

# STATES OF ALDERNEY



# BILLET D'ETAT

WEDNESDAY 12<sup>TH</sup> SEPTEMBER 2018

Price: £2.25

**STATES OF ALDERNEY**

**BILLET D'ETAT**

**FOR WEDNESDAY 12<sup>TH</sup> SEPTEMBER 2018**

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 12<sup>th</sup> September 2018. This will be preceded by the People's Meeting, which will be held on Wednesday 5<sup>th</sup> September 2018 at 7:00 pm in the Island Hall.

W Stuart Trought  
President

**Item I**      **Chief Pleas**

**Persons whose names are included on the Register of Voters and who have given due notice will address the States on matters of public interest.**

**Item II**      **Change to the States of Alderney Rules of Procedure**

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

“In order that Alderney is able to respond to and properly consider regulations and ordinances that derive from Committees of the States of Guernsey (for example, from the EU Withdrawal (Bailiwick of Guernsey (Brexit) Law, recent General Data Protection Legislation (GDPR) and any other future legislation that contain disapplication clauses), it is proposed to add a new paragraph at the end of Rule 4 to the States of Alderney Rules of Procedure.

The additional text will ensure that all States of Guernsey Policy and Resources Committee and any other States of Guernsey Committee originating regulations/ordinances that derive from the above categories of legislation, are submitted for final approval to the States of Alderney and none go, albeit unintentionally, unnoticed or forgotten in the ‘system’.

Given the powers that the States of Guernsey Policy and Resources Committee are likely to obtain under the EU Withdrawal (Bailiwick of Guernsey)(Brexit) legislation, and those they have already obtained under GDPR legislation, and are probably going to seek in forthcoming further legislation, I believe that this additional rule will be an incredibly important safeguard for Alderney.

**Proposed addition to Rule 4 of the States of Alderney Rules of Procedure**

<b>Legislation made in Guernsey</b>		Regulations and Ordinances that apply in Alderney may be made by a Committee of the States of Guernsey or enacted by the States of Deliberation (as the case may be), typically under a Bailiwick-wide Law. Where the relevant Law provides that such legislation is subject to disapplication in Alderney by resolution of the States, it shall be included in a Billet d'Etat for a meeting of the States (within any time-limit for disapplication specified in the Law), together with a motion not to annul the legislation.
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I would be grateful if you would place this matter before the next meeting of the States of Alderney with an appropriate proposition.

James Dent, Chairman

**The States of Alderney is asked to approve, in exercise of their powers to prescribe rules of procedure applicable to meetings of the States under section 45(1) of the Government of Alderney Law, 2004, that the following amendment is made to the States of Alderney Rules of Procedure, as amended:**

**Immediately before Rule 5 (Billet to Bailiff) insert the following new rule 4B:**

**“Legislation made in Guernsey  
Regulations and Ordinances that apply in Alderney may be made by a Committee of the States of Guernsey or enacted by the States of Deliberation (as the case may be), typically under a Bailiwick-wide Law. Where the relevant Law provides that such legislation is subject to disapplication in Alderney by resolution of the States, it shall be included in a Billet d'Etat for a meeting of the States (within any time-limit for disapplication specified in the Law), together with a motion not to annul the legislation.”**

**Item III**      **The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018**

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

*“The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (The “Law”) is broadly equivalent in scope and purpose to the UK’s European Union (Withdrawal) Bill. Because so much about the process of Brexit is still unsure and undecided, the Law has been drafted to provide as much legislative flexibility as possible for the Bailiwick.*

*It has four primary purposes:*

- 1. to repeal the European Communities (Bailiwick of Guernsey) Law, 1973 (“the 1973 Law”), and thus turn off the flow of European legislation which is directly applicable in the Bailiwick pursuant to Protocol 3 (see section 1);*
- 2. to preserve in domestic law that directly applicable EU legislation which had effect in the Bailiwick immediately before exit day (“Preserved EU law”) (see section 2), to avoid a legal black hole on exit day;*
- 3. to provide a suitable mechanism to amend and repeal both Preserved EU law and other enactments at short notice where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit (see the regulation making power at section 5); and*
- 4. to make appropriate provision in relation to the interpretation, and status, of EU law after exit (see sections 6 to 8).*

*In all of this, and in the transitional provision it makes in Schedule 1, it is broadly consistent with provision within the UK Withdrawal Bill.*

*The Law does not require the preparation of what purports to be a comprehensive list of Preserved EU law. Instead, at section 3(2) there is a more general power for the Policy & Resources Committee (after consultation with HM Procureur) to publish information relating to Preserved EU law. In addition the Law makes provision in respect of any Withdrawal Agreement that the UK may enter into with the EU and which has application in the Bailiwick.*

*Section 1 repeals the 1973 Law on exit day (defined as 11pm on 29 March 2019, or such other day as the Policy & Resources Committee may appoint by regulations) but also provides that regulations under section 5 can amend the 1973 Law before exit day.*

*Section 2 preserves EU provisions (another defined term) in domestic law on exit day, subject to amendment by section 5 regulations and to the provisions of any enactment coming into force on or after exit day.*

*Section 3 provides that such saved EU provisions are Preserved EU law.*

*Section 4 is a 'for the avoidance of doubt' provision, making clear that Ordinances under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("the Implementation Law") and other enactments implementing EU provisions continue to have effect, notwithstanding the repeal of the 1973 Law.*

*Section 5 gives power to amend or repeal Preserved EU law and other enactments by regulation where that is necessary and expedient in consequence of the repeal of the 1973 Law or otherwise in consequence of Brexit. To provide for enhanced scrutiny and protection in respect of the exercise of this wide power, it sets out a process of certification by HM Procureur at subsection (3); this regulation making power sits with the relevant Alderney and Sark Committees where exercised solely in respect of those Islands.*

*Sections 6 and 7 deal with the interpretation of legislation and other related matters after 'the designated day', which day is to be appointed by regulations made by the Policy & Resources Committee. If there is a transition period during which EU law continues to have effect, it is intended that the designated day will be the end of that transition period; if there is not, the designated day will simply be the same as exit day.*

*Section 8 deals with the status of Preserved EU law in the context of the Human Rights (Bailiwick of Guernsey) Law, 2000 and the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.*

*Section 9 gives power to the States to make provision in relation to any Withdrawal Agreement (a defined term – see section 12), including provision equivalent to provision in the 1973 Law, thus enabling the States to provide for EU law to continue to have effect during a transition period. It also allows for such an Ordinance to provide that EU law which comes into force and is applicable in the Bailiwick during that period to be Preserved EU law.*

*Section 10 deems the EU Charter of Fundamental Rights to be an EU provision for the purposes of the Implementation Law and thus susceptible to implementation by Ordinance under that Law.*

*Section 11 makes provision in respect of Ordinances and regulations made under the Law; subsections (6) to (10) are concerned with regulations made under section 5.*

*Section 12 is the interpretation section, section 13 gives effect to the two Schedules, and sections 14 and 15 deal with citation and commencement.*

*Schedule 1 contains consequential, transitional and saving provisions, including amendments to the 1973 Law and the 1994 Law.*

*Schedule 2 contains the updated definition of "the EU Treaties".*

*I would be grateful if this matter is placed before the next meeting of the States of Alderney with an appropriate proposition.*

*James Dent, Chairman"*

**The States of Alderney is asked to approve the Projet de Loi entitled "The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.**

**Item IV      The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018**

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

*"As part of the suite of legislation drafted as a consequence of the UK's withdrawal from the European Union, the Law is closely linked to the approach set down in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the "Brexit Law").*

*The Brexit Law preserves in domestic law the directly applicable European legislation which had effect in the Bailiwick immediately before exit day ("Preserved EU law") in order to avoid a legal black hole on exit day, 29 March 2019. Although the Brexit Law provides powers for the Policy & Resources Committee to amend and repeal Preserved EU law where it is necessary and expedient to do so in consequence of the repeal of the European Communities Law, 1973 or otherwise in consequence of Brexit, those powers are only intended to ensure the continuing operability of Preserved EU law.*

*Section 1 of the Law therefore permits the repeal or amendment of Preserved EU law for broader policy purposes by Ordinance of the States of Deliberation (in relation to Guernsey and the Bailiwick as a whole) and the States of Alderney and the Chief Pleas of Sark (in relation to their respective islands). In addition, that section permits the repeal or amendment of any Ordinance made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 for broader policy purposes by Ordinance of any of the above legislatures.*

*Section 2 of the Law sets out examples of the matters in relation to which Ordinances may make provision, including customs and trade, financial services, agriculture and fisheries.*

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

*James Dent, Chairman"*

**The States of Alderney is asked to approve the Projet de Loi entitled "The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018" and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.**

**Item V**      **The Republic of Maldives (Restrictive Measures) (Alderney) Ordinance, 2018**

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

*"In response to concern about the situation in the Republic of the Maldives (the Maldives), the EU has published Council Regulation (EU) 2018/1001. This sets out restrictive measures, including an asset freeze applicable to listed persons responsible for undermining the rule of law or obstructing an inclusive political process in the Maldives, as well as those responsible for serious human rights violations or abuses there. To date nobody has been listed.*

*Alderney does not currently have legislation in place to implement the EU measures, but could do so by enacting an Ordinance under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994. The absence of any implementing legislation will not present a problem for as long as there are no designations in place under the EU Regulation but, it is understood that this position may change at any time.*

*It has been recommended to the Committee that early enactment of an Ordinance giving effect to sanctions in respect of the Maldives is necessary to ensure that, once designations of listed persons are made by the EU, they can be given effect domestically.*

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

*James Dent, Chairman"*

**The States of Alderney is asked to approve the "Republic of Maldives (Restrictive Measures) (Alderney) Ordinance, 2018"**

**Item VI**      **The Alderney eGambling (Amendment) (No.2) Ordinance, 2018**

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

"On the 1<sup>st</sup> April 2015, Section 30 of the Alderney eGambling Ordinance 2009 was amended to extend the term business associate to create a gambling business associate. Gambling business associates are entities outside the Bailiwick who contract with our licensees and Category 1 or 2 associate certificate holders. The contracts enable the movement of players into or out of our jurisdiction to enable our licensees or associate certificate holders to organise and promote a gambling transaction or to effect the gambling transaction on behalf of the business associate or the business associate effects the gambling transaction on behalf of a Category 1 licensee or associate certificate holder.

To enable an associate to become a gambling business associate, due diligence must be conducted by the licensee or associate certificate holder of the entity they wish to associate with. Such due diligence is considered by the Alderney Gambling Control Commission (AGCC) and, if satisfied, that association is approved. This due diligence affords the players leaving this jurisdiction protection as the AGCC would have knowledge of the business associate, for example, where they are licensed and information regarding their organisation.

Further, the AGCC ensures that the Bailiwick reputation is safeguarded by ensuring that the business associate is an entity who should do business with our licensees or associate certificate holders.

The Alderney eGambling (Amendment) (No.2) Ordinance, 2018 creates a new type of gambling business associate. The AGCC has recognised a new model existing within a number of category 2 operators (B2B operators) who send players from their eGambling platform to associates who effect the gambling transaction on their behalf. This is not covered by the current definition. To ensure that these players are afforded the same protection and the Bailiwick reputation is protected, the amendment seeks to add to the definition of the gambling business associate the following:

- *Category 2 eGambling licensee or a Category 2 associate certificate holder, in any arrangement whereby the business associate effects the gambling transaction on behalf of the Category 2 eGambling licensee or Category 2 associate certificate holder*

Such amendment is written with exactly the same safeguards and fee structure as presently exists. The licensee or associate certificate holder must signpost the player. This means they are warned that they are leaving the Alderney jurisdiction and that the gambling they will undertake is not regulated by the AGCC. The fee will be £3,000 per association. They must also undertake the same level of due diligence of the associate and that will need approval before they can send players to the associate.

The AGCC has, whilst reviewing the eGambling legislation, identified a small number of minor drafting issues, mainly typographical or administrative, which they have taken the opportunity to amend and are included in this ordinance.

In accordance with the Memorandum of Understanding with the Guernsey Committee for Home Affairs, that Committee has been briefed and has noted the proposed changes to the legislation and has no objections to the content of the Ordinance or any other comment on it.

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

James Dent, Chairman”

**The States of Alderney is asked to approve “The Alderney eGambling (Amendment) (No.2) Ordinance, 2018”.**

**Item VII      The Airport in Alderney - issues currently impacting the current and future use of Alderney’s airport**

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

*“Despite:*

- (i) the adoption in October 2013 by the States of Guernsey of a Requête entitled “The Airfield in Alderney” that required the States of Guernsey to rehabilitate and ‘future-proof’ the Alderney runway;*
- (ii) the unanimous adoption in December 2014 by the States of Guernsey of a Policy Council Report on the same subject; and*

(iii) a number of consultancy reports, that set out paths for achieving the outcome originally envisaged,

the rehabilitation and widening works at our airport have yet to begin.

The States of Alderney Policy and Finance Committee has expressed its concern over these delays and is particularly concerned that they will negatively impact the success of the currently envisaged Public Service Obligation contracts which are about to be competitively let for the Alderney-Guernsey and Alderney-Southampton routes.

Consequently, at its meeting on 24<sup>th</sup> July, the Policy and Finance Committee resolved to seek a debate without resolution in regard to the issues currently perceived as impacting all aspects of the current and future operation of Alderney's airport.

Members may wish to express opinions on a wide variety of issues, including but not limited to the following:

- The programme and works currently envisaged for the rehabilitation of the runway
- The impact of the above-described delays in rehabilitation work on the Public Service Obligation contracts
- The 'fitness-for purpose' of the airport terminal and apron
- Institutional arrangements in regard to the management, operation and funding of the airport activities.

I would be grateful if you would place this matter before the next meeting of the States of Alderney for debate without resolution.

James Dent, Chairman"

**The States of Alderney is asked to debate this matter without resolution.**

**Item VIII** **The 1948 Agreement between the States of Alderney and the States of Guernsey**

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

*"The 1948 Agreement between the States of Alderney and the States of Guernsey: Alderney's views on the way forward in order that there can be an equitable resolution of issues that are in both our island's interests.*

*Background*

*At its meeting on 24<sup>th</sup> July, the Policy and Finance Committee resolved to welcome a review of the 1948 Agreement and requested the Chairman to convey this officially to the President of the States of Guernsey Policy and Resources Committee.*

*The Policy and Finance Committee noted that the review should be:*

- *Chaired by a respected independent person, requested from the UK*
- *Begin with a review of previous work*
- *Charged with making recommendations that are in both our islands' economic, financial, social and environmental interests and should be balanced in regards to the needs and aspirations of both our communities in these matters; and*
- *Wherever practical, be evidence based.*

*Lord Keen, who is the UK Ministry of Justice spokesperson in the House of Lords and who advises the UK Secretary of State for Justice on policy in regards to the Channel Islands, is planning to visit Alderney towards the end of September.*



*Given the role that the UK played in brokering the original 1948 Agreement, I believe that it is important he hears our views on the way forward in regard to the current debate with Guernsey on the relationship between our two islands. It, therefore, makes sense that we should air our views about how any review should take place and, in particular, how we would value the involvement of the UK in the review.*

*I need to stress that, at this stage, we are not debating the detail of what we want to get out of a review but are laying down a marker about the review process and the importance of the UK in it.*

*I would be grateful if you would place this matter before the next meeting of the States of Alderney for debate without resolution.*

*James Dent, Chairman*"

**The States of Alderney is asked to debate this matter without resolution.**

**Item IX      Questions and Reports**

**Issued: 31<sup>st</sup> August 2018**