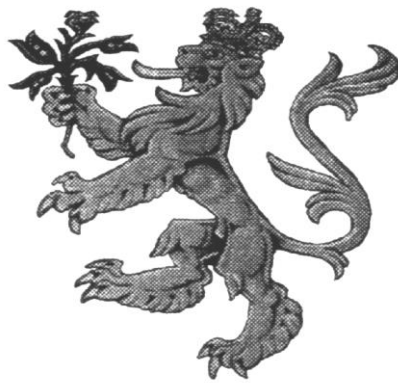


STATES OF ALDERNEY



BILLET D'ETAT

WEDNESDAY 14TH JUNE 2017

Price: £2.20

STATES OF ALDERNEY

BILLET D'ETAT

FOR WEDNESDAY 14TH JUNE 2017

Members of the States:

I have the honour to inform you that the Meeting of the States will be held at 5:30 pm on Wednesday 14th June 2017. This will be preceded by the People's Meeting, which will be held on Wednesday 7th June 2017 at 7:00 pm in the Island Hall.

W Stuart Trought
President

Item I **The Building and Development Control (Alderney) (Amendment) Ordinance, 2017**

The following letter was received from Mr Birmingham, Chairman of the Building and Development Control Committee:-

"I am delighted to report that the public consultation draft Land Use Plan 2017 is nearing completion. This week the Committee agreed the final changes before the draft plan documents are published for public consultation on 12 June 2017. The consultation will be open until mid-august and the plan will be subject to a public Inquiry in September.

As well as gaining from the consultative and open process which has been of enormous help in producing this comprehensive plan, we have improved its format. This we hope will provide a more user friendly and accessible document which will help the public, applicants and the States members.

In completing this second and final stage of the draft Land Use Plan, the Committee have identified technical changes which need to be made to the Building and Development Control (Alderney) Law, 2002 mainly to ensure the widened scope and format of the Plan is fully compliant with the law. These changes have been incorporated into the Building and Development Control (Alderney) (Amendment) Ordinance, 2017. This Ordinance also includes new powers for the Committee to issue statutory procedural guidance subject to prior consultation and clarifies that the Committee's existing powers under section 5 to impose requirements on applicants (e.g. for information or to publicise applications) allows it to make different requirements for different kinds of applications. These changes are primarily technical and procedural. The Committee recommends the States approve this Ordinance for implementation from the 14 June 2017.

Some of the new land use policies proposed, and new procedures recommended, e.g. policies relating to development in the Designated Area, anticipate further law

changes including to apply the Law to the States and to amend section 12 relating to the Designated Area. These will be proposed in a second amending Ordinance which as they involve substantive changes of more significant effect, will be published for consultation very shortly after the Draft Plan. The States will have the opportunity to debate those later changes at that time, together with the report of the Public Inquiry to be held into the draft plan set for this September.

I would be grateful if you would place this matter before the next meeting of the States of Alderney with an appropriate proposition.

*Matt Birmingham
Chairman”*

The States of Alderney is asked to approve the “Building and Development Control (Alderney) (Amendment) Ordinance, 2017”.

Item II **Audited Accounts 2016**

The following letter was received from Mr Dent, Chairman of the Policy and Finance Committee:-

“In accordance with Section 61 (5) of The Government of Alderney Law 2004, as amended, together with the mandate of the Policy and Finance Committee, I attach the accounts of the States of Alderney and the States of Alderney Water Board together with the Policy & Finance Committee Chairman’s report, and the Auditors’ Reports thereon, in respect of the year ended 31st December 2016.

I would be grateful if you would place this report before the States of Alderney with the propositions below.

J. Dent, Chairman”

The States of Alderney is asked to approve:-

- (a) The States of Alderney 2016 Accounts, and**
- (b) The States of Alderney Water Board 2016 Financial Statements**

Item III **Wire Transfers legislation**

The following letter was received from Mr Dent, Chairman of the Policy and Finance Committee:-

“Executive Summary

The States of Alderney enacted the Transfer of Funds (Alderney) Ordinance, 2007 as part of the fabric of legislation to ensure that no changes need be made to mechanisms for the electronic transfer of funds between the Bailiwick and the UK following the introduction of an EU Regulation on transfers of funds (known colloquially as wire transfers).

Following revisions to the Financial Action Task Force standards in 2012, the EU has issued a new Regulation, which will come into effect from the summer of 2017. This means that the Bailiwick also needs to revise its legislative framework so that a derogation issued by the UK Government (see below) can remain in place and

enable the Bailiwick to continue to use reduced information provisions, which are not available without the derogation. This because the BACS payment system, which serves the UK and the Crown Dependencies and which accounts for a very significant proportion of transfers between the UK and the Dependencies, does not have the capacity to provide the detailed customer information required under the EU Regulation for transfers from third countries to EU Member States.

Background

The Transfer of Funds (Alderney) Ordinance, 2007, together with the separate Transfer of Funds Ordinances for each of Guernsey and Sark, are part of the Bailiwick's framework for meeting international standards on anti-money laundering and combating terrorist financing. In particular, these Ordinances were enacted in order to meet the then Recommendations of the Financial Action Task Force on Money Laundering and Terrorist Financing and Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds (the Old Regulation).

The Old Regulation treats the EU as a single jurisdiction as it was felt this would guarantee the smooth functioning of the payment infrastructure in the EU. It imposes different requirements for transfers within the EU as opposed to transfers between third countries and the EU.

The then FATF Recommendations had different rules for domestic transfers (transfers within a single jurisdiction) as opposed to international/cross-border transfers (transfers between two jurisdictions). International/cross border transfers are subject to more onerous requirements in respect of the amount of payer information to be included in the transfers. The EU applied the notion of domestic transfers to all intra-EU transfers (i.e. all the Member States were to be treated as a single jurisdiction) and the notion of international/cross-border transfers to transfers between the EU and third countries. As a consequence of this approach, without a mechanism allowing a different approach to be taken, transfers between Member States and the Bailiwick would be treated as international transfers and, therefore, would need to be accompanied by more detailed information than the domestic transfer requirements applicable to transfers between Member States.

However, the BACS payment system (which serves only the UK and the Crown Dependencies) does not have the capacity to provide the detailed originator information for international transfers between the Dependencies and the UK required under the EC's proposals for transfers between Member States and third countries. Consequently, there would not have been a cost effective way of transferring volume payments between Bailiwick and the UK.

Article 17 of the Old Regulation states that the European Commission may authorise any Member State of the European Union to conclude agreements with a territory outside the EU which contain derogations from the Old Regulation, in order to allow for transfers of funds between that territory and the Member State concerned to be treated as transfers of funds within that Member State. Alderney, Guernsey and Sark have received a derogation from the UK Government enabling wire transfers between the Bailiwick and the UK to contain the reduced information requirements for transfers within the EU compared with transfers between third countries and the EU.

A derogation can only be issued if certain conditions are met, including a condition for the jurisdiction concerned to require payment service providers to apply the same standards as those in the Old Regulation.

Requirement for change

On 20 May 2015 the EU enacted Regulation (EU) 2015/847 on information accompanying transfers of funds (the New Regulation). In addition to creating a revised framework in the EU for wire transfers the New Regulation will repeal the Old Regulation. Accordingly, the Old Regulation will be replaced in late June

2017 and Alderney (and Guernsey and Sark) must meet the requirements of the New Regulation if the derogation issued by the UK under the Old Regulation is to be extended. The New Regulation will apply from 26 June 2017 and EU Member States must comply with the New Regulation by that date.

The results of the 2016 UK referendum on the EU do not affect the importance of the timing of the extension of the UK's derogation. The derogation needs to be issued on or before 26 June 2017 and continue to be in force until such time as the UK leaves the EU. It will be important to ensure that transfers between Guernsey and the UK will continue to be treated as domestic transfers after the UK leaves the EU.

Like the Old Regulation the New Regulation provides for the possibility for such transfers of funds to be treated as transfers within that Member State (ie as domestic transfers) where:

- (a) it shares a monetary union with the Member State concerned or forms part of the currency area of the Member State concerned;*
- (b) it is a member of the payment and clearing systems of the Member State concerned;*
- (c) it requires payment service providers under its jurisdiction to apply the same rules as those established under the Regulation.*

Proposals

In order to meet all of the above conditions Alderney will need to implement legislation which meets the new Regulation. As with the 2007 Ordinance, the most expedient means of achieving this is by way of an Ordinance made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 as amended.

Following consultation with the private sector, the Policy & Resources Committee in Guernsey provided the UK Government with draft new wire transfers legislation in September 2016 so that it was able to liaise with the European Commission on the derogation. The consultation process between the UK and the European Commission is ongoing but, in light of the 26 June deadline referred to above, the Policy & Finance Committee is seeking approval from the States of Alderney for a new Ordinance.

The 2007 Ordinance applies in relation to transfers of funds in any currency which are sent or received by a payment service provider (PSP) established in Alderney (the legislation also provides exceptions to this). PSPs must ensure that transfers of funds are accompanied by substantial information on the payer and verify that information. Reduced requirements are in place where the PSPs of both the payer and the payee are situated in the British Islands – i.e. transfers to the UK, Jersey and the Isle of Man are treated as being domestic transfers and the reduced requirements resulting from this. The Ordinance also contains technical provisions on, for example, missing or incomplete information on the payer; record keeping; the provision of information and documents by PSPs to the authorities in Guernsey; offences; and power for the Guernsey Financial Services Commission (GFSC) to make rules, instructions and guidance for the purposes of the Ordinance. The GFSC monitors compliance by PSPs with the Ordinance.

Key changes to the regime set out in the Old Regulation include:

- (a) a requirement that transfers of funds are accompanied by information on the payee, not only the payer.*
- (b) a requirement that the accuracy of the information on the payee for transfers of funds of more than EUR 1,000 should be verified.*
- (c) a requirement that the payment service provider (PSP) of the payee and any intermediary PSP establish effective risk-based procedures for determining*

whether to execute, reject or suspend a transfer of funds that lacks the required payer and payee information.

The Policy & Finance Committee proposes that the 2007 Ordinance should be repealed and a new Ordinance enacted enabling Alderney to meet the New Regulation in such a way that the existing derogation issued by the UK Government can remain in place.

Supplemental and consequential matters will also need to be addressed in the proposed Ordinance, which will supplement the requirements of the New Regulation itself for the purpose of ensuring those requirements are given appropriate and proportionate effect in our domestic law.

Therefore, the Transfer of Funds (Alderney) Ordinance, 2017 is provided for consideration by the States of Alderney. A Keeling Schedule is also provided; this is an informal document provided to assist the reader. It shows how the new Regulation will apply in Alderney, marked up to show the modifications made by the Ordinance.

James Dent, Chairman”

The States of Alderney are asked to approve the Transfer of Funds (Alderney) Ordinance, 2017, which will also repeal the Transfer of Funds (Alderney) Ordinance, 2007.

Item IV Capital Funding (Revised) - Refurbishment of the Nunnery

The following letter was received jointly from Mr Dent, Chairman of the Policy and Finance Committee, and Mrs Paris, Chairman of the General Services Committee:-

“At its meeting held on 24 May 2017 the States of Alderney considered a report entitled Capital Funding - Refurbishment of the Nunnery.

At the meeting the States resolved to: –

- *Approve the award of the contract for the refurbishment of the Nunnery to Tickled Pink builders; and*
- *Approve the leasing of the building to the Alderney Wildlife Trust for an initial period of five years.*

There were however a small number of reservations with regard to proposition number 2, which was to approve the expenditure of £280,000, to be charged to the capital account. On this aspect the votes were evenly split and in accordance with long established States protocol, the President did not exercise his casting vote, and therefore the status quo remained, which meant the expenditure was not approved.

During the debate there were many positive comments about the Alderney Bird Observatory and the Alderney Wildlife Trust, and broad support for the proposals, however there were some concerns over whether best value was being achieved.

To address these concerns independent advice is being sought from the Property Services unit within the States of Guernsey. The unit has overall responsibility for all general States property and buildings in Guernsey including construction, rebuilds, renovation, sales, purchases and leases, and therefore has the expertise which is needed.

The independent assessment which is being undertaken will consider whether:-

- (a) the dilapidation support was fair and proportionate; and*
- (b) any aspects of the development could reasonably be deferred; and*
- (c) any aspects of the development might be regarded as 'over-specified' and*
- (d) the project management could be carried out in an alternative manner.*

The documentation has been forwarded to Property Services and a site visit is planned for the week ending 2 June 2017. The initial feedback is that the proposed works and costings appear reasonable, but the more detailed guidance will not be available until after the site visit.

Given the various time constraints which include the Billet submission deadlines for States reports; the need for the Alderney Wildlife Trust to have a clear decision; and the desirability to carry out any roof repairs during the summer; it remains important to progress this matter at pace.

Therefore, at this stage the States is being asked to approve a revised proposition which is to authorise expenditure of a sum of £280,000, or such lower sum as may be negotiated in light of professional advice received from the Property Services Unit of the States of Guernsey, and for this to be charged to the capital account.

We would therefore be grateful if you would place this matter before the States of Alderney with appropriate propositions.

*James Dent, Chairman
and
Norma Paris, Chairman*

The States of Alderney is asked to approve capital expenditure of up to £280,000 for the refurbishment of the Nunnery, or such lower negotiated figure, to be confirmed at the States Meeting, following receipt of the independent report.

Item V Questions and Reports

A report entitled "Activity of the Policy and Finance Committee during 2017" will be presented by the Chairman of the Policy and Finance Committee.

Issued: 2nd June 2017