

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**REFERRAL OF UK ACTS OF PARLIAMENT AND ORDERS IN COUNCIL TO THE STATES OF
DELIBERATION**

The States are asked to decide:-

Whether, after consideration of the Policy Letter titled 'Referral of UK Acts of Parliament and Orders in Council to the States of Deliberation', dated 11th March 2019, they are of the opinion:-

1. To approve the legislative proposals set out in paragraph 3.1 of the Policy Letter (an extract of a letter from Her Majesty's Procureur is reproduced therein); and
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The above 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.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REFERRAL OF UK ACTS OF PARLIAMENT AND ORDERS IN COUNCIL TO THE STATES OF
DELIBERATION

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port

11th March 2019

Dear Sir

1. Background

- 1.1 The Policy & Resources Committee ('the Committee') proposes changes to the Reform (Guernsey) Law 1948 to fulfil the requirements of earlier States Resolutions. Those changes will require that UK Acts of Parliament and Orders in Council which seek to apply to Guernsey will be referred to the States of Deliberation for approval and consent before such an Act of Parliament or Order in Council (as the case may be) is registered in Guernsey's Royal Court.
- 1.2 The Constitutional Investigation Committee ('CIC') was formed in January 2014¹, following earlier decisions of the States of Deliberation², in order to investigate proposals on greater autonomy in relation to legislative process and international affairs. The CIC's mandate included reviewing the method of extension of UK Acts of Parliament to the Island.
- 1.3 As part of its work, the CIC investigated the corresponding arrangements in Jersey. Those arrangements were outlined in the CIC's Policy Letter 'Proposal to achieve greater autonomy in the legislative process and international affairs for Guernsey'³. Article 31 of the States of Jersey Law 2005, as amended, provides, *inter alia*, a duty to refer to the States of Jersey Assembly any Acts of the UK

¹ Billet d'État I, 29th January 2014 (Article V): <https://gov.gg/CHttpHandler.ashx?id=85309&p=0> ; Resolutions, 30th January 2014: <https://gov.gg/CHttpHandler.ashx?id=99554&p=0>

² Billet d'État XVIII (Volume 1), 25th September 2013 (Article II): <https://gov.gg/CHttpHandler.ashx?id=84016&p=0> ; Resolutions, 26th September 2013: <https://gov.gg/CHttpHandler.ashx?id=99638&p=0>

³ Billet d'État I, 26th January 2016 (Article XV): <https://www.gov.gg/CHttpHandler.ashx?id=99517&p=0>

Parliament which apply directly to Jersey or when an Order in Council should be made to extend an Act of the UK Parliament. Following consideration of that Policy Letter, the States resolved (*inter alia*):

“To direct the States Assembly and Constitution Committee to investigate the possibility of amending the Reform (Guernsey) Law 1948 to require the referral of certain matters to the States of Deliberation relating to UK Acts of Parliament which have direct effect or are to be extended to Guernsey by Order in Council, and bring any proposals before the States thereon.”⁴

- 1.4 In November 2016, as part of the Policy & Resource Plan, it was agreed that the States would “seek greater autonomy from the UK in respect of the legislative process and international agreements”⁵. In the Policy & Resource Plan of 2017⁶, the Committee recognised that further work would need to be undertaken in regard to States’ Resolutions relating to the work of the CIC. Following an amendment to that Policy Letter⁷, responsibility for progressing the work identified in Resolution 3 of Article 15 of Billet d’État I of 2016 (as in Paragraph 1.3 above) was transferred from the States’ Assembly & Constitution Committee to the Policy & Resources Committee⁸.

2. Current context

- 2.1 It is a long standing constitutional convention that Westminster does not legislate for Guernsey without consent on purely domestic matters.
- 2.2 During the passage of the UK’s Criminal Finances Bill in 2016 and the Sanctions and Anti-Money Laundering Bill in 2018, a number of amendments were moved by the Labour Party which included references to the Overseas Territories or the Channel Islands and the Isle of Man, and to their respective registers of beneficial ownership of companies. The amendments seemed to acknowledge differences between the Overseas Territories and the ‘Crown Dependencies’ (being the Channel Islands and the Isle of Man). Those amendments relating to the Channel Islands and the Isle of Man were rejected or withdrawn on constitutional grounds.
- 2.3 Certain amendments to the Sanctions and Anti-Money Laundering Bill (2018) threatened to undermine Guernsey’s established policy position by seeking to

⁴ Resolution 3 of those Resolutions, 27th January 2016:

<https://www.gov.gg/CHttpHandler.ashx?id=100130&p=0>

⁵ Policy & Resource Plan – Phase One ‘Future Guernsey’ (‘Final - approved by the States on 16 November 2016’). (The version published in Billet d’État XXVIII of 2016 was then amended at a States Meeting in November 2016.): <https://www.gov.gg/CHttpHandler.ashx?id=105052&p=0>

⁶ Billet d’État XII, 27th June 2017 (Article I): <https://www.gov.gg/CHttpHandler.ashx?id=107774&p=0>

⁷ Amendment to Proposition No. P2017/53 <https://www.gov.gg/CHttpHandler.ashx?id=108545&p=0>

⁸ Resolutions, 30th June 2017 <https://www.gov.gg/CHttpHandler.ashx?id=108566&p=0>

impose UK policy on the Channel Islands and the Isle of Man. One proposed amendment sought to compel the introduction of public registers of beneficial ownership of companies in the Channel Islands and the Isle of Man, even if that was contrary to any policy decision of the democratically-elected governments of those jurisdictions. If that amendment had been passed by the UK Parliament, it would have created a serious breach of constitutional convention. Following engagement with the UK on this matter ahead of debate in the House of Commons⁹, the amendment was withdrawn.

- 2.4 At the meeting of the States of Deliberation held on 16th May 2018, the President of the Committee made a statement regarding the constitutional issues arising from amendments to the UK's Sanctions and Anti-Money Laundering Bill¹⁰. The statement included a reference to exploring a mechanism for the Bailiwick of Guernsey to introduce a similar measure to article 31 of the States of Jersey Law:

“One of the Resolutions from the Constitutional Investigation Committee was to investigate referring certain matters to the States for approval and consent before registration. This might include UK Acts of Parliament which have direct effect or are to be extended to Guernsey by Order in Council. It would potentially provide an additional safeguard developed from one that already exists in statute in Jersey. I intend to discuss that approach with counterparts in the States of Alderney and Chief Pleas of Sark to seek a Bailiwick-wide consensus.”

- 2.5 The Committee wishes to ensure that Guernsey has the strongest package of measures which maintain the current constitutional relationship and protect the island's autonomy should the UK's Parliament or Government, now or in the future, create a similar constitutional challenge. Introducing a mechanism that would provide for referring certain matters to the States for approval and consent before registration in Guernsey's Royal Court could provide an additional safeguard to protect the island's constitutional position. Such matters might include UK Acts of Parliament that have direct effect or are to be extended to Guernsey by Order in Council.

- 2.6 On 1st March 2019, during the passage of the Financial Services (Implementation of Legislation) Bill, similar amendments (regarding public registers of beneficial ownership of companies) were proposed to be debated in the UK Parliament. Those amendments again sought to impose UK policy on the Channel Islands and Isle of Man. One of those amendments¹¹ garnered wide support from MPs

⁹ Third Reading in House of Commons debate, 1st May 2018

¹⁰ Statement by the President of the Policy & Resources Committee (16th May 2018)

<https://www.gov.gg/article/165298/Statement-by-the-President-of-the-Policy--Resources-Committee>

¹¹ That amendment, numbered NC3 at that time, also referred to a previously accepted amendment to the Sanctions and Anti-Money Laundering Act 2018, relating to the Overseas Territories).

across the political spectrum. The Bill was due to be debated on 4th March 2019, was withdrawn by the UK Government earlier that day, but is due to return to the House of Commons at a later date.

- 2.7 The Policy & Resources Committee had already directed work to be undertaken to review the options relating to the attempts by UK parliamentarians to legislate for Guernsey and has now sought the advice of HM Procurer in light of the need to respond to the immediate concerns.

3. Legislative proposals

- 3.1 On 7th March 2019, HM Procurer wrote to the Policy & Resources Committee to set out the rationale for legislation in regard to the registration by Guernsey's Royal Court of UK Acts of Parliament and Orders in Council (extract):

"...I recommend that, for expediency and as a continuation of the work stream the States agreed to as part of the resolutions from the Constitutional Investigation Committee Policy Letter in January 2016 (a proposition that was transferred from SACC to P&R to deliver in the P&R plan 18 months ago) <https://www.gov.gg/article/150850/States-Meeting-on-26th-January-2016-Billets-I-II-V>, the Committee should consider proposing the enactment of the equivalent of Section 31 States of Jersey Law 2005 (<https://www.gov.gg/article/165298/Statement-by-the-President-of-the-Policy--Resources-Committee>).

Section 31 states:

"31 Duty to refer certain matters to the States

- (1) Where it is proposed—*
- (a) that any provision of a draft Act of the Parliament of the United Kingdom should apply directly to Jersey; or*
 - (b) that an Order in Council should be made extending to Jersey—*
 - (i) any provision of an Act of the Parliament of the United Kingdom, or*
 - (ii) any Measure, pursuant to the Channel Islands (Church Legislation) Measures 1931 and 1957,*
- the Chief Minister shall lodge the proposal in order that the States may signify their views on it.*
- (2) Where, upon transmission of an Act of the Parliament of the United Kingdom containing a provision described in paragraph (1)(a) or of an Order in Council described in paragraph (1)(b) to the Royal Court for registration, it appears to the Royal Court*

that the States have not signified their agreement to the substance of the provision or Order in Council—

- (a) the Royal Court shall refer the provision or Order in Council to the Chief Minister; and*
- (b) the Chief Minister shall, in accordance with paragraph (1), refer it to the States.”*

<https://www.jerseylaw.je/laws/revised/Pages/16.800.aspx>

Although there has been much discussion, in the context of the Constitutional Investigation Committee work stream as to whether section 31 is clear enough, (and these considerations form part of that ongoing work stream) having the equivalent section in place in Guernsey would permit the States actively to signify their approval (or otherwise) of a UK Act. It would also give statutory recognition to the fact that Guernsey has autonomous capacity in domestic affairs.

*In order for this mechanism to be achieved, amendments (by way of a *Projet de Loi*) would be required to the Reform (Guernsey) Law 1948.”*

- 3.2 HM Procureur has advised that in her view no European Convention on Human Rights points arise that would prevent the Ministry of Justice from recommending the grant of Royal Sanction to such a *Projet*. The drafting of such an amendment to the Reform (Guernsey) Law 1948 could be completed in a short timeframe, if approved by the States and prioritised.

4. Compliance with Rule 4

- 4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications. HM Procureur has advised that there is no reason in law why the Propositions should not be put into effect.
- 4.3 In regard to Rule 4(3) it is not envisaged that additional resources will be required for work arising out of these proposals. Resources will be required to draft the proposed legislation but this would be achieved by reprioritising existing work.
- 4.4 In accordance with Rule 4(4), it is confirmed that the Propositions related to this Policy Letter have the unanimous support of the Committee.

- 4.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee because its mandate includes responsibilities for: *(c) external relations and international and constitutional affairs*, which includes: *relations with the United Kingdom and other jurisdictions; [and] representing, or overseeing the representation of, and negotiating for, the Island*". The Propositions contribute to the States' objectives and policy plans as outlined in the Policy & Resource Plan – Phase Two¹². It links with the objective to "seek greater autonomy from the UK in respect of the legislative process and international agreements" (under the strategic outcome of 'Our Place in the World: Mature international identity'). The Committee has not conferred or consulted with other Committees of the States in the preparation of the Propositions because this work relates to an extant States' Resolution and the Committee is responsible for such constitutional matters.
- 4.6 It is intended to liaise further with the States of Alderney and Chief Pleas of Sark to establish whether they wish to adopt similar provisions. The general principle has already been discussed at Bailiwick Council meetings.

4. Propositions

The States are asked to decide whether they are of the opinion:-

1. To approve the legislative proposals set out in paragraph 3.1 of the Policy Letter (an extract of a letter from Her Majesty's Procureur is reproduced therein); and
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

¹² Billet d'État XII of 2017 (as considered by the States in June 2017):
<https://gov.gg/CHttpHandler.ashx?id=107774&p=0> (p38 and p127)