

THE EUROPEAN UNION (BREXIT) (BAILIWICK OF GUERNSEY) LAW, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

This Law is broadly equivalent in scope and purpose to the UK's European Union (Withdrawal) Bill. Because so much about the process of Brexit is still unsure and undecided, the Law has been drafted to provide as much legislative flexibility as possible for the Bailiwick. It has four primary purposes:

1. to repeal the European Communities (Bailiwick of Guernsey) Law, 1973 ("the 1973 Law"), and thus turn off the flow of European legislation which is directly applicable in the Bailiwick pursuant to Protocol 3 (see section 1);
2. to preserve in domestic law that directly applicable EU legislation which had effect in the Bailiwick immediately before exit day ("Preserved EU law") (see section 2), to avoid a legal black hole on exit day;
3. to provide a suitable mechanism to amend and repeal both Preserved EU law and other enactments at short notice where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit (see the regulation making power at section 5); and
4. to make appropriate provision in relation to the interpretation, and status, of EU law after exit (see sections 6 to 8).

In all of this, and in the transitional provision it makes in Schedule 1, it is broadly consistent with provision within the UK Withdrawal Bill.

The Law does not require the preparation of what purports to be a comprehensive list of Preserved EU law. Instead, at section 3(2) there is a more general power for the Policy & Resources Committee (after consultation with HM Procureur) to publish information relating to Preserved EU law. In this way, key examples of Preserved EU law can be published, and more comprehensive information could be published if that were thought appropriate.

In addition to the foregoing, the Law makes provision in respect of any Withdrawal Agreement that the UK may enter into with the EU and which has application in the Bailiwick. In this, it differs from the Withdrawal Bill; the UK has made clear that its intent is to legislate separately in respect of the Withdrawal Agreement once that Agreement has been finalised, in October or November. It would not be prudent for the Bailiwick to rely on taking the same approach, as it is likely that there would be insufficient time for a Projet to be prepared, passed through the three Island legislatures, and approved by the UK before Brexit day. Accordingly, the Law provides both for the possibility of a Withdrawal Agreement, with a transition period during which EU law continues to apply, and for there to be no such Agreement or period at all. In respect of circumstances in which there is a transition period under such an Agreement, the Law also provides a mechanism for providing that EU law which comes on stream in the Bailiwick during that transition period is Preserved EU law for the purposes of the Law.

Section 1 repeals the 1973 Law on exit day (defined as 11pm on 29 March 2019, or such other day as the Policy & Resources Committee may appoint by regulations) but also provides that regulations under section 5 can amend the 1973 Law before exit day. Section 2 preserves EU provisions (another defined term) in domestic law on exit day, subject to amendment by section 5 regulations and to the provisions of any enactment coming into force on or after exit day. Section 3 provides that such saved EU provisions are Preserved EU law. Section 4 is a 'for the avoidance of doubt' provision, making clear that Ordinances under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("the Implementation Law") and other enactments implementing EU provisions continue to have effect, notwithstanding the repeal of the 1973 Law.

Section 5 gives power to amend or repeal Preserved EU law and other enactments by regulation where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit. To provide for enhanced scrutiny and protection in respect of the exercise of this wide power, it sets out a process of certification by HM Procureur at subsection (3); this regulation making power sits with the relevant Alderney and Sark Committees where exercised solely in respect of those Islands. Sections 6 and 7 deal with the interpretation of legislation and other related matters after 'the designated day', which day is to be appointed by regulations made by the Policy & Resources Committee. If there is a transition period during which EU law continues to have effect, it is intended that the designated day will be the end of that transition period; if there is not, the designated day will simply be the same as exit day. Section 6 provides that a court may take account of relevant EU law on and after the designated day, but is not obliged to do so, and is not bound by that law, and makes some further specific provision. Section 7 provides that there is no right on or after the designated day to challenge any Preserved EU law on the grounds that before the designated day, the corresponding EU provision was invalid. Section 8 deals with the status of Preserved EU law in the context of the Human Rights (Bailiwick of

Guernsey) Law, 2000 and the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

Section 9 gives power to the States to make provision in relation to any Withdrawal Agreement (a defined term – see section 12), including provision equivalent to provision in the 1973 Law, thus enabling the States to provide for EU law to continue to have effect during a transition period. It also allows for such an Ordinance to provide that EU law which comes into force and is applicable in the Bailiwick during that period to be Preserved EU law. Section 10 deems the EU Charter of Fundamental Rights to be an EU provision for the purposes of the Implementation Law and thus susceptible to implementation by Ordinance under that Law. Section 11 makes provision in respect of Ordinances and regulations made under the Law; subsections (6) to (10) are concerned with regulations made under section 5. Section 12 is the interpretation section, section 13 gives effect to the two Schedules, and sections 14 and 15 deal with citation and commencement.

Schedule 1 contains consequential, transitional and saving provisions, including amendments to the 1973 Law and the 1994 Law. The amendments to the 1994 Law (paragraph 4) are consequential on provision made in this Law; the inserted definition of "EU provision" provides both for EU provisions (whether or not directly applicable in or binding upon the Bailiwick during any transition period) and items of Preserved EU law to be implemented by Ordinance under the 1994 Law, which will continue to be relevant in respect of items of Preserved EU law. The amendment to the 1973 Law (paragraph 3 and Schedule 2) is to bring the definition of the Treaties in that Law up to date, in order for there to be clarity on the face of the statute book in this regard. Paragraph 1 is concerned with ambulatory references ("...as amended from time to time") in EU provisions and how they should be read after exit day. Paragraph 2 makes provision in respect of how powers to make subordinate legislation should be read as applying in respect of Preserved EU law. Paragraph 5 is concerned with things being done (eg licences being issued) during the exit period, and paragraph 6 makes protective provision in respect of court and tribunal proceedings begun, and conduct which gives rise to any criminal liability occurring, before the designated day.

Schedule 2 contains the updated definition of "the EU Treaties".

PROJET DE LOI

ENTITLED

The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018

ARRANGEMENT OF SECTIONS

1. Repeal of the European Communities Law, 1973.
2. Saving for EU provisions on exit day.
3. Preserved EU law.
4. Status of Implementation Law and other enactments implementing EU provisions.
5. Power to disapply, amend etc. Preserved EU law and other provisions.
6. Interpretation of Preserved EU law, etc.
7. Challenges to validity of Preserved EU law.
8. Status of Preserved EU law.
9. Provision in respect of the withdrawal agreement.
10. Provision in respect of the EU Charter of Fundamental Rights.
11. General provisions as to Ordinances and regulations.
12. Interpretation.
13. Amendments to enactments and other consequential, transitional etc. provision.
14. Citation.
15. Commencement.

SCHEDULE 1: Consequential, transitional and saving provision.

SCHEDULE 2: Meaning of "the EU Treaties".

PROJET DE LOI

ENTITLED

The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018

THE STATES, in pursuance of their Resolution of the 8th day of November, 2017^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.

Repeal of the European Communities Law, 1973.

1. (1) The European Communities (Bailiwick of Guernsey) Law, 1973^b ("**the 1973 Law**") is repealed on exit day.

(2) For the avoidance of doubt, regulations under section 5 may be made in respect of the 1973 Law before exit day.

Saving for EU provisions on exit day.

2. Notwithstanding the repeal of the 1973 Law, any EU provision that

^a Article III of Billet d'État No. XXI of 2017.

^b Ordres en Conseil Vol. XXIV, p. 87; amended by Vol. XXVII, p. 242; Vol. XXIX, pp. 127 and 419; Vol. XXXI, p. 278; Order in Council No. XXV of 2002; Recueil d'Ordonnances Tome XXVI, p. 316; Tome XXVIII, p. 79; Ordinance No. XLVII of 2001; No. XVIII of 2003; No. XXXIII of 2003; No. II of 2007; No. XIX of 2014; No. IX of 2016.

was directly applicable or otherwise had effect in, or was binding upon, the Bailiwick or any part thereof immediately before exit day continues so to have effect in the same way as immediately before exit day -

- (a) unless and until disapplied by regulations under section 5,
- (b) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (c) subject to the provisions of any enactment coming into force on or after exit day.

Preserved EU law.

3. (1) In this Law, "**Preserved EU law**" means –

- (a) EU provisions which continue to have effect in the Bailiwick or any part thereof under section 2, and
- (b) EU provisions which have effect in the Bailiwick or any part thereof by virtue of an Ordinance made under section 9.

(2) The Policy & Resources Committee may from time to time, and after consultation with Her Majesty's Procureur, publish information (in such form as the Policy & Resources Committee thinks fit) relating to Preserved EU law, including (but not limited to) examples of Preserved EU law.

Status of Implementation Law and other enactments implementing EU provisions.

4. (1) Notwithstanding the repeal of the 1973 Law by section 1, and for the avoidance of doubt, the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c ("**the Implementation Law**") continues to have effect.

(2) Accordingly -

(a) sections 1 and 4 of the Implementation Law (implementation of EU provisions and general provisions as to Ordinances) continue to have effect, and

(b) any Ordinance made under those sections and in force immediately before exit day, continues to have effect in the same way as immediately before exit day -

(i) unless and until amended or repealed by -

(A) a further Ordinance under that Law,

(B) regulations under section 5, or

(C) an Ordinance under the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018^d,

^c Ordres en Conseil Vol. XXXV(1), p. 65.

^d Order in Council No. * of 2018.

- (ii) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (iii) subject to the provisions of any enactment coming into force on or after exit day.

(3) Notwithstanding the repeal of the 1973 Law by section 1, and for the avoidance of doubt, any enactment other than the Implementation Law in force immediately before exit day which implemented any EU provision in the Bailiwick, or any part thereof, continues to have effect, in the same way as immediately before exit day -

- (a) unless and until amended or repealed by regulations under section 5,
- (b) subject to such exceptions, adaptations and modifications as may be prescribed by regulations under section 5, and
- (c) subject to the provisions of any enactment coming into force on or after exit day.

Power to disapply, amend etc. Preserved EU law and other provisions.

5. (1) For the purpose set out in subsection (2), and subject to subsection (3), the relevant Committee may by regulation -

- (a) provide for the disapplication of any Preserved EU law,
- (b) provide that any Preserved EU law shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the regulations,
- (c) amend or repeal any enactment (including this Law),
or
- (d) provide that any enactment shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the regulations.

(2) The purpose is to make provision which is necessary or expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of the withdrawal of the United Kingdom from the EU.

(3) The relevant Committee has no power to make regulations under this section unless Her Majesty's Procureur has certified that -

- (a) their enactment satisfies the purpose set out in subsection (2), and is necessary or expedient in the public interest, and
- (b) they are compatible with Convention rights, and do not otherwise contravene any international obligation of the United Kingdom binding on the Bailiwick (or any part thereof).

(4) The "**relevant Committee**" means, in relation to -

(a) Preserved EU law, or

(b) an enactment,

applying -

(i) in Alderney only, the Alderney Committee,

(ii) in Sark only, the Sark Committee, and

(iii) in any other case, the Policy & Resources Committee.

Interpretation of Preserved EU law, etc.

6. (1) On and after the designated day, the principle of the supremacy of EU law shall not apply to any Preserved EU law, enactment or rule of law including, for the avoidance of doubt, any enactment or rule of law approved or made before the designated day.

(2) On or after the designated day, a court, tribunal or other public authority may take account of –

(a) principles laid down or decisions made by the European Court, and

(b) general principles of EU law,

which are relevant to the proper interpretation of Preserved EU law, but is not bound by those principles or decisions.

(3) Without prejudice to subsection (2) -

- (a) no right of action accrues in domestic law on or after the designated day based on a failure to comply with any of the general principles of EU law,
- (b) no liability to damages based on the decision of the European Court in *Francovich v. Italy*^e (or any other decision of the European Court specified for this purpose in regulations made by the Policy & Resources Committee) shall be incurred by the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, or by any of their respective committees, members, officers or servants, for any loss or damage arising or suffered on or after the designated day, and
- (c) no court or tribunal or other public authority may, on or after the designated day -
 - (i) disapply or quash any enactment or other rule of law, or,

^e *Francovich and Bonifaci v Republic of Italy* (Cases C-6/90 and C-9/90) [1991] ECR I-05357.

- (ii) quash any conduct or otherwise decide that it is unlawful,

on the ground that it is incompatible with any of the general principles of EU law.

Challenges to validity of Preserved EU law.

7. (1) Subject to subsection (2), there is no right on or after the designated day to challenge any Preserved EU law on the basis that, immediately before the designated day, the corresponding EU provision was invalid.

(2) Subsection (1) does not apply so far as -

- (a) the European Court has decided that the provision was invalid, or
- (b) the challenge is of a kind provided for in regulations made by the Policy & Resources Committee.

Status of Preserved EU law.

8. (1) An item of Preserved EU law is deemed to be primary legislation for the purposes of sections 3, 4 and 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000^f.

^f Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; and G.S.I. No. 27 of 2006.

(2) An item of Preserved EU law is deemed to be an enactment for the purposes of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016⁸.

Provision in respect of the withdrawal agreement.

9. (1) The States of Deliberation may by Ordinance make such provision as they see fit in connection with the withdrawal agreement including, without limitation, any provision corresponding to that made in the 1973 Law.

(2) For the avoidance of doubt, an Ordinance made under subsection (1) may provide that EU provisions coming into force in the EU after exit day, which are directly applicable or otherwise have effect in or are binding upon the Bailiwick, or any part thereof, in consequence of the withdrawal agreement, are also Preserved EU law for the purposes of this Law.

Provision in respect of the EU Charter of Fundamental Rights.

10. Without prejudice to section 2, the EU Charter of Fundamental Rights shall be deemed to be an EU provision, and section 1 of the Implementation Law applies to it accordingly.

General provisions as to Ordinances and regulations.

11. (1) An Ordinance or regulations under this Law -

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

⁸ Order in Council No. * of 2018.

(b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -

- (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance or regulation and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),
- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,
- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsections (1)(b)(i) and (4)(g) and by any other provision of this Law to make provision as to the creation and punishment of offences does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being

imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^h, or

- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred by this Law to make an Ordinance or regulations 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, and
- (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,

^h Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance or regulations under this Law -

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,
- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance or regulations unless the thing is done or omitted to be done in bad faith (but may not prevent an award of damages in respect of an 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),
- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,

- (d) may direct that any EU provision or any enactment shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance or regulations apply with such exceptions, adaptations and modifications as may be specified in the Ordinance or regulations,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision or enactment described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance or regulations) thereupon have the same force and effect as an Ordinance or regulations under this Law,
- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any enactment for the time being in force,
- (g) may in the case of an Ordinance of the States of Deliberation or regulations of the Policy & Resources Committee specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the

Government of Alderney Law, 2004ⁱ or (as the case may be) section 11 of the Reform (Sark) Law, 2008^j,

- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on indictment which exceeds the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment, or the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or (as the case may be) the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and
- (i) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance or regulations.

ⁱ Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

^j Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance Nos. II and VI of 2015; No. XI of 2017.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) Where the Policy & Resources Committee proposes to make regulations under section 5 applying in Alderney or Sark, it shall consult -

(a) the Alderney Committee, or

(b) the Sark Committee,

as the case may be; but, subject to subsection (7), a failure to comply with this subsection shall not invalidate any regulations made under this section.

(7) Regulations made under section 5 by the Policy & Resources Committee applying in Alderney or Sark cease to have effect -

(a) in Alderney if, within the period of four months immediately following the approval date, the States of Alderney resolve to disapprove their application to Alderney, and

(b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove their application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of regulations in accordance with subsection (7), the regulations cease to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

(a) anything done under the regulations in Alderney or (as the case may be) Sark, or

(b) the making of new regulations having effect in Alderney or (as the case may be) Sark.

(9) In subsection (7), "**approval date**", in relation to regulations, means the date of their enactment by the Policy & Resources Committee.

(10) Regulations of the relevant Committee under section 5 shall be laid before a meeting of -

(a) the States of Deliberation, where the regulations are made by the Policy & Resources Committee,

(b) the States of Alderney, where the regulations are made by the Alderney Committee, or

(c) the Chief Pleas of Sark, where the regulations are made by the Sark Committee,

as soon as possible after being made; and if at that or the next meeting the States of Deliberation, the States of Alderney or (as the case may be) the Chief Pleas of Sark resolve that the regulations be annulled, the regulations shall cease to have effect but without prejudice to anything done under them or to the making of new regulations.

Interpretation.

12. (1) In this Law, unless the contrary intention appears -

"the 1973 Law" : see section 1(1),

"the Alderney Committee" means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

"the Bailiwick" means the Bailiwick of Guernsey,

"committee" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"Convention rights" has the meaning given in section 1 of the Human Rights (Bailiwick of Guernsey) Law, 2000,

"the designated day" means such day and time as the Policy & Resources Committee may by regulations appoint,

"enactment" includes any Law, Ordinance and any subordinate legislation,

"the EEA" means the European Economic Area,

"the EU" means the European Union, being the Union established by the Treaty on European Union signed at Maastricht on 7th February 1992 (as amended by any later Treaty),

"the EU Charter of Fundamental Rights" means the Charter of Fundamental Rights of the European Union of 7th December 2000, as adapted at Strasbourg on 12th December 2007,

"EU instrument" means any instrument issued by the EU or by an institution of the EU,

"EU provision" means -

- (a) any provision contained in or arising under the EU Treaties or any EU instrument, and
- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the EU Treaties,

and is deemed to include the EU Charter of Fundamental Rights,

"the EU Treaties" has the meaning given in Schedule 2 to this Law,

"Euratom" means the European Atomic Energy Community, being the Community established by the Treaty establishing the European Atomic Energy Community signed at Rome on 25th March 1957 (as amended by any later Treaty),

"the European Court" means the Court of Justice of the European Union,

"exit day" means 11pm on 29th March, 2019, or such other day and time as the Policy & Resources Committee may by regulations appoint,

"Her Majesty's Procureur" includes Her Majesty's Comptroller,

"implementation", in relation to an EU provision, includes the enforcement or enactment of the provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the provision, in or under domestic law, and **"implement"** and related expressions shall be construed accordingly,

"the Implementation Law" : see section 4(1),

"the Policy & Resources Committee" means the Policy & Resources Committee of the States of Guernsey or such other Committee as the States of Deliberation may appoint by Ordinance for the purposes of this Law,

"Preserved EU law" : see section 3,

"public authority" has the meaning given in section 6 of the Human Rights (Bailiwick of Guernsey) Law, 2000,

"relevant Committee" : see section 5(4),

"the Sark Committee" means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance, and

"the withdrawal agreement" means -

- (a) an agreement (whether or not ratified) between the United Kingdom and the EU under Article 50(2) of the Treaty on European Union^k which sets out the arrangements for the United Kingdom's withdrawal from the EU,
- (b) an agreement (whether or not ratified) between the United Kingdom and the EU in respect of the withdrawal of the United Kingdom from the European Atomic Energy Community,
- (c) any other arrangements that may be agreed in respect of the withdrawal of the United Kingdom from the EU or the European Atomic Energy Community (including without limitation any arrangements having effect during, or giving effect to, any transitional or implementation period of that withdrawal).

(2) Any reference in this Law to an enactment -

^k The Treaty on European Union signed at Maastricht on 7th February 1992, as amended by the Treaty signed at Amsterdam on 2nd October 1997, the Treaty signed at Nice on 26th February 2001 and the Treaty signed at Lisbon on 13th December 2007.

(a) is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied, and

(b) includes a provision or portion of that enactment.

(3) References in this Law to the Alderney Committee and to the Sark Committee are references to the committees for the time being exercising the functions conferred by or under this Law on the Alderney Committee or (as the case may be) on the Sark Committee.

Amendments to enactments and other consequential, transitional etc. provision.

13. Schedule 1 (Consequential, transitional and saving provision), including the amendments set out there to the 1973 Law and the Implementation Law, and Schedule 2 (Meaning of "the EU Treaties"), have effect.

Citation.

14. This Law may be cited as the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018.

Commencement.

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

SCHEDULE 1

Section 13

CONSEQUENTIAL, TRANSITIONAL AND SAVING PROVISION

General consequential provision

Existing ambulatory references.

1. (1) Any reference which, immediately before exit day -
 - (a) exists in any enactment or any EU provision which is to form part of Preserved EU law, and
 - (b) is a reference to any EU provision (as it has effect from time to time) which is to form part of Preserved EU law,

is to be read, on and after exit day, as a reference to the EU provision as it forms part of Preserved EU law and, unless the contrary intention appears, as modified or amended from time to time by an enactment or an item of Preserved EU law.

- (2) Any reference which, immediately before exit day -
 - (a) exists in any enactment or any EU provision which is to form part of Preserved EU law, and
 - (b) is a reference to any EU provision (as it has effect from time to time) which is not to form part of Preserved EU law,

is to be read, on and after exit day, as a reference to the EU provision as it has effect immediately before exit day.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Law or any other enactment.

Powers to make subordinate legislation.

2. (1) Any power to make or approve subordinate legislation which was conferred before exit day is to be read, on or after exit day, and so far as the context permits or requires, as being capable of being exercised to amend (or, as the case may be, result in the amendment of) any Preserved EU law.

(2) Any power to make or approve subordinate legislation which, immediately before exit day, is subject to an implied restriction that it is exercisable only compatibly with EU law is to be read on and after exit day without that restriction or any corresponding restriction in relation to compatibility with Preserved EU law.

(3) Any power to make or approve subordinate legislation which is conferred on or after exit day may, so far as the context permits or requires, be exercised so as to amend any Preserved EU law.

(4) Subparagraphs (1) to (3) are subject to any other provision made by or under this Law or any other enactment.

Specific consequential provision

The 1973 Law.

3. (1) The 1973 Law is amended as follows.

(2) In section 1(1), in the definition of **""the Treaties"** or **"the Community Treaties""**, for paragraph (a) to the end substitute subparagraphs (a) to (u) of paragraph 1 of Schedule 2.

The Implementation Law.

4. (1) The Implementation Law is amended as follows.

(2) In the heading of section 1, for "Community provisions" substitute "EU provisions", and in section 1 for "Community provision" substitute "EU provision".

(3) Section 2 (Power to amend European Communities Law) is repealed.

(4) In section 3(1), for the definition of "Community provision", substitute -

""EU provision" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018, and includes an item of Preserved EU law within the meaning of that Law,"

and in the definition of "implementation", for "Community provision" substitute "EU provision".

Transitional and saving provision

Continuation of existing acts, etc.

5. (1) Anything done -

- (a) in connection with anything which continues to be, or forms part of, domestic law by virtue of –
 - (i) section 2 or an Ordinance made under section 9 (Preserved EU law), or
 - (ii) section 4,
- (b) for the purpose mentioned in section 1 of the Implementation Law, or
- (c) for a purpose otherwise related to the EU, the EEA or Euratom,

if in force or effective immediately before exit day, continues to be in force or effective on or after exit day in the same way as immediately before exit day.

(2) Anything in the process of being lawfully done immediately before exit day in connection with anything mentioned in subparagraph (1)(a), or for the purposes mentioned in subparagraph (1) (b) and (c), may continue to be done on or after exit day in the same way as immediately before exit day.

(3) Subparagraphs (1) and (2) are subject to any other provision made by or under this Law or any other enactment.

(4) References in this paragraph to things being done include references to anything omitted to be done.

Existing EU Law.

6. (1) Sections 6(3) and 7 do not apply in relation to -
- (a) any proceedings begun, but not finally decided, before a court or tribunal in the Bailiwick before the designated day, and
 - (b) any conduct which occurred before the designated day which gives rise to any criminal liability.

(2) Section 6(3)(b) does not apply in relation to any decision of a court or tribunal, or other public authority, on or after the designated day which is a necessary consequence of any decision of a court or tribunal made before the designated day.

SCHEDULE 2

Section 13

MEANING OF "THE EU TREATIES"

1. In this Law, "**the EU Treaties**" means, subject to paragraph 2, the pre-accession treaties described in paragraph 4, taken with -

- (a) the treaty relating to the accession of the United Kingdom to the European Economic Community and to the European Atomic Energy Community, signed at Brussels on the 22nd January 1972, and
- (b) the decision, of the same date, of the Council of the European Communities ("**the Council**") relating to the accession of the United Kingdom to the European Coal and Steel Community, and
- (c) the treaty relating to the accession of the Hellenic Republic to the European Economic Community and to the European Atomic Energy Community, signed at Athens on 28th May 1979, and
- (d) the decision, of 24th May 1979, of the Council relating to the accession of the Hellenic Republic to the European Coal and Steel Community, and
- (e) the decisions of the Council of 7 May 1985, 24th June 1988, 31st October 1994, 29th September 2000 and 7th June 2007 on the Communities' system of own resources, and the decision

of the Council of 26th May 2014 on the EU's system of own resources, and

- (f) the treaty relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Economic Community and to the European Atomic Energy Community, signed at Lisbon and Madrid on 12th June 1985, and
- (g) the decision, of 11th June 1985, of the Council relating to the accession of the Kingdom of Spain and the Portuguese Republic to the European Coal and Steel Community, and
- (h) the following provisions of the Single European Act signed at Luxembourg and The Hague on 17th and 28th February 1986, namely Title II (amendment of the treaties establishing the Communities) and, so far as they relate to any of the Communities or any Community institution, the preamble and Titles I (common provisions) and IV (general and final provisions), and
- (i) Titles II, III and IV of the Treaty on European Union signed at Maastricht on 7th February 1992, together with the other provisions of the Treaty so far as they relate to those Titles, and the Protocols adopted at Maastricht on that date and annexed to the Treaty establishing the European Community with the exception of the Protocol on Social Policy on page 117 of Cm 1934, and

- (j) the decision, of 1st February 1993, of the Council amending the Act concerning the election of the representatives of the European Parliament by direct universal suffrage annexed to Council Decision 76/787/ECSC, EEC, Euratom of 20th September 1976, and
- (k) the Agreement on the European Economic Area signed at Oporto on 2nd May 1992 together with the Protocol adjusting that Agreement signed at Brussels on 17th March 1993, and
- (l) the treaty concerning the accession of the Kingdom of Norway, the Republic of Austria, the Republic of Finland and the Kingdom of Sweden to the European Union, signed at Corfu on 24th June 1994, and
- (m) the following provisions of the Treaty signed at Amsterdam on 2nd October 1997 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts -
 - (i) Articles 2 to 9,
 - (ii) Article 12, and
 - (iii) the other provisions of the Treaty so far as they relate to those Articles,

and the Protocols adopted on that occasion other than the Protocol on Article J.7 of the Treaty on European Union, and

(n) the following provisions of the Treaty signed at Nice on 26th February 2001 amending the Treaty on European Union, the Treaties establishing the European Communities and certain related Acts -

(i) Articles 2 to 10, and

(ii) the other provisions of the Treaty so far as they relate to those Articles,

and the Protocols adopted on that occasion; and any other treaty entered into by the EU (except in so far as it relates to, or could be applied in relation to, the Common Foreign and Security Policy), with or without any of the member States, or entered into, as a treaty ancillary to any of the Treaties, by the United Kingdom, and

(o) the treaty concerning the accession of the Czech Republic, the Republic of Estonia, the Republic of Cyprus, the Republic of Latvia, the Republic of Lithuania, the Republic of Hungary, the Republic of Malta, the Republic of Poland, the Republic of Slovenia and the Slovak Republic to the European Union, signed at Athens on 16th April 2003, and

(p) the treaty concerning the accession of the Republic of Bulgaria and Romania to the European Union, signed at Luxembourg on 25th April 2005, and

- (q) the Treaty of Lisbon Amending the Treaty on European Union and the Treaty Establishing the European Community signed at Lisbon on 13th December 2007 (together with its Annex and protocols), excluding any provision that relates to, or in so far as it relates to or could be applied in relation to, the Common Foreign and Security Policy, and
- (r) the Protocol amending the Protocol (No 36) on transitional provisions annexed to the Treaty on European Union, to the Treaty on the Functioning of the European Union and to the Treaty establishing the European Atomic Energy Community, signed at Brussels on 23rd June 2010, and
- (s) the treaty concerning the accession of the Republic of Croatia to the European Union, signed at Brussels on 9th December 2011,
- (t) the Protocol on the concerns of the Irish people on the Treaty of Lisbon, adopted at Brussels on 16th May 2012, and
- (u) any other treaty specified by Ordinance of the States of Deliberation.

2. If Her Majesty by Order in Council made in accordance with the provisions of section 1(3) of the European Communities Act 1972 declares that a treaty specified in the Order is to be regarded as one of the EU Treaties as defined in that Act, the Order shall be conclusive that it is to be regarded as one of the EU Treaties as herein defined; but a treaty entered into by the United Kingdom after the

22nd January 1972, other than a pre-accession treaty to which the United Kingdom acceded on terms settled on or before that date, shall not be regarded as one of the EU Treaties as herein defined unless it is so specified.

3. For the purposes of paragraphs 1 and 2, "**treaty**" includes any international agreement, and any protocol or annex to a treaty or international agreement.

4. The pre-accession treaties are -

- (a) the "E.C.S.C. Treaty", that is to say, the Treaty establishing the European Coal and Steel Community, signed at Paris on the 18th April 1951,
- (b) the "E.E.C. Treaty", that is to say, the Treaty establishing the European Economic Community, signed at Rome on the 25th March 1957,
- (c) the "Euratom Treaty", that is to say, the Treaty establishing the European Atomic Energy Community, signed at Rome on the 25th March 1957,
- (d) the Convention on certain Institutions common to the European Communities, signed at Rome on the 25th March 1957,
- (e) the Treaty establishing a single Council and a single Commission of the European Communities, signed at Brussels on the 8th April 1965,

- (f) the Treaty amending certain Budgetary Provisions of the Treaties establishing the European Communities and of the Treaty establishing a single Council and a single Commission of the European Communities, signed at Luxembourg on the 22nd April 1970,
- (g) any treaty entered into before the 22nd January 1972 by any of the Communities (with or without any of the member States) or, as a treaty ancillary to any treaty included in this Part of this Schedule, by the member States (with or without any other country).