

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**THE GRANT OF ROYAL ASSENT TO PROJETS DE LOI, COUNSELLORS OF STATE AND
OTHER CONSTITUTIONAL MATTERS**

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled 'The Grant of Royal Assent to Projets de Loi, Counsellors of State and other Constitutional Matters', they are of the opinion: -

1. To agree that Royal Assent for Projets de Loi approved by a Bailiwick legislature may be granted by His Excellency the Lieutenant-Governor of the Bailiwick, on behalf of the King-in-Council (as set out in Section 7 of the Policy Letter).
2. To direct the Policy & Resources Committee to liaise with the Lieutenant-Governor, the Bailiff, the Ministry of Justice and the authorities in Alderney and Sark on the practical and legislative arrangements that will be required to give effect to Proposition 1 and to authorise the Committee to agree to those arrangements on behalf of the States.
3. To signify their agreement to the substance of the proposed Order in Council required to implement Proposition 1, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
4. In Resolution 1 of Article XV of Billet d'État No. I of 2016, relating to the Policy Letter entitled "Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey", to delete the words "the granting of Royal Sanction;".
5. To acknowledge that the Counsellors of State Act 2022, regarding the addition of further Counsellors of State, has effect in Guernsey (and the whole Bailiwick of Guernsey) by necessary implication.
6. To signify their agreement to the substance of the Counsellors of State Act 2022 insofar as it has effect in Guernsey by necessary implication, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
7. To note the contents of the remainder of the Policy Letter.

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AND OTHER CONSTITUTIONAL MATTERS

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

Date 31st March, 2023

Dear Sir

1 Executive Summary

- 1.1 Significant constitutional events, including the death of Her Majesty Queen Elizabeth II, have recently taken place in the United Kingdom which affect, or have the potential to affect, Guernsey and the Bailiwick. In light of this, the Policy & Resources Committee ("the Committee") has continued to progress Resolutions relating to the work of Guernsey's Constitutional Investigation Committee ("CIC"), as well as further reviewing the Island's constitutional position and developing proposals to reflect relevant changes.
- 1.2 Royal Assent is currently granted to Projets de Loi ("Projets") by HM The King acting through the Privy Council¹. This process relies on regular meetings of the Privy Council, and timely review of Projets by UK Ministers (acting in their capacity as Privy Counsellors). These reviews are limited to the compliance with the international obligations that extend to the Bailiwick.
- 1.3 This Policy Letter proposes that an alternative Royal Assent process should be introduced whereby His Excellency the Lieutenant-Governor can grant Royal Assent on behalf of the Privy Council, unless the Projet is specifically reserved for consideration by the Privy Council. In order to permit the Lieutenant-Governor to do so, an Order in Council is required which would set out the process. This alternative process for granting Royal Assent should result in faster processing of legislation, would not be reliant on existing schedules for Privy Council meetings, and would also underline the Bailiwick's domestic legislative autonomy and international identity.

¹ Although it is formally the "King-in-Council" who grants Royal Assent to Projets de Loi, this Policy Letter will use the familiar term "the Privy Council" for ease of understanding.

- 1.4 The Policy Letter also provides information about the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order, 2022 (made to ensure continuity of the current Royal Assent process for the approval of Projets following the death of Her Majesty Queen Elizabeth II), the addition of further Counsellors of State and progress undertaken following the States' Resolutions relating to the CIC's work.
- 1.5 This Policy Letter also formally seeks the agreement of the States to the substance of (a) the Order in Council which will implement the alternative Royal Assent process, and (b) the Counsellors of State Act 2022 which adds further additional Counsellors of State, for the purposes of article 72A of the Reform (Guernsey) Law 1948, as amended² (see paragraph 11.3).

2 Background to the review of the Royal Assent process for Projets de Loi

- 2.1 In 2014/15, the CIC considered whether to change the model by which Royal Assent is granted for Projets. It was formed in January 2014³, following earlier decisions of the States of Deliberation⁴, to investigate proposals for Guernsey to achieve greater autonomy in relation to the legislative process and international affairs more generally.
- 2.2 The CIC's considerations and recommendations were detailed in a 2016 Policy Letter⁵. The States agreed with the CIC's recommendations to change the model for Royal Assent and made relevant Resolutions on 27th January 2016.
- 2.3 The CIC was dissolved on 30th April 2016. Thereafter, the Policy & Resources Committee took over the responsibility to progress the Resolutions relating to the CIC's work⁶. Appendix 1 sets out further background to this work.

3 Current Royal Assent process for Projets de Loi

- 3.1 The Channel Islands have formally been possessions of the English Crown for approximately 800 years. In order to govern the Islands, the Sovereign originally made Orders in Council under the Royal Prerogative, but this approach was

² [Reform \(Guernsey\) Law, 1948](#). The equivalent Sark provision is set out in section 63A of the [Reform \(Sark\) Law, 2008](#).

³ [Billet d'État I of 2014, Article V](#) and [Resolutions of 30th January, 2014](#).

⁴ [Billet d'État XVIII of 2013 \(Volume I\), Article II](#) and [Resolutions of 26th September, 2013](#).

⁵ [Billet d'État I of 2016, Article XV](#) and [Resolutions of 27th January, 2016](#).

⁶ For Resolution 3 (proposal to amend the Reform (Guernsey) Law, 1948), the CIC was initially responsible for progressing the work (January 2016-June 2017); that responsibility was then transferred to the Policy & Resources Committee.

eventually superseded by the grant of Royal Assent to Projets approved by Bailiwick legislatures⁷.

- 3.2 Currently, where a Bailiwick legislature⁸ approves a Projet, it is sent through official channels for (a) consideration by the Lord Chancellor and (b) the grant of Royal Assent by the Privy Council. Each Projet is accompanied by an explanatory memorandum prepared by the Law Officers of the Crown setting out the Projet's purpose and confirming its compliance with existing international obligations.
- 3.3 The Committee for the Affairs of Jersey and Guernsey, which was previously established by a 1952 Order in Council⁹, reports on each Projet submitted to the Privy Council and, assisted by the scrutiny already undertaken by or on behalf of the Lord Chancellor, advises whether Royal Assent should be granted to that legislation.
- 3.4 Following the grant of Royal Assent, the Clerk to the Privy Council signs the Order in Council which is then transmitted via official channels for registration in the Royal Court, along with the relevant Projet. At the direction of the Royal Court, Orders in Council applying to Alderney and/or Sark are then transmitted by His Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark (as relevant) for registration on the records of those islands.
- 3.5 Jersey follows a similar process to the Bailiwick for the approval of its legislation and Royal Assent, as noted by the CIC in its 2016 report.¹⁰
- 3.6 Although the current process works reasonably efficiently (as Projets are generally approved within three or four months of being sent to the Ministry of Justice), the approval of legislation remains tied to formal sittings of the Privy Council. As the Privy Council does not sit in August or September, nor during certain periods relating to UK General Elections, Royal Assent to legislation cannot be given during those months, which can affect the timescales for approving Channel Island legislation. In addition, the deadlines for submission to the Privy Council are fixed and even a small delay might mean that a Projet must wait until the next meeting. This can cause minor delays which can have an impact on time-critical legislation.

⁷ An exception is where the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992 applies, whereby legislation relating to tax and duties may have effect notwithstanding the fact that Royal Assent has not yet been given.

⁸ Meaning the States of Deliberation, the States of Alderney and Chief Pleas of Sark.

⁹ [Order in Council 22nd February, 1952.](#)

¹⁰ [Billet d'État I of 2016, Article XV](#), p. 133, paragraph 4.1.

4 The Royal Assent process proposed by the CIC for Projets de Loi

- 4.1 Having considered various options, the CIC recommended the adoption of a streamlined process for the granting of Royal Assent for Projets, as set out in the 2016 Policy Letter¹¹. The Policy & Resources Committee ('the Committee') is, however, now proposing a variation to the CIC recommended model for the reasons set out in Section 6.
- 4.2 "The CIC saw the benefits of bringing the process of Royal Sanction closer to Guernsey, where it would not cause a problem for the UK Government, and that the Lieutenant Governor would be well placed - given the constitutional position of his role - to act as an agent for Her Majesty in the granting of Royal assent. This accurately reflects Guernsey's maturity as a jurisdiction with responsibility for its own affairs and provides benefits such as speed and efficiency in processing legislation."¹²
- 4.3 Under the CIC's proposals, the Lieutenant-Governor would be granted delegated authority to grant (or withhold) Royal Assent for Guernsey primary legislation. The Lord Chancellor would still exercise the same degree of oversight over Projets submitted for Royal Assent by the Lieutenant-Governor as already occurs for Projets submitted for Royal Assent using the current procedure.
- 4.4 The CIC recommendations included a six-week period for the Ministry of Justice to intervene on certain grounds. If no demurrals were received from the Lord Chancellor by the end of that period, the Lieutenant-Governor could consider whether to exercise delegated responsibility and grant Royal Assent to the legislation. The CIC model would have continued to use, and increasingly relied on, certification by the Law Officers of the Crown to ensure compliance with existing international obligations and requirements of good government.

5 The Royal Assent process for Isle of Man primary legislation

- 5.1 The process for Royal Assent operates differently in the Isle of Man from that operating in the Bailiwicks of Guernsey and Jersey. The Isle of Man process has existed for more than 40 years.
- 5.2 In the Isle of Man, an Order in Council gives the Lieutenant-Governor power to grant Royal Assent to primary legislation on behalf of the Privy Council.¹³ When the legislation is submitted to the Ministry of Justice for its lawyers to advise the

¹¹ As set out in section 6, "Proposal for change in the making of Orders in Council" [Billet d'État I of 2016, Article XV](#), p.140.

¹² Extract from paragraph 5.4 [Billet d'État I of 2016, Article XV](#), p.138.

¹³ The power to do this was originally set out in The Royal Assent to Legislation (Isle of Man) Order 1981 (as amended), which was replaced by [The Royal Assent to Legislation and Sodor and Man Diocesan Synod Measures \(Isle of Man\) Order, 2022](#).

Lord Chancellor¹⁴, the Lieutenant-Governor recommends whether it would be appropriate for the legislation to be reserved to the Privy Council or whether Royal Assent could be granted using the powers under the Order in Council. Additionally, the Lieutenant-Governor must consult the Lord Chancellor when the legislation relates to specified subjects¹⁵ and may only grant Royal Assent where satisfied that the Lord Chancellor has decided not to direct that the legislation is reserved to the Privy Council. Unless legislation is specifically reserved to the Privy Council in accordance with that Order, the Lieutenant-Governor can then exercise delegated powers to grant Royal Assent to the primary legislation.

- 5.3 It should be noted that the CIC considered the Isle of Man model and other options during its investigations in 2015.¹⁶ At that time, the CIC opined that, when considering the timescale of Royal Assent by delegated authority as operated in the Isle of Man compared with the Privy Council procedures, any timescale reduction would not be significant because the same administrative and legal process would be undertaken by the Ministry of Justice and the Lord Chancellor in each instance prior to Royal Assent being given. Conversely, the CIC also noted that adopting the Isle of Man process would mean that Royal Assent could be granted more quickly (compared to the current process) during periods when the Privy Council did not meet (including August, September and during UK General Election periods).

6 Consideration of the CIC and Isle of Man processes for the grant of Royal Assent

- 6.1 Having reviewed the proposed CIC process and compared it with the Isle of Man's established process, the Committee considers that there may be benefits to the Bailiwick if it adopted the Isle of Man process with relevant modifications. As identified by the CIC, *Projets* would no longer be dependent upon scheduled Privy Council meetings. This process would also provide increased flexibility, and potentially more convenient deadlines, for the approval of *Projets* which may better suit and support the relevant Bailiwick parliament's legislative priorities. This would be particularly helpful for approving urgent *Projets* and also could potentially reduce the timescales for the approval of other *Projets*.
- 6.2 If the Lieutenant-Governor (who is resident in the Bailiwick) has power to grant Royal Assent to *Projets*, this could serve to underline the Bailiwick's legislative autonomy. This approach would also assist with developing Guernsey's international identity, in accordance with directions from the States of

¹⁴ The advice relates to compliance with international obligations, in particular human rights.

¹⁵ The requirement to consult applies where the legislation (i) deals wholly or partly with defence, international relations, nationality and citizenship, the powers and remuneration of the Lieutenant Governor or the constitutional relationship between the United Kingdom and the Isle of Man; or (ii) affects the Royal Prerogative or the Rights of His Majesty in His private capacity.

¹⁶ [Billet d'État I of 2016, Article XV](#), p138, Paragraphs 4.2-4.4, 5.4.

Deliberation, the Island's developing international relations approach and the international identity framework agreed between Guernsey and the UK in 2008¹⁷. The CIC referred to the importance of developing Guernsey's autonomy, where appropriate, in accordance with that framework.¹⁸ Work to develop this autonomy is addressed in the Government Work Plan ('GWP') which states that 'Guernsey must retain its autonomy and assert its international identity while continuing to meet international obligations and norms'¹⁹ and the GWP actions to 'Assert the Bailiwick's constitutional position'; and 'continue development of Guernsey's international identity'.

- 6.3 The Committee has noted that there could be disadvantages with the CIC process as the proposed demurral procedure might give rise to uncertainty, as it would not be clear until the deadline had passed whether the Lord Chancellor intended to object to the grant of Royal Assent by the Lieutenant-Governor.
- 6.4 The Ministry of Justice has indicated its support for the adoption of an alternative process based on that of the Isle of Man, at least in part because established procedures could be adapted to apply to Projets. However, the Ministry of Justice does not support the adoption of the CIC process because it is untested and, due to the demurral procedure, the presumption would arise that the Lieutenant-Governor could decide whether to grant Royal Assent if no response was received from the Lord Chancellor within the time limit, even if this was contrary to the Lord Chancellor's final considered conclusion.
- 6.5 The Committee therefore recommends that the Isle of Man process be modified for Guernsey and the wider Bailiwick. The States of Alderney and Chief Pleas of Sark will also be asked to approve the alternative process for Royal Assent.
- 6.6 The Bailiwick authorities have already communicated their clear wish to achieve greater constitutional resilience in the future and will continue to work with the UK Government to review and build upon the modified Isle of Man process, in accordance with the Bailiwick's needs.

7 The proposed alternative process for Royal Assent for Projets de Loi

- 7.1 In order to give the Lieutenant-Governor power to grant Royal Assent to Projets, an Order in Council must be made by the Privy Council. The necessary procedural and operational changes will be implemented in conjunction with the drafting of the Order in Council. For the avoidance of doubt, the power of the Lieutenant-Governor to grant Royal Assent to Projets could also be exercised by a Deputy Lieutenant-Governor where there is no Lieutenant-Governor in post or where

¹⁷ [International Identity Framework, 2008](#), signed 18th December 2008.

¹⁸ [Billet d'État I of 2016, Article XV](#), p129, paragraph 1.2.

¹⁹ At section 5.8, page 18.

the Lieutenant-Governor is unavailable to act for the purposes of the Order in Council.

- 7.2 The Law Officers of the Crown have proposed appropriate modifications to the current Order in Council for the Isle of Man which streamline the process as much as possible and do not introduce any unnecessary additional procedures. Of note, the proposed process will not change how Projets are debated or approved by any of the Bailiwick parliaments.
- 7.3 The flow chart (attached as Appendix 2) outlines the proposed new process.
- 7.4 After a Projet has been approved by the relevant legislature(s) within the Bailiwick, the explanatory memorandum accompanying the Projet will also include the Law Officers' advice whether the Lieutenant-Governor must consult the Lord Chancellor (see paragraph 7.7) and may grant Royal Assent.
- 7.5 The Lieutenant-Governor will consider that advice and decide whether to reserve the Projet to the Privy Council or whether Royal Assent can be granted using the powers under the Order in Council.
- 7.6 In accordance with the Order in Council, the Lieutenant-Governor must consult the Lord Chancellor when deciding whether Projets relating to certain subjects should be reserved to the Privy Council. In line with the Isle of Man process, it is proposed that these Projets would deal wholly or partly with:

- Defence,
- international relations,
- nationality and citizenship,
- the powers and remuneration of the Lieutenant-Governor,
- the constitutional relationship between the UK and the Bailiwick (or any jurisdiction of it), or
- any matters affecting the Royal Prerogative or the rights of the Sovereign in their private capacity.

- 7.7 For clarity, simply because the Lieutenant-Governor must consult the Lord Chancellor in accordance with the Order in Council, this does not automatically mean that the Projet will be reserved to the Privy Council.
- 7.8 After the Lieutenant-Governor has made a decision whether or not to reserve the Projet to the Privy Council, both it and the accompanying documents will be submitted in the normal way to the Ministry of Justice, to review the Projet on behalf of the Lord Chancellor.

- 7.9 If the Lieutenant-Governor does not reserve the Projet and the Lord Chancellor agrees that Royal Assent may be given, the Lieutenant-Governor may grant Royal Assent to the Projet by signing a document called a “Signification of Royal Assent”.
- 7.10 Any Projet reserved for the grant of Royal Assent by the Privy Council will follow the current process, as confirmed in the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022 (see Section 9 and Appendix 3).
- 7.11 Following Royal Assent being granted (whether by the Privy Council or by the Lieutenant-Governor), all Projets will continue to be registered in the Royal Court. Where Royal Assent is granted by the Lieutenant-Governor, the Signification will be registered together with the Projet. On the direction of the Royal Court, all Projets applicable to the islands of Alderney and Sark will then be transmitted with the relevant Order in Council or Signification to the relevant Island(s) for registration on their records.

8 Legislative requirements and article 72A of the Reform (Guernsey) Law, 1948

- 8.1 The drafting of the Order in Council is being undertaken by the Ministry of Justice and the Law Officers of the Crown. A draft has enabled detailed technical discussions to take place regarding the legal and practical aspects of the proposed alternative Royal Assent process. The Order will be made in perpetuity, so will continue to have effect following the death of the Sovereign.
- 8.2 As the Order in Council will have effect in Guernsey, article 72A(1)(b)(iii) of the Reform (Guernsey) Law, 1948 applies (see paragraph 11.3). The Committee has therefore included the substance of this proposal in Section 7 of this Policy Letter to allow the States to signify their views on it.
- 8.3 The Committee recommends that the States signify their agreement to the substance of the proposed Order in Council which will introduce an alternative Royal Assent process allowing the Lieutenant-Governor to grant Royal Assent to a Projet on behalf of the Privy Council, unless it is specifically reserved for consideration by the Privy Council (see Proposition 3).
- 8.4 Sark has enacted equivalent legislation²⁰ in section 63A of the Reform (Sark) Law, 2008. Consequently, Sark’s Policy & Finance Committee will submit the same proposal to Chief Pleas, inviting them to signify their agreement to it.
- 8.5 Although Alderney has not enacted equivalent legislation, the States of Alderney will be requested to agree the same proposal, as a matter of constitutional importance.

²⁰ Section 63A of the [Reform \(Sark\) Law, 2008](#).

9 Consolidation of existing Orders in Council for the grant of Royal Assent

- 9.1 When Her Majesty Queen Elizabeth II died in September 2022, it was necessary to accelerate work already underway to ensure that Royal Assent could continue to be granted to primary legislation, principally from the Channel Islands.
- 9.2 Work was undertaken by the Law Officers of the Crown, Committee officers and the Ministry of Justice to consolidate and update Orders in Council from 1952²¹ and 2011²² which set out the Royal Assent process for Projets granted by the Privy Council. Similar work was undertaken by Jersey for its own Royal Assent process.
- 9.3 The Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022²³ (“the 2022 Order”), attached as Appendix 3, was made by the Privy Council on 9th November, 2022²⁴. The 2022 Order replaced the Orders in Council made in 1952 and 2011 and reconstituted the Committee for the Affairs of Jersey and Guernsey²⁵. The Order was also made in perpetuity so that it will continue to have effect following the death of the Sovereign. If the Bailiwick were to adopt the alternative Royal Assent process set out in Section 7 of this Policy Letter, the process set out in the 2022 Order would continue to be used for matters reserved to the Privy Council.

10 Additional Counsellors of State

- 10.1 The UK recently enacted the [Counsellors of State Act 2022](#) (“the 2022 Act”)²⁶ to add further Counsellors of State who may discharge royal functions on behalf of HM The King, if he is temporarily unable to do so because of illness or absence from the UK²⁷. HRH The Earl of Wessex²⁸ and HRH The Princess Royal were therefore added, as it was considered that there might otherwise be insufficient Counsellors of State able to discharge those functions²⁹. The 2022 Act has effect

²¹ [Order in Council 22nd February, 1952.](#)

²² [Order in Council 13th July, 2011.](#)

²³ [Order in Council 9th November, 2022.](#)

²⁴ It should be noted that article 72A of the Reform (Guernsey) Law, 1948 did not apply in this case, as the Order in Council related to an internal process of the Crown occurring in the UK rather than one that had effect in the Bailiwick.

²⁵ The number of Privy Counsellors required to attend the Committee was reduced to two.

²⁶ The 2022 Act modified the interpretation of the [Regency Act 1937](#) to include HRH The Earl of Wessex and HRH The Princess Royal as Counsellors of State.

²⁷ Under section 6 of the Regency Act 1937, the Counsellors of State are the Sovereign’s spouse and the four adults next in the line of succession to the Crown, unless otherwise disqualified by the Act. The Sovereign may delegate royal functions to Counsellors of State by Letters Patent for the period of illness or absence. “Royal functions” include most of the powers and authorities belonging to the Crown, including attendance at Privy Council meetings.

²⁸ Since the enactment of the 2022 Act, HRH The Earl of Wessex has been created Duke of Edinburgh.

²⁹ The Counsellors of State before the enactment of the 2022 Act were The Queen Consort; The Prince of Wales; The Duke of Sussex; The Duke of York; and Princess Beatrice. [royal.uk website](#)

in the Bailiwick, the other Crown Dependencies and the British Overseas Territories by necessary implication.

- 10.2 In 2013, similar constitutional matters were considered by the Bailiwick following the UK's enactment of the [Succession to the Crown Act 2013](#) which amended the rules on succession to the Crown³⁰. These rules extended to the Crown Dependencies and British Overseas Territories by necessary implication. On that occasion, the States of Deliberation resolved³¹ to direct preparation of a *Projet de Loi* expressly providing for the rules governing succession to the Crown in respect of Guernsey to be determined in accordance with the relevant law of the United Kingdom. The Succession to the Crown (Bailiwick of Guernsey) Law, 2016³² was subsequently approved by all three Bailiwick legislatures and brought into force. Similar legislation was introduced in Jersey in order to establish a common Channel Island position.
- 10.3 As the 2022 Act has effect in the Bailiwick by necessary implication, article 72A(1)(b)(iii) of the Reform (Guernsey) Law, 1948 applies (see paragraph 11.3). The Committee has therefore included the substance of this proposal to allow the States to signify their views on it.
- 10.4 The Committee recommends that the States signify their agreement to the substance of the 2022 Act, as set out in this section.
- 10.5 Sections 8.4 and 8.5 in relation to Sark and Alderney respectively apply equally in relation to the 2022 Act as they do to the proposed Order in Council.
- 10.6 However, the Committee does not recommend that domestic legislation is required on this occasion. The Committee considers that debate of this Policy Letter and the making of a Resolution (see Proposition 6) is an appropriate and proportionate way to formally recognise the constitutional position, the Bailiwick's identity and its relationship with the Crown. It should be noted that, if the alternative Royal Assent process set out in this Policy Letter is introduced, fewer *Projets* will be sent to the Privy Council for the grant of Royal Assent; this is therefore likely to reduce the impact of any actions by the Counsellors of State in relation to the Bailiwick.

11 Update on other constitutional matters

- 11.1 In the last States' term, the previous Policy & Resources Committee considered a number of options to reaffirm or strengthen the constitutional resilience of

³⁰ [Succession to the Crown Act 2013](#). This legislation introduced measures to recognise female heirs equally to male heirs in the line of succession and to remove the disqualification from the Succession of the Crown arising from marriage to a Roman Catholic.

³¹ [Article VIII of Billet d' État No. XXIV of 2013](#) and [Resolutions of 11th December, 2013](#).

³² [Succession to the Crown \(Bailiwick of Guernsey\) Law, 2016](#).

Guernsey and the wider Bailiwick, building on the recommendations made by the CIC's 2016 report. That work has been continued by the current Committee.

- 11.2 Progress has been made regarding other topics identified in the CIC's report. These include:

Duty of Policy & Resources Committee to refer certain UK legislation to the States of Deliberation before registration:

- 11.3 In accordance with Resolution 3 on the CIC's 2016 Policy Letter, the Reform (Guernsey) Law, 1948 was amended in 2019³³ to insert article 72A, which requires the Policy & Resources Committee (unless it considers it unnecessary) to refer any proposal that:

- (a) a provision of an Act of Parliament should apply directly to Guernsey, or
- (b) an Order in Council should be made extending a provision of an Act of Parliament or a Church of England measure, or that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

to the States of Deliberation to signify their views on it. Article 72A also requires the Royal Court to refer to the States such a provision of an Act or such an Order in Council which has been transmitted for registration where the States have not already signified their agreement to the substance of the provision or Order in Council.³⁴

The review of processes for the extension of international agreements to Guernsey and the wider Bailiwick

- 11.4 This matter was explored in the CIC report³⁵ and later identified in a Requête titled "Extension to the Bailiwick of the UK-US-Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments" which was considered and approved by the States in August 2020³⁶. The

³³ The Reform (Guernsey) Law, 1948, was amended following consideration of a [Policy Letter \('Referral of UK Acts of Parliament and Orders in Council to the States of Deliberation'\)](#) in March 2019. [The Reform \(Guernsey\) \(Amendment\) Law, 2019](#) came into effect from 4th November, 2019.

³⁴ Examples of occasions on which the Committee has referred matters to the States under Article 72A of the Reform (Guernsey) Law, 1948 include:

- Policy Letter dated 7th January, 2020, 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey', [Billet d'État II of 2020](#).
- Policy Letter dated 16th November, 2020, 'Brexit & biometric data: Extending relevant provision of UK Immigration Acts', [Billet d'État XXVII of 2020](#).

³⁵ Section 7 of CIC 2016 report [Billet d'État I of 2016, Article XV](#) and Resolution 1.

³⁶ Postponed from the March 2020 meeting.

Resolutions from 2020 provided a target date of the end of 2021 for proposals to be brought to the States³⁷.

- 11.5 A Policy Letter entitled “Consideration of Guernsey’s Participation in International Agreements”³⁸ (‘the 2021 Policy Letter’) was considered by the States of Deliberation in December 2021 and Resolutions made that modernise processes for considering and approving Guernsey’s participation in international agreements, by granting delegated authority to the Policy & Resources Committee to request and/or agree to Guernsey’s participation in new or existing international agreements in defined circumstances (and including Alderney and Sark’s participation in relevant agreements, following consultation and subject to approval by those Islands). The revised process is intended to provide sufficient flexibility to react to fast-paced events, such as for participation in Free Trade Agreements, and to enable additional transparency and increased public awareness.

Entrustment for the Bailiwick (or part of it) to enter directly into international agreements

- 11.6 The UK, as the State having responsibility for Guernsey’s international relations, may give an entrustment to Guernsey’s government in order that it can negotiate and conclude certain international agreements directly with other countries, rather than being represented by the UK. An entrustment can be specific to a particular agreement or on a more general basis.
- 11.7 The CIC recommended³⁹ that a general entrustment should be sought from the UK to widen its scope, so that it could be used more frequently to deal with other countries.
- 11.8 As summarised in the 2021 Policy Letter, entrustment has been used by Guernsey on various occasions (including generally for tax matters, such as Tax Information Exchange Agreements (TIEAs)⁴⁰ and Double Taxation Agreements (DTAs)⁴¹, and a specific entrustment to enter into a reciprocal social security agreement between Guernsey and Latvia⁴²). Engagement with the Ministry of

³⁷ Requête titled ‘[Extension to the Bailiwick of the UK-US-Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments](#)’ ; [Resolutions of 25 August, 2020](#).

³⁸ [Billet d’État XXV of 2021](#).

³⁹ Section 7.6 of CIC report.

⁴⁰ There is information on the Tax Information Exchange Agreements which Guernsey has signed to date available at <https://www.gov.gg/tiea>. At the time of writing, Guernsey has agreed and signed 61 TIEAs.

⁴¹ There is information on the Double Taxation Agreements which Guernsey has signed to date available at <https://www.gov.gg/dta>. At the time of writing, Guernsey currently has full DTAs in force with 14 jurisdictions and partial DTAs in force with 12 jurisdictions.

⁴² On 30th October, 2015, the States agreed, in principle, to enter into a Social Security Agreement with the Republic of Latvia. This Proposition was included in the Committee’s annual ‘uprating report’ (‘[Benefit and Contribution Rates for 2016](#)’, paragraphs 106-125). Following negotiations, an agreement on social

Justice regarding future entrustment opportunities is continuing and is being kept under review. The UK has issued entrustments to Jersey for Bilateral Investment Treaties on a case-by-case basis, opening up this option for Guernsey.

Establishment of a treaty management function in the External Relations team in the office of the Policy & Resources Committee

- 11.9 Funding for a Treaties Officer was secured within the 2020 Budget process⁴³. Recruitment for that role has been completed.

Development of Guernsey's international identity

- 11.10 In 2008, the Guernsey and UK governments agreed and signed the "Framework for Developing the International Identity of Guernsey"⁴⁴.
- 11.11 The CIC report⁴⁵ noted the adoption of the framework and the intention: "to ensure that, where appropriate, greater autonomy for managing its affairs can continue to be secured. It is an important measure of Guernsey's maturity as a jurisdiction that it is able to demonstrate effective democratic self-determination within its existing constitutional relationship with the UK".
- 11.12 Guernsey has continued to develop its international identity, including by building political and working relationships directly with other jurisdictions when appropriate. Reference to the International Identity Framework has been made in correspondence with the UK Government and with UK parliamentary Committees as required.
- 11.13 Prioritisation of work following the UK's withdrawal from the European Union and the negotiations for the future relationship with the EU, and the effects of the COVID-19 pandemic, have affected progress of constitutional work, including matters mentioned in a statement to the States in May 2018 by the former President of the Committee⁴⁶. Those workstreams included: working with the UK Government to ensure that the convention is upheld that the UK does not legislate without Guernsey's consent on purely domestic matters, work to ensure

security between the States of Guernsey and the Government of the Republic of Latvia was signed simultaneously in Guernsey and Riga on 23 September 2020. The agreement is the first of its type to be negotiated and concluded by the States under entrustment from the UK. Due to the ongoing COVID-19 related travel restrictions the signing of the Agreement took place via video conference. [Media release. The Social Security \(Reciprocal Agreement with the Republic of Latvia\) Ordinance, 2020](#) approved by the States of Deliberation at its Meeting of 25th November 2020.

⁴³ [Billet d'État XXI of 2019](#) and [Resolutions, Paragraph 11.4 of the CIC report and Resolution 5 following the CIC report.](#)

⁴⁴ [International Identity Framework.](#)

⁴⁵ [Billet d'État I of 2016, Article XV](#), p129, paragraph 1.2.

⁴⁶ [Statement 16th May 2018 by the President of the Policy & Resources Committee.](#)

effective measures are in place to combat financial crime and the development of a referendum process for Guernsey.

12 Engagement and consultation

- 12.1 This section focuses mainly on the proposed Royal Assent process, but also considers wider issues as considered in this Policy Letter as appropriate.
- 12.2 The Law Officers of the Crown – both Law Officers have advised on the proposed alternative Royal Assent process, including on the legislative and practical changes required. They have also provided advice about international agreements and entrustment matters as referenced in this Policy Letter.
- 12.3 Alderney and Sark – the Law Officers made initial enquires with the Alderney and Sark authorities with regard to their views on a possible alternative Royal Assent process. In order for this process to apply throughout the Bailiwick, it must also be approved by the States of Alderney and Chief Pleas of Sark. The Committee has consulted the Policy & Finance Committees of Alderney and Sark. Those Committees have confirmed that they are supportive of an alternative Royal Assent process based on the Isle of Man process with modifications. They are also content that the same Policy Letter will be used for all three jurisdictions, with Resolutions tailored for each of them. Alderney and Sark have been regularly apprised of the work on Guernsey's process for deciding whether and how to participate in international agreements and the likely practical effect for those Islands and have been consulted when constitutional matters have Bailiwick-wide implications.
- 12.4 The Ministry of Justice – Discussions have taken place between Guernsey and the UK at Ministerial and officer level and it has been agreed that the three Bailiwick parliaments should firstly approve the principles of the change to the process of Royal Assent. Following such approval, a formal request to introduce the process could then be made by the Bailiwick authorities to the Lord Chancellor, including the making of the required Order in Council to introduce the necessary provisions.
- 12.5 Ministry of Justice officers have agreed to continue to work with Bailiwick officers to review the new process once it has been implemented to ensure that it operates efficiently and effectively. Regular engagement has taken place at Ministerial and Officer level regarding the matters considered in this Policy Letter.
- 12.6 Jersey – Discussions have taken place with officers in Jersey to ascertain whether Jersey's government might also recommend the adoption of an alternative model for Royal Assent. Jersey has confirmed that it is not seeking to adopt the Isle of Man process (or a modification of it) at this time.

- 12.7 The Isle of Man – Isle of Man officers have assisted in sharing information to enable the Bailiwick to consider their procedures and adapt its process.
- 12.8 Regular engagement has also taken place between the three Crown Dependencies at both Ministerial and officer level regarding the wider matters considered in this Policy Letter.
- 12.9 The Lieutenant-Governor – Both the current and the former Lieutenant-Governors have been consulted and updated on the proposals regarding an alternative Royal Assent process for Projets, and the practical and operational changes that will need to be introduced. Joint working has been undertaken regarding these changes. This Policy Letter has been shared with the Lieutenant-Governor and his office.
- 12.10 The Bailiff – The Bailiff has been consulted on the proposals regarding an alternative Royal Assent process, the practical and operational changes required and the drafting of the Order in Council that will be required to give the Lieutenant-Governor power to grant Royal Assent. This Policy Letter has been shared with the Bailiff.

13 Resource implications of the proposed alternative Royal Assent process and for the wider issues

- 13.1 Following approval by the three Bailiwick parliaments, an *ad hoc* working group including Bailiwick officials, representatives from the Lieutenant-Governor's office, the Law Officers' Chambers and relevant UK officials will continue to plan and then implement the alternative Royal Assent process.
- 13.2 Once established, it is not anticipated that additional resources will be required to deliver the new process.
- 13.3 No additional resources are sought for the other matters considered in this Policy Letter.

14 Compliance with Rule 4

- 14.1 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.
- 14.2 In accordance with Rule 4(1)(a), the changes proposed within this Policy Letter contribute to the States' objectives and policy plans. Extant Resolutions relating to Royal Assent, made following the CIC's 2016 recommendations, were

considered as part of the Government Work Plan (GWP)⁴⁷. Those Resolutions are included in the current iteration of the GWP within 'Priority 4 Reshaping Government actions', as part of the focus on 'effective government'. The Propositions also relate to the Committee's mandated responsibilities for external relations and international and constitutional affairs, which include the Island's constitutional position and the relationship with the Crown. The Committee's mandate also includes exercising powers and performing duties conferred on it by extant legislation (in this case, those in article 72A of the Reform (Guernsey) Law, 1948 as amended). The GWP Priority 2: Managing the Effects of Brexit and our international Obligations, and related workstreams relate to the wider constitutional matters set out in this Policy Letter (as set out in section 6.2) ⁴⁸.

- 14.3 In accordance with Rule 4(1)(b), the Committee's consultation with other parties is outlined in Section 12. The Committee will continue to consult and engage with relevant stakeholders regarding the implementation of the new model for Royal Assent and regarding the constitutional resilience work referred to in this Policy Letter.
- 14.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 14.5 In accordance with Rule 4(1)(d), the resources required to fulfil the Propositions of this Policy Letter are set out in Section 13.
- 14.6 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache
President

M A J Helyar
Vice-President

J P Le Tocq
D J Mahoney
R C Murray

⁴⁷ Government Work Plan – Stage 1, [Billet d'État VI of 2021](#) and [Resolutions](#) of 26th March, 2021 and Government Work Plan – Stage 2, [Billet d'État XV of 2021](#) at Annex 1 at pages 71 and 112 and [Resolutions](#) of 23rd July, 2021.

⁴⁸ GWP- Stage 2 Priority 2 at Annex 1, p41.

APPENDIX 1

Background to review of Royal Assent process for Projets de Loi

In 2013, the House of Commons Justice Committee report⁴⁹ on ‘Crown Dependencies; developments since 2010’ suggested the possible adoption by Guernsey and Jersey of a model for Royal Assent which was already used in the Isle of Man. That report considered the interface and developments in the relationship between the UK and the Crown Dependencies.

Engagement has been undertaken with the Ministry of Justice (both at Ministerial and officer level) from 2018 to date. The UK’s decision in June 2016 to leave the European Union (Brexit) resulted in a significant volume of work for the UK and Guernsey’s government. Consequently, work on the Resolutions made regarding the CIC’s report happened more slowly than originally planned.

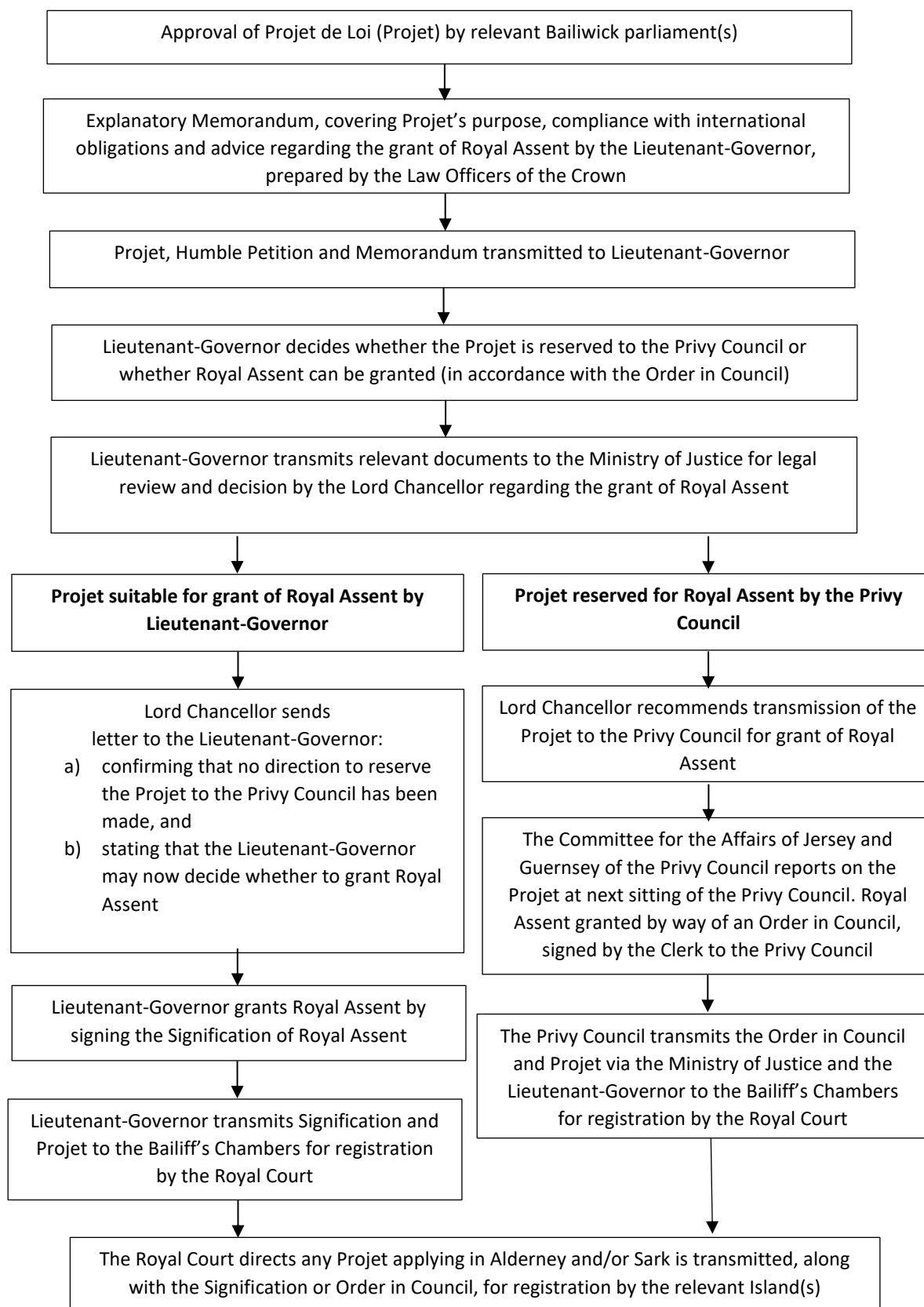
In May 2018, the Policy & Resources Committee indicated its intention to progress the CIC work during a statement made by the former President of the Committee to the States⁵⁰. The Committee notified the Ministry of Justice accordingly, causing the Rt Hon the Lord Keen of Elie KC (then Minister with responsibility for Crown Dependency business) to respond that, “We also stand ready to listen and examine any future proposals that Guernsey has in this regard.” Work was undertaken by the Policy & Resources Committee and a dialogue with the Ministry of Justice commenced.

Unfortunately, in early 2020, due to the COVID-19 pandemic and the consequent reprioritisation of work, the progress of this constitutional workstream was further delayed. However, in April 2020, the Ministry of Justice wrote to the Bailiwick’s Lieutenant-Governor to ask whether the insular authorities of the Bailiwick wished to explore the adoption of the Isle of Man model of Royal Assent. It is understood that the enquiry was prompted by Jersey’s need to fast-track urgent legislation during the pandemic. HM Procureur, at His Excellency the Lieutenant-Governor’s request, approached the governments of Sark and Alderney about the enquiry and the Isle of Man model. The current Committee (and its predecessor) decided later in 2020 to progress work to explore changing the model for Royal Assent separately to other constitutional resilience workstreams as soon as it was pragmatic to do so.

⁴⁹ [House of Commons Justice Committee Report: ‘Crown Dependencies: developments since 2010’ from 2013 p 15-24.](#)

⁵⁰ [Statement 16th May 2018 by the President of the Policy & Resources Committee](#)

Flow Chart of proposed Royal Assent processes for Projets de Loi



Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022



At the Court at Buckingham Palace

THE 9th DAY OF NOVEMBER 2022

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY
IN COUNCIL

**Royal Assent to Legislation and Petitions
(Bailiwick of Guernsey) Order 2022**

His Majesty, by virtue and in exercise of all the powers in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered for Himself, and His Heirs and Successors in Council, as follows –

1. This Order may be cited as the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022 and shall commence the day after the day on which it is made.
2. The whole Privy Council, or any two or more of them, are hereby appointed a single Committee for the Affairs of Jersey and Guernsey under this Order and the Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022, as, from time to time, amended, supplemented, or re-enacted (with or without modification).
3. All Projets de Loi approved by the States of Deliberation, the States of Alderney, or the Chief Pleas of Sark (including any two or all of those Island legislatures), and submitted to His Majesty in Council, for His Majesty's approval, and all Petitions received in relation to any such Projet de Loi shall be referred to, and they are hereby referred to, the said Committee for its consideration and report.
4. Their Lordships shall report thereupon to His Majesty at this Committee in like manner as if such Projets de Loi and Petitions had been referred to the said Committee by a special Order of His Majesty in Council.
5. The said Committee shall not ordinarily postpone its consideration of any such Projets de Loi if a Petition is made against them and is received later than 28 days after their final approval by the relevant Island legislature(s).
6. This Order will continue in effect for His Majesty's Heirs and Successors in Council, until He or They further Order.

Richard Tilbrook

EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces the General Order of Reference dated 22 February 1952 and the Supplementary Order dated 13 July 2011 (“the previous Orders”), both made by Her Late Majesty Queen Elizabeth II, relating to the grant of Royal Assent to Projets de Loi approved by legislatures in the Bailiwick of Guernsey.

This Order reconstitutes a single Committee for the Affairs of Jersey and Guernsey in order to perform the duties set out in this Order. Its duties in respect of the Bailiwick of Jersey are set out in the Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022.

This Order consolidates the previous Orders for the purposes of the Bailiwick of Guernsey and promotes continuity and stability by continuing in effect for His Majesty’s Heirs and Successors in Council.