Information from third parties.**

**14.** (1) The Commission and any of its members, servants or agents may, in carrying out their respective functions –

- (a) seek and receive information from any person, and
- (b) take any such information into account in deciding

whether and in what manner to carry out their respective functions.

(2) The provisions of subsection (1) are for the avoidance of doubt and are without prejudice to any function conferred by or under any other enactment.

**Duties of confidentiality not broken by disclosure to Commission.**

**15.** No obligation as to confidentiality or other restriction upon the disclosure of information imposed by statute, contract or otherwise is contravened by the making of a disclosure of information to the Commission, or to any member, servant or agent of the Commission, for the purpose of enabling or assisting the Commission to carry out any of its functions.

*Miscellaneous and general*

**Exclusion of liability.**

**16.** (1) Subject to subsection (3), no person within subsection (2) is to be –

(a) liable in damages, or

(b) where an individual, personally liable in any civil proceedings,

in respect of anything done or omitted to be done in the discharge or purported discharge of his functions, or functions delegated to him, under this Law, unless the thing was done or omitted to be done in bad faith.

(2) The persons within this subsection are –

(a) the Commission, and

(b) any member, servant or agent of the Commission.

(3) Subsection (1) does not apply so as to prevent an award of damages in respect of the act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000<sup>c</sup>.

**Interpretation.**

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

**"annual report"** means a report made by the Commission pursuant to section 5,

**"Bailiwick"** means the Bailiwick of Guernsey,

**"bankrupt"**, in relation to an individual, includes an individual –

- (a) whose affairs have been declared to be in a state of "désastre" by his arresting creditors at a meeting held before a Commissioner of the Royal Court, the Court of Alderney or the Court of the Seneschal,
- (b) against whom an interim vesting order has been made in respect of any real property in the Bailiwick, or
- (c) in respect of whom a declaration of insolvency has been made under the Loi ayant rapport aux Débiteurs et à la

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<sup>c</sup> Ordres en Conseil Vol. XL, p. 396 as amended by Order in Council No. 1 of 2005 and G.S.I. No. 27 of 2006.

Renonciation, 1929<sup>d</sup>,

**"body"** includes an authority, organisation and a body incorporated under the law of any country or territory and any unincorporated body,

**"Chairman"** means the Chairman of the Commission appointed in accordance with the First Schedule,

**"Chief Officer"** –

- (a) in relation to the Guernsey Police, means the Chief Officer of that organisation,
- (b) in relation to the Guernsey Border Agency, means the Chief Officer of that Agency, and
- (c) in relation to any law enforcement organisation prescribed by regulations of [the Committee], means the officer prescribed by those regulations as the Chief Officer of that organisation,

**"the Commission"** means the Guernsey Law Enforcement Commission established by this Law,

**"[the Committee]"** means the States [Committee for Home Affairs],

**"department of the States"** means any department, council or committee (however called) of the States,

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<sup>d</sup> Ordres en Conseil Vol. VIII, p. 310.

**"enactment"** means any Law, Ordinance or subordinate legislation,

**"Guernsey Border Agency"** means the organisation also known or referred to as "the Customs and Excise and Immigration and Nationality Service" including –

- (a) its Chief Officer and any officer acting by or under his authority, and
- (b) any other individual working, including on a temporary basis, for such organisation whether under a contract of employment, a contract for services or otherwise,

**"Guernsey Police"** means the organisation also known or referred to as "the Island Police Force" including –

- (a) its Chief Officer and any other member of the salaried police force of the Island of Guernsey,
- (b) any member of the special constabulary of the Island of Guernsey, and
- (c) any other individual working, including on a temporary basis, for such organisations whether under a contract of employment, a contract for services or otherwise,

**"law enforcement"** means the carrying out of functions relating to the enforcement and upholding of the criminal law, the protection of the general public and border control, including those functions set out in the Second Schedule but, for the avoidance of doubt, does not include any function relating to immigration and nationality conferred upon His Excellency the

Lieutenant Governor under any enactment or any Act of Parliament having effect in, or extended to, the Bailiwick, or any part of the Bailiwick,

**"law enforcement organisation"** means –

- (a) the Guernsey Police,
- (b) the Guernsey Border Agency, and
- (c) such other person or body as [the Committee] may by regulation prescribe,

**"performance target"** means an expected result or level of achievement,

**"the public"** includes any section of the public, however selected,

**"the Royal Court"** means the Royal Court of Guernsey and includes any division thereof,

a **"servant"** of the Commission includes any person providing research, administrative, secretarial or other services to the Commission,

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

**"subordinate legislation"** means any regulation, rule, order, notice, rule of court, resolution, scheme, warrant, byelaw or other instrument made under any enactment and having legislative effect, and

**"year"** means a calendar year.



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

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

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## NOTES

*In section 17, the words in, first, the first and, second, the second pairs of square brackets in the definition of the expression "the Committee" in subsection (1) and, third, the words "the Committee" in square brackets wherever else occurring were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, respectively section 5(1), Schedule 3, paragraph 7, section 2, Schedule 1, paragraph 6(a) and section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

*The functions, rights and liabilities of the Home Department and its Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Committee for Home Affairs and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 6(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.*

*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.*

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## **General provisions as to subordinate legislation.**

**18.** (1) Any Ordinance or regulation under this Law –

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

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

- (b) may contain such consequential, incidental, supplementary, transitional and savings provisions as may appear to be necessary or expedient (including, in the case of an Ordinance, provision making consequential amendments to this Law and any other enactment).

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

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) so as to make, as respects the cases in relation to which it is exercised –
  - (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
  - (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
  - (iii) any such provision either unconditionally or subject to any prescribed conditions.

(3) Any regulation made under this Law shall be laid before a meeting of the States as soon as possible after being made; and if at that meeting or the next meeting the States resolve that the regulation be annulled, it shall cease to have effect but without prejudice to anything done under it or to the making of a new regulation.

**Citation.**

**19.** This Law may be cited as the Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011.

**Commencement.**

**20.** This Law shall come into force on such day as the States may by Ordinance appoint, and different days may be so appointed for different provisions of this Law or for different purposes.

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**NOTE**

*The Law is not yet in force.*

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FIRST SCHEDULE

Section 1(2)

THE GUERNSEY LAW ENFORCEMENT COMMISSION

**Constitution of the Commission.**

1. (1) The Commission shall consist of either three or four members, as determined by [the Committee].

(2) Members of the Commission shall be known as Commissioners; and in this Schedule, members of the Commission other than the Chairman are referred to as "**ordinary members**".

(3) The Chairman and ordinary members shall be appointed by the States from persons nominated by [the Committee].

(4) Before nominating a person to the States for appointment as the Chairman or an ordinary member of the Commission, [the Committee] may require that person to provide, and to authorise [the Committee] to obtain, such particulars (including previous convictions) and references as [the Committee] may reasonably require to ascertain his suitability for chairmanship or membership (as the case may be) of the Commission.

(5) The Chairman and ordinary members shall be appointed for a term of three years or such shorter period as the States may determine in any particular case.

(6) Members of the Commission may be reappointed.

(7) A person may not be a member of the Commission if –

(a) he is now, or has ever been in the 12 months preceding

–

- (i) a member of the States of Deliberation,
  - (ii) a member of the States of Alderney, or
  - (iii) a member of the Chief Pleas of Sark,
- (b) he is a person employed, whether on a full time or part time basis, by the States, or the States of Alderney,
- (c) he is a serving member of a law enforcement organisation or otherwise under the direction and control of a Chief Officer, or
- (d) he is the holder of judicial office in any court in the Bailiwick.

### **Incorporation of the Commission.**

2. The Commission is a body corporate, and is capable of suing and being sued in its corporate name.

### **Members of the Commission.**

3. (1) An ordinary member of the Commission may resign from office at any time.

(2) Any resignation by an ordinary member of the Commission must be in writing and made to [the Committee].

(3) The Chairman may resign his office at any time by giving notice in writing to [the Committee]; and the resignation of a person from an office under this subparagraph shall not, in itself, affect his continuance in office as an

ordinary member.

(4) Any member of the Commission may be removed from office by [the Committee], if [the Committee] is satisfied that –

- (a) he has without reasonable cause failed to carry out his duties,
- (b) he has been convicted of a criminal offence,
- (c) he has become bankrupt,
- (d) he is incapacitated by physical or mental illness, or
- (e) he is otherwise unable or unfit to perform his duties.

(5) [The Committee] shall notify the States of the resignation or removal from office of a member of the Commission at the first available opportunity thereafter.

(6) If the Chairman resigns from his office as such, or is removed from office by [the Committee], then [the Committee] shall nominate another member of the Commission to that office who shall remain in that office until the end of his term as a member, and [the Committee] shall notify the States of that nomination at the first available opportunity thereafter.

(7) The validity of any proceedings of the Commission is unaffected by a vacancy in its members, by any defect in the election of a member and by any lack of qualification of a person to act as a member.

**Oath of office.**

4. Every member of the Commission shall, before carrying out any function under this Law, take an oath or make an affirmation before the Royal Court sitting as an Ordinary Court in the following terms or in words to the like effect –

"You {swear and promise on the faith and truth that you owe to God} {do solemnly, sincerely and truly declare and affirm} that you will well and faithfully discharge the functions of {Chairman of the Law Enforcement Commission} {Commissioner} in accordance with law; that you will exercise the powers entrusted to you only as appears necessary to you for the due discharge of those functions; and that you will not disclose any information received by you in the discharge of those functions except in accordance with the provisions of the Law Enforcement Commission (Bailiwick of Guernsey) Law, 2011; or in any other case required or authorised by law."

**Administration and expenses.**

5. (1) There shall be paid out of the general revenue account of the States such allowances (including attendance allowances) and expenses of the Commission and its members, servants and agents as [the Committee] may determine.

(2) [ The Committee] shall cause to be kept a record and account of all expenditure incurred by [the Committee] under subparagraph (1) and section 4.

(3) The Commission shall provide [the Committee] with such information as [the Committee] may reasonably require to enable it to discharge its obligations under subparagraph (2).

**Meetings.**

6. (1) The Commission shall meet at least quarterly, and shall also meet also from time to time as necessary.

(2) The person who presides at meetings of the Commission shall be –

- (a) the Chairman, if he is present,
- (b) if the Chairman is not present, the person elected to chair the meeting by, and from among, the ordinary members of the Commission present.

(3) A quorum at any meeting is 2 members of the Commission.

(4) Each member of the Commission has one vote.

**Transaction of business without meeting.**

7. The Commission may, if it thinks fit, transact any business by the circulation of papers to all of the members of the Commission, and a resolution in writing approved in writing by a majority of the members of the Commission shall be as valid and effectual as if passed at a meeting of the Commission by the votes of the members so approving the resolution.

**Chief Officers to report to the Commission and answer questions.**

8. (1) The Chief Officers shall appear before a meeting of the Commission at least quarterly, to report on the activities of the law enforcement organisation for which they are responsible and to answer any questions arising from that report or otherwise relating to their activities.

(2) On giving reasonable notice, the Commission may at any other time for the purpose of the discharge of his functions require a Chief Officer to answer any question relating to his activities, either in writing or by appearing before it.



(3) A Chief Officer may refuse to answer a question under this paragraph –

- (a) where the question relates to actions or functions carried out under the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003<sup>f</sup> ("**the 2003 Law**"), including a question, the answer to which may involve –
  - (i) naming or otherwise identifying a covert human intelligence source as defined in the 2003 Law, or
  - (ii) revealing details of special investigatory techniques,
- (b) where the answer is likely to constitute a breach of legal privilege,
- (c) where the answer may disclose the identity of an individual who is the subject of an on-going criminal investigation or trial,
- (d) where, were the question asked in legal proceedings, public interest immunity would apply, or

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<sup>f</sup> Order in Council No. XXX of 2003; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Regulation of Investigatory Powers (Applicable Public Authorities) Regulations, 2004 (G.S.I. No. 26 of 2004). The Law is modified by the Regulation of Investigatory Powers (British Broadcasting Corporation) Regulations, 2004 (G.S.I. No. 25 of 2004).

- (e) where the answer is likely to risk damage to the security of the British Islands.

**Minutes.**

9. The Commission shall keep proper minutes of its proceedings, including minutes of –

- (a) any business transacted as permitted by paragraph 7 of this Schedule,
- (b) appearances by the Chief Officers before the Commission, and
- (c) any written exchanges between a Chief Officer and the Commission under paragraph 8(2) of this Schedule.

**Delegation to members, servants and agents.**

10. (1) The Commission may, by an instrument in writing, delegate to any of its members, servants or agents named or described in that instrument, either generally or otherwise as provided by that instrument, any of its functions except –

- (a) this power of delegation, and
- (b) its duty to make an annual report to [the Committee].

(2) A function delegated under this paragraph may be carried out by the delegate in accordance with the instrument of delegation and, when so carried out, shall, for the purposes of this Law, be deemed to have been carried out by the Commission.

(3) A delegation under this paragraph is revocable by the

Commission at will and does not prevent the carrying out of a function by the Commission.

(4) For the avoidance of doubt, a function may be delegated under this paragraph to a committee comprising any number of the Commission's members.

**Residual power to regulate procedure.**

**11.** Subject to the provisions of this Law the Commission may regulate its own procedure.

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**NOTE**

*In the First Schedule, the words "T/the Committee" in square brackets, wherever occurring, were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 5(1), Schedule 3, paragraph 7, with effect from 1st May, 2016.*

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SECOND SCHEDULE  
LAW ENFORCEMENT FUNCTIONS

Section 17

1. The prevention, detection and investigation, and assisting in connection with the prosecution before the courts, of crimes or criminal activity including those relating to –

- (a) drug or people trafficking,
- (b) identity theft,
- (c) theft, robbery, burglary, fraud, money-laundering, financial or economic crime, and other offences of dishonesty,
- (d) cybercrime,
- (e) international crime,
- (f) child abuse, domestic violence and other offences against the person,
- (g) vandalism, alcohol abuse and other anti-social behaviour,
- (h) the supply and possession of drugs and other illegal substances,
- (i) traffic offences,
- (j) breach of export control legislation or prohibitions on

importation of goods, and

(k) breach of immigration controls.

2. Combating cross-border and other crime.
3. Maintaining public order.
4. Providing services necessary to ensure the protection of the general public and maintenance of public safety.
5. Providing services necessary to control the movement of people, goods and services into and out of, and within, the Bailiwick.

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<sup>1</sup> These words were previously substituted by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 2, Schedule, with effect from 26th February, 2015.

<sup>2</sup> 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 from, respectively, the Sark General Purposes and Advisory Committee and of its Chairman by the Sark General Purposes and Advisory and Finance and Commerce Committees (Transfer of Functions) (Guernsey) Ordinance, 2015, section 1, Schedule, with effect from 26th February, 2015, subject to the savings and transitional provisions in section 3 of the 2015 Ordinance.