

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

THE PUBLIC NOTARIES (BAILIWICK OF GUERNSEY) LAW, 2023

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The Public Notaries (Bailiwick of Guernsey) Law, 2023", and to authorise the Bailiff to present a most humble petition to His Majesty praying for His Royal Sanction thereto.

EXPLANATORY MEMORANDUM

This purpose of this Projet is to put on a statutory footing the power of the Master of the Faculties to regulate public notaries practicing in Guernsey. The Master exercises this power by enacting rules (section 1).

The rules may cover education, training, practice, conduct, discipline, record keeping, account keeping, the handling of client's money, indemnification against losses arising in respect of civil liability, compensation for losses suffered by persons in respect of dishonesty on the part of a public notary or their employees, the payment of reasonable fees and appeals against decisions of the Court of the Faculties i.e. in proceedings arising out of such rules.

Any such rules enacted by the Master must be laid before the States, and the States have the power to annul (section 1(2)).

Section 1(1) enables the Master to regulate public notaries in Guernsey in a manner similar to how the Master would regulate public notaries in England and Wales. The power to amend this subsection by Ordinance at section 3 enables any future updates to the relevant legislation in England and Wales to be mirrored locally, if appropriate. The Policy and Resources Committee have a duty to consult Alderney and Sark, the Master and the Association of Guernsey Notaries Public when recommending amendments (section 3(4)).

Further provisions are designed to ensure that matters arising under rules enacted under this Law are dealt with locally. It is stipulated that the courts of the Bailiwick have exclusive jurisdiction over financial claims by the Master against a public notary (section 1(4)). It is further stipulated that the Royal Court has exclusive jurisdiction over any appeal from, and other proceedings arising from, proceedings brought before

the Court of the Faculties (section 1(4)).

PROJET DE LOI

ENTITLED

The Public Notaries (Bailiwick of Guernsey) Law, 2023

THE STATES, in pursuance of their Resolution of the 13th July, 2022^a, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

Regulation of Notaries.

1. (1) The Master of the Faculties ("**the Master**") may by rules make provision –
 - (a) as to the educational and training provisions which must be satisfied before a person may be granted a faculty to practise as a public notary,
 - (b) as to further training which public notaries are to be required to undergo,
 - (c) for regulating the practice, conduct and discipline of public notaries,
 - (d) as to the keeping by public notaries of records and

^a Article XI of Billet d'État No. XII of 2022.

accounts,

- (e) as to the handling by public notaries of clients' money,
- (f) as to the indemnification of public notaries against losses arising from claims in respect of civil liability incurred by them,
- (g) as to compensation payable for losses suffered by persons in respect of dishonesty on the part of public notaries or their employees,
- (h) requiring the payment, in such circumstances as may be prescribed, of such reasonable fees as may be prescribed, including in particular fees for –
 - (i) the grant of a faculty, and
 - (ii) the issue of a practising certificate,

by the Court of Faculties, and

- (i) as to appeals against decisions of the Court of Faculties made in respect of public notaries.

(2) Rules made under this section shall be laid before a meeting of the States as soon as possible after being made; and if at that or the next meeting the States resolve that the Rules be annulled, the Rules shall cease to have effect but without prejudice to anything done under them or to the making of new Rules.

(3) Where a public notary in the Bailiwick is required to pay a monetary sum pursuant to rules made by the Master under this section, that sum shall be recoverable as a civil debt, and the courts of the Bailiwick shall have exclusive jurisdiction over proceedings to recover such debts.

(4) The Royal Court shall have exclusive jurisdiction over any –

(a) appeal from, and

(b) other proceedings arising from,

proceedings brought before the Court of Faculties pursuant to rules made by the Master under this section.

(5) This section is without prejudice to any inherent or other power of the Master to make rules regulating public notaries in the Bailiwick.

Application.

2. Rules made under this Law shall apply to public notaries in the Bailiwick whether admitted before or after the commencement of this Law; and any rules made before such commencement that could have been made under this Law shall have effect, after the date of commencement of this Law, as if made under this Law.

Power to Amend by Ordinance.

3. (1) The States may by Ordinance repeal, replace, amend, extend, adapt, modify or disapply section 1(1).

(2) Without prejudice to the generality of subsection (1), the States may consider the content of any equivalent or similar Act or subordinate legislation applicable in England and Wales when deciding whether to exercise the power under subsection (1).

(3) Where the States exercise the power under subsection (1), the States may by Ordinance make such provision repealing, replacing, amending, extending, adapting, modifying or disapplying any other enactment or rule of customary or common law, prescription, practice or procedure, including for the purpose of making such consequential, incidental, supplementary, savings, transitional and other ancillary provision as may appear to be necessary or expedient as a result of exercising that power.

(4) The Policy & Resources Committee shall, before recommending the States to agree to make an Ordinance under subsection (1), consult –

- (a) in the case of an Ordinance having effect in Alderney, the Policy and Finance Committee of the States of Alderney,
- (b) in the case of an Ordinance having effect in Sark, the Policy and Finance Committee of the Chief Pleas of Sark,
- (c) the Master,
- (d) the Association of Guernsey Notaries Public or any equivalent or successor body representing the interests of public notaries in Guernsey, and

(e) such other persons as it considers appropriate,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under the provisions of this Law.

Interpretation.

4. In this Law -

"**Court of Faculties**" means the Court of Faculties of the Archbishop of Canterbury,

"**enactment**" means any Law, Ordinance or subordinate legislation enacted (in each case) in the Bailiwick.

"**Master**": see section 1(1), and

"**prescribed**" means prescribed by rules made under this Law.

Citation.

5. This Law may be cited as the Public Notaries (Bailiwick of Guernsey) Law, 2023.

Commencement.

6. This Law shall come into force on the day of its registration on the records of the Island of Guernsey.