

POLICY COUNCIL

PUBLIC FUNCTIONS LAW

1. Executive Summary

The States, in approving the Report of the Policy Council relating to the recommendations of the Parochial Legislation Working Party in 2010, accepted the recommendation in that Report that the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 ("the 1991 Law") be amended to allow the States by Ordinance to transfer functions from the States to the Constables and/or Douzaines, and vice-versa. HM Procureur has written to the Policy Council recommending that the opportunity be taken, when making this amendment, to make several other amendments to the 1991 Law at the same time, for the purpose of making it more effective and to promote flexibility in the allocation of governmental and similar functions.

The Policy Council supports HM Procureur's recommendations, believing that they will help to make government more efficient and will also streamline the legislative process by allowing these matters to be dealt with by Ordinance rather than by *Projet de Loi*.

2. Proposals from HM Procureur

HM Procureur has written to the Policy Council in the following terms:

"The Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991

1. *The above titled Law came into force in 1992 and has been used on numerous occasions since to transfer functions by Ordinance between various authorities, boards, committees, departments and other bodies of the States of Guernsey, States of Alderney and Chief Pleas of Sark. For example, powers under the Law were used to bring about the important "Machinery of Government" changes approved by the States of Guernsey in 2003. The Law has not been amended since it came into force.*
2. *On 30th June 2010 the States resolved to approve a Report from the Policy Council dated 30th April 2010 recommending, inter alia, the enactment, amendment and repeal of legislation as set out in the report of the Parochial Legislation Working Party. This included approving, at Resolution 1(c), the recommendation of the Working Party that -*

"the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991 be amended to allow the States from time to time, by Ordinance, to transfer appropriate functions from the States

to the Constables and/or Douzaines of one, or some, or all of the Parishes, and vice-versa".

3. *I believe that the recommendation of the Working Party as approved by the States will, once implemented by way of amendment of the Law, prove to be particularly useful. There are however some additional amendments to the Law which have been identified within the Law Officers' Chambers that would make it more effective and, in particular, enable greater flexibility in the allocation of governmental and related functions. As the Law will need to be amended to give effect to the Resolution referred to above, I recommend that the opportunity be taken to update it by making these other amendments at the same time. They are as follows:*

3.1 *to amend section 1 of the Law to empower the States by Ordinance to vary an enactment so as to transfer a function conferred or permitted to be conferred on a Department or Committee by that enactment to a public or statutory office or body (of whom there are now many more than when the Law was made, the Law currently only contemplating the Guernsey Financial Services Commission ("the GFSC")), and between public or statutory offices or bodies;*

3.2 *to provide that where a Bailiwick-wide Law confers or permits the conferral of a function on a named Committee of the States of Alderney or the Chief Pleas of Sark, that function may be transferred to or conferred on such other Committee of the States of Alderney or the Chief Pleas as the States of Alderney or the Chief Pleas (as the case may be) may from time to time prescribe by Ordinance;*

3.3 *to amend section 3 of the Law which makes general procedural provision as to the enactment of Ordinances under the Law to reflect the more modern template for such powers (for example, to include a power to repeal such Ordinances as well as to "vary" them, and a power to make consequential provisions);*

3.4 *to amend section 4 of the Law, which relates to the performance of a Department's, Committee's or public office's functions by officers responsible to them, so as to encompass other descriptions of public or statutory office or body (the section currently only dealing with States Departments and Committees and the GFSC) and also to widen the concept of an "officer responsible to" a committee or body which requires the potential delegate to be an employee of the States (or of the GFSC) and to be "responsible to" the committee or body in question, which is not always a connection that can be established with legal certainty;*

3.5 to broaden the definition of the expression "public office" in section 5 of the Law which currently contemplates only an office implicitly held by an individual to which functions are specifically assigned by an enactment and the holder of which is remunerated out of funds provided by the States or the GFSC to encompass more recent models of office, authority or body performing public statutory functions (such as the Guernsey Competition and Regulatory Authority), in addition to the GFSC which is specifically covered by the Law.

4. In addition, minor technical amendments of several definitions in the Law (and other consequential amendments) will need to be made to take account of the proposals in paragraph 3.1 to 3.5.

5. The amendments proposed above are likely to be of benefit to both the States of Alderney and the Chief Pleas of Sark. The relevant authorities and on those Islands have been consulted and have approved the proposals."

3. Consultation

The relevant Committees of the States of Alderney and the Chief Pleas of Sark have been consulted about the proposals in this Report and support them.

4. Resources

These proposals will not result in any additional expenditure by the States.

5. Good Governance Principles

The proposals in this States Report are in accordance with the principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principle 5: "*developing the capacity and capability of the governing body to be effective*".

6. Legislation

An amending *Projet de Loi* will be required to give effect to the recommendations in this Report. After consulting the Law Officers it is understood that the necessary legislation can be drafted within two months, assuming no unforeseen difficulties emerge during the drafting process.

7. Recommendations

The Policy Council recommends the States:

1. to approve the proposals set out in the letter from HM Procureur reproduced at paragraph 2 of this Report.

2. to direct the preparation of legislation necessary to give effect to the above recommendation.

J P Le Tocq
Chief Minister

27th July 2015

A H Langlois
Deputy Chief Minister

Y Burford
P L Gillson
S J Ogier

R W Sillars
M G O'Hara
K A Stewart

P A Luxon
D B Jones
G A St Pier

(N.B. As there are no resource implications in this report, the Treasury and Resources Department has no comments to make.)

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 27th July, 2015, of the Policy Council, they are of the opinion:-

1. To approve the proposals set out in the letter from HM Procureur reproduced at paragraph 2 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.