



OFFICIAL REPORT

OF THE

STATES OF THE

ISLAND OF ALDERNEY

HANSARD

The Court House, Alderney, Wednesday, 17th June 2015

*All published Official Reports can be found on the
official States of Alderney website www.alderney.gov.gg*

Volume 3, No. 5

Present:

Mr Stuart Trought, President

Members

Mr Matthew Birmingham

Mr Neil Harvey

Mr Louis Jean

Mr Robert McDowall

Mr Graham McKinley

Mrs Norma Paris

Mr Steve Roberts

Mr Christopher Rowley

Mr Francis Simonet

Mr Ian Tugby

The Greffier of the Court

Mrs Sarah Kelly

Business transacted

Billet d'État for Wednesday, 17th June 2015	67
I. Re-appointment of the Code of Conduct Panel, approved	67
II. Testamentary Freedom – The Retrait Lignager (Abolition) (Alderney) Law, 2015 and The Alderney Inheritance Law, 2015 approved.....	69
III. Questions and Reports – Policy and Finance Committee – Chairman's Report.....	75
<i>The Assembly adjourned at 6.03 p.m.....</i>	<i>76</i>

States of Alderney

*The States met at 5.33 p.m. in the presence of Lieutenant G T Workman RN (Rtd),
a representative of His Excellency Air Marshal Peter Walker, C.B., C.B.E.
Lieutenant-Governor and Commander-in-Chief of the Bailiwick of Guernsey*

[THE PRESIDENT *in the Chair*]

PRAYERS

The Greffier

ROLL CALL

The Greffier

Billet d'État for Wednesday, 17th June 2015

I. Re-appointment of the Code of Conduct Panel, approved

Item I.

*The States of Alderney is asked:
to approve that the following persons:*

Mr Peter Cunningham

Mrs Rosemary Hanbury

Mrs Helen McGregor

Mrs Pamela Pearson

Mr John Russell

*be confirmed as Members of the States Members Code of Conduct Review Panel until the
period ending 31st December 2015.*

The President: Madam Greffier, before we move to the first Item, I will ask Mr Birmingham,
as Convener, to give the report on the People's Meeting – if you would be so kind,
5 Mr Birmingham.

Mr Birmingham: The People's Meeting took place on 10th June at 1900 hrs. I convened the
meeting and I was assisted by the Chief Executive and the Treasurer. The President was in
attendance, as were six other States Members excluding myself, and our minutes secretary.
10 There were approximately 22 members of the public and two members of the press.
Would you like me to read the details of Item I?

The President: It will save you rising again, Mr Birmingham, so please do.

15 **Mr Birmingham:** Thank you very much.

Under Item I, re-appointment of the Code of Conduct Panel, there were two comments. They included: for clarification, if a States Member is in breach of the Code of Conduct, would the person taking the complaint to other Members/the President require a solicitor to do so; and can the President quash the complaint before it is put to the Code of Conduct Panel?

20 The Convener – that was me – allowed the President to answer the question and he advised that complaints of a breach of the Code of Conduct are brought to him or the Greffier and he will determine if there is sufficient proof of a breach and then present it to the panel. However, if not, then it will be dismissed.

25 The second comment was: why is this appointment only until the end of the year? I again allowed the President to give clarification and he advised that this was to allow it to fall in line with the annual appointments from January 2016.

The President: Thank you. I think you also omitted the answer to whether or not they need a solicitor. They do not need a solicitor.

30

Mr Birmingham: Oh, yes, sir, that is correct, they do not need a solicitor.

The President: Thank you.

Madam Greffier, if you would formally introduced Item I, please.

35

The Greffier: Yes, sir.

Item I is the Re-appointment of the Code of Conduct Panel. The States of Alderney is asked to approve that the following persons – that is Peter Cunningham, Rosemary Hanbury, Helen McGregor, Pamela Pearson and John Russell – be confirmed as Members of the States Members Code of Conduct Review Panel until the period ending 31st December 2015.

40

The President: Thank you very much.

Mr Harvey, I believe you wish to propose this.

45 **Mr Harvey:** Thank you, sir, yes.

A fairly straightforward measure which, as my colleague has said, will bring us into the normal timetable for these appointments at the end of the year.

I recommend to my fellow States Members that we approve this simple measure. Thank you.

50 **The President:** Thank you very much, Mr Harvey.

Mr Rowley, I believe you wish to second this.

Mr Rowley: Yes, that is right, sir.

55 **The President:** You wish to second it?

Mr Rowley: Yes, I wish to second it.

The President: Thank you very much.

60 Does any Member wish to speak on Item I?

Mr Jean: I would like to enlarge on the point made by Mr Birmingham. If a States Member actually finds himself in a problem in a *bona fide* committee meeting, is he able to use the Code of Conduct Panel on recommendation from you?

65 I am terrified even more, as when I had my problem I feel probably that... I did not think of it at the time, and I admit I did not ask you whether you would refer it to the Code of Conduct Panel, but would that be the normal procedure, especially as I found myself in the situation

where the other party had employed the services of an advocate. I did not, I dealt with it myself, but I was asking for assistance.

70 What I really want to know is whether, in future, it will probably be right, in a set of circumstances like that, where it took place in a committee meeting, that the Code of Conduct Panel should immediately be involved.

The President: I do not know whether this is really the place to do that, but for clarification I would refer you to the Greffier for the answer to that; but so that it is quite open to everybody, a complainant must place the evidence he believes is evidence of a breach of conduct to both the Greffier and me in writing. You do not need a solicitor in order to do that. A complaint will not be considered unless that happens. Does that slightly help to clarify it for you?

80 **Mr Jean:** Thank you.

The President: If you require further clarification I advise you to go to the Greffier outside of the States meeting.

85 **Mr Jean:** Thank you.

The President: Does any other Member wish to comment on the Code of Conduct? In that case, Madam Greffier, I think you can take that as approved.

90 **The Greffier:** Thank you, sir.

**II. Testamentary Freedom –
The Retrait Lignager (Abolition) (Alderney) Law, 2015 and
The Alderney Inheritance Law, 2015 approved**

Item II.

The States is asked to approve:

the Projet de Loi entitled:

a) 'The Retrait Lignager (Abolition) (Alderney) Law, 2015'; and

b) 'The Alderney Inheritance Law, 2015'

and to request the President to seek the Sanction of Her Most Excellent Majesty in Council for them to have the force of Law in the Island of Alderney.

95 **The President:** If we could move to Item II, please.

The Greffier: Item II, sir, is Testamentary Freedom. The States is asked to approve the Projet de Loi entitled The Retrait Lignager (Abolition) (Alderney) Law, 2015 and The Alderney Inheritance Law, 2015 and to request the President to seek the Sanction of Her Most Excellent
100 Majesty in Council for them to have the force of Law in the Island of Alderney.

The President: Thank you very much.
Mr Birmingham, as Convener.

105 **Mr Birmingham:** Thank you, Mr President.

Yes, there were a number of comments on this Item. First, currently a will for realty would require a signature witnessed by two Jurats, and a will of personalty has to be handwritten, signed and dated, but not witnessed. Part VI of the new Law replaces that requirement and the

110 question was: is that correct? I allowed Mr McDowall to answer the question, as he was best placed to, and he advised that any existing wills will stand if made under the previous Law; however, going forwards those changes of circumstances will apply.

The second point in question was: will there be a harmonising of previous wills done in the UK? Again, I deferred to Mr McDowall and he advised that, in effect, yes; however, domicile law applies to people domiciled here.

115 The third point was: what is the definition of 'civil partnership'? Again, I deferred to Mr McDowall to answer the question and he advised that civil partnerships are not recognised in the Bailiwick of Guernsey; however, it is the general definition of what civil partnership is under UK legislation. I have a bit of further clarity there from Madam Greffier: civil partnerships are recognised in the Bailiwick in modern legislation; they are not carried out in the Bailiwick. I hope
120 that adds a little bit of extra clarification.

The fourth point: a query was made regarding adding a codicil to an existing law. That was raised based on part I, page 5 of the Law. I was asked for clarification on the matter to be sought and to be brought up at this meeting. Again, we have some clarification on this. Any codicil in place prior to this legislation taking effect will be valid after this legislation is in force, assuming
125 that they are properly executed under the current Law. Any codicil made after this legislation is brought into force must be made in accordance with this law, even if the effect of it is to amend a will made under the current legislation. I hope that is the clarification that was required under that section.

Moving on to point five: under the previous Law there is no specific protection of children or family – is the new Law ruling out any commitment to family, and what impact would this have on children? I again deferred to Mr McDowall to answer the question and he advised that the new Law allows more freedom of testamentary disposition. In consequence, there will be more opportunity for more action to be taken by relatives, friends and others who believe that they have a greater entitlement than is reflected in their actual inheritance. Such claims are more
135 likely to be referred to the Royal Court in Guernsey for ruling in the future.

There was a further point: have there been any formalised guidelines published for the courts in relation to the previous question? It was noted that in paragraph 36 of the Law there are certain guidelines dealing with the distribution.

Moving on, a further point is that a query was raised relating to Inheritance Tax in the UK, based on schedule 1, section 4, 'Rules of intestate succession', particularly relating to point 7, 'Surviving spouse or civil partner'. Again, it was a case of seeking clarification. In this particular case, the rules of Inheritance Tax apply to... I have the detail here, if you will just bear with me one second. A person's domicile is only important in relation to their personal estate. If a person is not domiciled here but owns real property, that property is dealt with under Alderney law. If a
145 person is domiciled elsewhere but has personal property here, that property is dealt with under the law of their domicile. The court already recognises UK rules for realty as long as they specify that realty in the UK will. In terms of the other specific details, obviously, dealing with Inheritance Tax, that was very much on a case-by-case basis, which would really be for the individual to investigate.

150 Finally, the last question: is the law following the changes that have happened in Guernsey? Meaning the adoption of the new laws in Guernsey. It was noted that the Guernsey laws have been replicated with a few Alderney-specific changes as a result of differences in the current Alderney inheritance laws.

155 Then there was just one final point, which asked if it would be possible for a simplified version of the Law to be published, once it had been agreed, for members of the public.

Those were all the points raised on this matter.

The President: Thank you, Mr Birmingham.

160 Just for the sake of clarity for the public, I would point out that none of the current States Members are qualified to practise law within the Bailiwick, and if the general public wish to

know more about this Law then I would advise them to either take private legal advice or consult the Greffier.

On that, Mr McDowall, I believe you wish to propose this Item.

165 **Mr McDowall:** Yes. Thank you very much, Mr President, ladies and gentlemen.

Changes in the Inheritance Law are long overdue – I think these have been changed some 30 or 40 years ago, and indeed it took Guernsey 12 years to update its inheritance laws, from beginning to end, to provide freedom of testamentary disposition. A rearguard action was fought by the Guernsey Bar, among others, who have certainly lost fees in drawing up and
170 amending wills. There was a diminution of trust business, which resulted in more freedom of testamentary disposition. So Alderney, unusually, is fortunate that it has been able to take advantage of the benefits and experience of those battles, which of course are reflected in the legislation.

The current Inheritance Laws are rooted in Norman-French law, which is based on Roman
175 and civil law. I had the painful experience of doing Roman law for two years at university, so I know what a grind it is.

Like an off-the-peg suit, Norman-French law looks good to start with but shows wear and tear when the profile of the wearer changes; and I suspect that, like Napoleon, it will be destined for exile in the longer term. Norman-French law does not reflect both the good and grim realities of
180 family life in the 20th century, and their expressions of divorce, sexual freedoms, homosexual-lesbian relationships, the perversities of human rights legislation and the case law that goes with it, as well as the occasional capricious behaviour of the judiciary. So change is needed.

Additionally, under the current legislation the States was actually exposed to prospective litigation under Human Rights, and so this was absolutely necessary to guard against that.

185 The history of the legislation is simple, as those who follow States proceedings will know. In March 2014 a proposal to enact a review of the Inheritance Law, setting out the current defects – which were lack of freedom of testamentary disposition, costs and efficiency, legal and financial risks to the States of Alderney etc – was approved. The consultation setting out the proposed substantive changes was approved by P&F. A consultation took place over May 2014
190 and there was near unanimity in the proposed changes. I think a lawyer had a few concerns, probably to do with the fees.

The States of Alderney approved the move to drafting the proposed changes. The drafting has taken time, mainly because of reduced resources in the Law Officers department to draft legislation, though I pay tribute to Victoria Ogier, who did slave over it for four or five months,
195 and to Sarah Kelly, who gave a lot of guidance. I think we were fortunate that Victoria Ogier actually was the same drafter as the person who did the drafting of the States of Guernsey inheritance legislation, so we had drafting memory.

The legislation is quite long and I am sure you do not want me to go through it all, but there are broadly eight parts.

200 Part I abolishes the forced heirship rules.

Part II removes discrimination against illegitimate children and, importantly, complies with human rights legislation.

Part III sets out the rules in relation to intestate succession.

205 Part IV sets out provisions for dealing with real property in intestacy situations or where the heirs cannot be ascertained or found.

Part V: the prescription for any action, proceedings or claims under this Law shall be six years.

Part VI sets out the formalities for making wills.

Part VII deals with situations where two or more persons die in circumstances where it is uncertain to determine who died first.

210 Finally, part VIII: as a result of testamentary freedom, there are provisions for family and dependants of the deceased, and this part deals with the application of the financial provisions to the court.

215 It is a large body of legislation, probably one of the largest pieces we have had come before
the States of Alderney for some time. I do recommend it to the States. It will be more efficient,
some of the costs will be reduced and in some ways it brings more certainty, but in other ways,
like all freedoms that are given, it will be subject to possible litigation by those who are not
happy with what they get under wills. We see much more of that in the UK now there is more
freedom of testamentary disposition, but we live in a world where people want more freedoms
and hopefully this gives them the freedoms.

220 I commend it to the States. Thank you.

The President: Thank you, Mr McDowall.
Mr Roberts, I believe you wish to second this.

225 **Mr Roberts:** Yes, I do, Mr President.
I would just like to praise the work that Mr McDowall has done on this and I fully support it.

The President: Thank you, Mr Roberts.
Does any Member wish to comment on Item II?

230

Mr McKinley: Mr President, States Members, could I just please seek a point of clarification. I
refer specifically to paragraph 59, which says:

‘This Law shall come into force on the day appointed by Ordinance of the States; and different dates may be
appointed for different provisions and for different purposes.’

235 I find that slightly confusing, and my logic, really... The existing Law dates back to
January 1949, 56 years ago, and, as Mr McDowall has explained very clearly, much has
changed on a number of issues since then. I refer specifically to civil partnerships and
children born out of wedlock, but they are all included now and the new Law makes
complete sense to me. But I am not a lawyer, none of us are, and therefore... As
Mr Birmingham mentioned, at the People’s Meeting there was much concern raised on this
issue. A number of quite difficult questions were asked and were dealt with extremely well,
240 and he has made it quite clear now, from research since then, and answered a number of
those questions, but... A simple thing: I hope it does not come into effect today, because
there are still people out there with concerns and I hope that they will have time, between
now and listening perhaps to the radio discussions I believe are due on Friday, to change
things if they need to.

245

The President: Presumably you mean to change their own circumstances, not the –

Mr McKinley: Change their own circumstances –

250 **The President:** Because they will not be able to change this Law once it has been
enacted.

Mr McKinley: – to comply with this new Law. Not to change the Law, but just to change
their own circumstances to comply with the new Law.

255

The President: Thank you very much.
Does any other Member... Mr Jean.

260 **Mr Jean:** An observation before I start on Mr McKinley's remarks. It is quite interesting. I wonder whether it will be possible for us to have this come before us a second time, in view of what he is saying – not because it probably does not require any alteration, but what he is saying about the consultation process. It may be a good idea to bring it back in two to three months' time – that might be a good idea – for a Second Reading.

265 **The President:** If you would just be seated for a minute, Mr Jean.
Can you raise a point of order on that, please, Mr McKinley. Are you suggesting... because it did not sound to me that you are suggesting that this is brought back for a Second Reading. You are merely concerned about the fact that the date when this comes into force is not clear. Am I correct?

270 **Mr McKinley:** The date is not clear and I am concerned that, from the questions raised at the People's Meeting, there are clearly some more concerns out there that perhaps need to be answered.

I think the Law makes sense, but what I am concerned about is that people's personal circumstances... They may wish to change their will or change one or two things that they have already done. They may have to consult a lawyer, as was suggested by, I think, Mr McDowall and by you, and... to give them time to do that before the Law comes into force.

280 **The President:** Madam Greffier, would you care to clarify the situation.

The Greffier: I can answer that, sir.

285 The reason the commencement date is drafted in relation to commencement by Ordinance is that this Law now has to, if you pass it today, go to the Privy Council, and that will take at least three months and the Law will not be in force between now and the Privy Council consent. Within that time that gives you, as the States, the ability to ask the Law Officers to draft an Ordinance to give a commencement date. The Law, once passed by the Privy Council, will be sent to the Royal Court of Guernsey for registration. Once it is registered, then the Ordinance can bring this into effect.

290 There is a date mentioned in the Law in section I(6), which says that you, as the States, can set a date, between that date and the date of commencement, when people can start making wills under this Law, even though this Law has not commenced, and it might be that you wish to discuss that this evening and have that date as the date of your resolution, i.e. today's date. However, I must stress that that does not mean that any wills drafted before Privy Council consent will be valid, because you still need that, I think, before the Ordinance comes into play.

295 The problem is we do not know when it will be at the Privy Council. But as of today, if you pass this Law, the Law is exactly the same as it stands today. This does not change it.

300 **Mr McKinley:** No. If I may just say, I do not have a concern –

The President: Is this a point of order, Mr McKinley?

Mr McKinley: Just to thank you for the answer.

305 **The President:** Right, that's fine. To clarify the situation, yes?

Mr McKinley: To clarify the situation, that there is time for people to –

The Greffier: Absolutely. It will not change today.

310 **Mr McKinley:** Thank you very much.

The President: Thank you. If you would like to continue – and I hope that has clarified that as being so.

315 **Mr Jean:** That is absolutely fine, and I thank the Greffier for her explanation. That means we have all the time that we need, which I think is important; this is a very important piece of legislation.

I was delighted to see that those taking part in the consultation process were... the majority of whom were in favour of the change. There are some strange things left in the old Norman Law which we know and realise needed to change.

320 One of things that interested me was the change in the ability to buy back – the concept of the *Retrait Lignager*, the common-law principle, the right of descendants to buy back property from purchasers for the same price. That actually, certainly before the War, was not... Perhaps this is how it is now – they can buy it back at the same price – but in actual fact a relative of mine was the subject of a field that he bought from an estate being purchased back by the family, and the custom then was that £1 more in every £13 was paid. I do not suppose there were many extra pounds for my relative back then because money was hard earned, so I doubt that the field was worth a great deal; but anyway, he was subject to it, which is rather interesting.

330 I do not think I have anything else to say, except I am pleased with it and delighted and I believe that certainly those things like illegitimate heirs being recognised are quite right, there should not be any prejudice left and these things are the right way to go. We are more in line with Guernsey with this, and if we leave it as it is it becomes more and more difficult to deal in a modern world where we need to be more regular.

335 Thank you.

The President: Thank you very much, Mr Jean.
Does any other Member wish to speak on Item II? No.
Madam Greffier, would you put that to the vote, please.

340 *A vote was taken and the results were as follows:*

FOR	AGAINST	ABSTAINED
Mr Tugby	None	None
Mr Birmingham		
Mr Jean		
Mr Harvey		
Mr Simonet		
Mr McDowall		
Mr Rowley		
Mr Roberts		
Mrs Paris		
Mr McKinley		

The Greffier: That is carried, sir.

The President: Thank you very much, Madam Greffier.

**III. Questions and Reports –
Policy and Finance Committee –
Chairman’s Report**

Item III.

A report entitled ‘Policy and Finance Committee – Chairman’s Report’ has been received from Mr Harvey, Chairman of the Policy and Finance Committee.

345 **The President:** We move to Item III, please.

The Greffier: Sir, that is Questions and Reports and we have received one report from the Chairman of the Policy and Finance Committee.

350 **The President:** Thank you very much.

Mr Birmingham, as Convener, was there any comment on this Item, please?

Mr Birmingham: Thank you, Mr President.

355 There was, but it just states that the report was from the Chairman of Policy and Finance and that was the only comment.

The President: Thank you very much, Mr Birmingham.

Mr Harvey, would you like to rise and present your report, please.

360 **Mr Harvey:** Thank you, sir.

The Economic Development Plan, from the point of view of the States, is a key document. It is a work in progress; it continues to develop. It sets out, basically, the aspirations of the States in terms of improving the economy of the Island. Very brief background...

365 The resolution on Alderney Airport and Economic Development was agreed by the States of Guernsey in December 2014, including a commitment to produce an action plan to drive economic development in Alderney for approval by the Alderney Liaison Group by 31st March 2015.

370 The lead on developing the plan was taken by the States of Alderney through the Chief Executive and States Members Harvey and McDowall, and a draft was approved by the Policy and Finance Committee on 27th January 2015 for submission to the Alderney Liaison Group.

At its meeting in Alderney on 4th February the Liaison Group agreed the plan as presented and it was made publicly available, with a consultation event taking place on 26th February.

375 Since then, progress has been made in advancing the individual workstreams. The attached charts, which are the key to the plan, of course, highlight the progress using the traffic-light scheme – and I apologise for the rather small print that some people have drawn attention to and also the lack of ‘Alderney’ as headings, but we will remedy that.

There are two programme areas that are currently flagged red, i.e. the targets not being met, being Air Services project 7.1 and Broadband project 10.

380 The former is due to lack of progress by the States of Guernsey and Aurigny in providing the necessary information, including a copy of the shareholder objectives from Treasury and Resources to Aurigny, and the draft memorandum of understanding setting out flight frequencies, numbers of seats and fares. This was raised at the ALG meeting on 3rd June and I can advise you that we have now received the initial part of the memorandum of understanding for Aurigny, as between them and T&R, which sets out overall requirements of Aurigny,
385 including a number of governance issues and reporting issues. In terms of operational matters it confines itself to principally issues that are Guernsey specific, though it does reiterate the requirement that Aurigny maintain a service capability for Alderney. We never did receive a copy of the original shareholder objectives, but I believe this memorandum now significantly fleshes

390 them out and suggests to me at least that the States of Guernsey are taking a much greater
interest and perhaps a degree of control over Aurigny, without becoming shadow directors. The
Chief Executive and I will be going to Guernsey tomorrow to discuss Aurigny-specific issues to be
appended to the main memorandum of understanding.

The second red-flagged area is broadband, which has been due to a lack of internal
resources, which has now been resolved and the project will proceed in quarter 3.

395 In terms of those projects flagged as amber, i.e. mostly on target or some changes, there is
some concern regarding project 14, the Alderney breakwater, again due to lack of progress by
the States of Guernsey in making information available. This was discussed at the Liaison Group
on 3rd June and I am pleased to say that a significant party of Ministers and assorted civil
servants will be coming to Alderney on 23rd June to discuss the breakwater in much greater
400 detail – and hopefully, if time permits, to actually have a look at it.

I commend this report to the States. There should be no great surprises as it features on the
Policy and Finance agenda now every month, but I will be very happy to answer any queries
from States Members.

Thank you.

405

The President: Thank you very much, Mr Harvey.

Does any States Member wish to ask questions on the report from the Policy and Finance
Committee? We have no questions.

It just remains... do you wish that to be placed under deliberations, Mr Harvey?

410

Mr Harvey: I do indeed. I should like this kept with the records of this meeting.

The President: Thank you very much indeed.

415 In that case, Madam Greffier, that concludes this evening's business and I would be obliged if
you would close the session.

PRAYERS

The Greffier

The Assembly adjourned at 6.03 p.m.