

**THE INTERNATIONAL TRADE AGREEMENTS (IMPLEMENTATION)
(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 International Trade Agreements (Implementation) (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

As a result of the UK's withdrawal from the European Union, the Bailiwick of Guernsey requires a suitable mechanism to implement any international trade agreements to which it is a party, whether due to its inclusion by the UK or in its own right. It may also wish to implement such agreements in the future where there is no connection with the UK's withdrawal. The purpose of this enabling Law is to provide that mechanism.

Section 1 of the Law permits the States of Deliberation (in relation to Guernsey and the Bailiwick as a whole) and the States of Alderney and the Chief Pleas of Sark (in relation to their respective islands) to enact Ordinances where it is necessary or expedient for the purpose of implementing any international trade agreement or resolving trade disputes arising from an international trade agreement. Section 2 makes general provision in respect of Ordinances made under section 1, and the remaining sections deal with interpretation, citation and commencement.

The Law defines an "international trade agreement" as a free trade agreement, any other international agreement that relates to trade, and the Agreement on Government Procurement of the World Trade Organisation.

PROJET DE LOI

ENTITLED

The International Trade Agreements (Implementation) (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.

Implementation of international trade agreements.

1. (1) The States may by Ordinance make such provision as they consider necessary or expedient for the purpose of -

(a) the implementation of any international trade agreement or any provision thereof, and

(b) the resolution of trade disputes arising under international trade agreements.

(2) In this Law, "**international trade agreement**" means -

(a) a free trade agreement,

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

- (b) any other international agreement that relates to trade, whether or not acceded to or ratified by the United Kingdom on behalf of the Bailiwick, specified for the purposes of this Law by Ordinance of the States, or
- (c) the Agreement on Government Procurement signed at Marrakesh on 15th April 1994 (as modified from time to time).

General provisions as to Ordinances.

- 2. (1) An Ordinance under this Law -
 - (a) may be amended or repealed by a subsequent Ordinance hereunder,
 - (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 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 subsection (1)(b)(i) and (4)(g) 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^b, 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 may be exercised -

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

- (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,
 - (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 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 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),
- (c) may make provision for the purpose of dealing with matters arising out of or related to any international trade agreement or any provision thereof,
- (d) may direct that any international trade agreement or any provision thereof, or any enactment, shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or

^c 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; G.S.I. No. 27 of 2006.

incorporate (by reference, annexation or otherwise), any international trade agreement or any provision thereof, or any enactment, which agreement, provision or enactment shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance 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, 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, 2004^d or (as the case may be) section 11 of the Reform (Sark) Law, 2008^e,
- (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

^d 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.

^e Order in Council No. V of 2008; amended by Nos. VI of 2008 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.

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.

(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) An Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases 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 its 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 its application to Sark.

(7) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (6), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(8) In subsection (6), "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

Interpretation.

3. (1) In this Law, unless the context otherwise requires -

"**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,

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

"free trade agreement" means an agreement that is or was notifiable under -

- (a) paragraph 7(a) of Article XXIV of GATT, or
- (b) paragraph 7(a) of Article V of GATS,

"GATS" means the General Agreement on Trade in Services, part of Annex 1B to the WTO Agreement (as modified from time to time),

"GATT" means the General Agreement on Tariffs and Trade, part of Annex 1A to the WTO Agreement (as modified from time to time),

"implementation" of an international trade agreement or any provision thereof includes the enforcement or enactment of the agreement or provision, and the securing of the administration, execution, recognition, exercise or enjoyment of the agreement or provision, in or under domestic law, and without limitation includes any step that is preparatory to implementation,

"international agreement" means any convention, treaty, protocol, memorandum or other international instrument,

"international trade agreement" : see section 1(2),

"provision" of an international trade agreement includes -

- (a) any provision contained in or arising under the agreement, and

- (b) any right, power, liability, obligation, prohibition or restriction created or arising, or any remedy or procedure provided for, by or under the agreement,

"the States" means -

- (a) in relation to an Ordinance having effect in Alderney only, the States of Alderney,
- (b) in relation to an Ordinance having effect in Sark only, the Chief Pleas of Sark, and
- (c) in any other case, the States of Deliberation,

"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 WTO Agreement" means the agreement establishing the World Trade Organisation signed at Marrakesh on 15th April, 1994.

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

- (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.

Citation.

4. This Law may be cited as the International Trade Agreements (Implementation) (Bailiwick of Guernsey) Law, 2018.

Commencement.

5. 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.