

PROJET DE LOI

ENTITLED

The Feudal Dues (General Abolition of Congé) (Guernsey) Law, 2002 *

[CONSOLIDATED TEXT]

NOTE

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* No. XXVI of 2002 (Ordres en Conseil Vol. XLII(2), p. 1324); as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003, Recueil d'Ordonnances Tome XXIX, p. 406); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016).

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ARRANGEMENT OF SECTIONS

1. General abolition of congé and congé fees.
2. Limitations on scope of section 1.
3. The Feudal Dues Law.
4. Funding of former and continuing Crown responsibilities.
5. Document Duty.
6. Interpretation.
7. Citation.
8. Commencement.

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THE STATES, in pursuance of their Resolutions of 14th December, 2000^a and 25th September, 2002^b, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

General abolition of congé and congé fees.

1. (1) Subject to section 2 of this Law, the congé of Her Majesty's Receiver General hitherto required to be produced at the time of the signing by the Ordinary Court of a conveyance of realty in Guernsey shall not be required in respect of any such conveyance presented to that Court for signature after the commencement of this Law.

(2) In consequence of subsection (1) of this section, any fees or dues hitherto payable for or in connection with the grant or obtaining of the congé of Her Majesty's Receiver General shall not be payable in respect of any conveyance to which that subsection applies.

Limitations on scope of section 1.

2. Section 1 of this Law does not in any way alter or affect –

a On Article 1.4 of Billet d'État No. XXIV of 2000.

b On Article I of Billet d'État No. XX of 2002.

- (a) the feudal relationship, including all rights and obligations appurtenant thereto –
 - (i) between Her Majesty and any person holding an interest in a fief, or
 - (ii) between any person holding an interest in a fief and any person holding an interest in a dependency of that fief,
- (b) the customary law immediately before the commencement of this Law concerning the grant, obtaining and attestation of any requisite consent or permission for the transfer of or other dealing with a fief, including any rule of customary law as to the payment of fees or dues in connection therewith,
- (c) any requirement or obligation attaching to particular realty, or incumbent on a particular person, by virtue of any charge, covenant, contract, agreement, judicial order or statute.

The Feudal Dues Law.

3. As respects the Feudal Dues (Guernsey) Law, 1980^c –

- (a) section 3 is repealed, but
- (b) the other provisions remain in force and are to be construed as one with this Law.

^c Ordres en Conseil Vol. XXVII, p. 249.

Funding of former and continuing Crown responsibilities.

4. (1) It is hereby declared for the purpose of certainty that, irrespective of the sums, if any, which may be paid from time to time to the States pursuant to the Jersey and Guernsey (Financial Provisions) Act 1947^d it is and shall remain the duty of the States to fund from the general revenue of the States –

- (a) all expenditure reasonably required for the efficient and effective performance of those functions for which responsibility, or financial responsibility, has been or may hereafter be transferred from the Crown to the States by, under or pursuant to any enactment, agreement or arrangement^e, and
- (b) any actual or foreseeable deficit as between –
 - (i) all expenditure reasonably incurred, or likely to be incurred, by or on behalf of the Crown in the discharge, performance, maintenance, defence or exercise of any Crown or Royal duty, obligation, interest, right, responsibility or function in or in relation to this Bailiwick, and
 - (ii) the revenues of the Crown arising or accruing in this Bailiwick and available to meet that actual and likely expenditure.

^d An Act of Parliament (11 Geo.6 c.2) registered on the Records of the Island of Guernsey on 28th February, 1949 (Ordres en Conseil Vol. XIII, p. 218).

^e For example, those financial responsibilities accepted by the States pursuant to their Resolutions on Article III of Billet d'État No. VII of 1947.

(2) The extent of any such deficit as is referred to in paragraph (1) (b) of this section is such amount as Her Majesty's Receiver General may from time to time certify in writing to the States [Policy & Resources Committee].

NOTES

In section 4, the words in square brackets were substituted by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 2, Schedule 1, paragraph 15(a), with effect from 1st May, 2016.¹

The functions, rights and liabilities of the Treasury and Resources Department and of its Minister or Deputy Minister arising under or by virtue of this Law were transferred to and vested in, respectively, the Policy & Resources Committee and its President or Vice-President by the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016, section 1, Schedule 1, paragraph 15(a), with effect from 1st May, 2016, subject to the savings and transitional provisions in section 3 of the 2016 Ordinance.²

Document Duty.

5. (1) The Document Duty (Guernsey) Law, 1973^f is amended in accordance with subsections (2) to (7) of this section.

(2) In section 1(1) –

(a) for "sections two and eight" there is substituted "section 8",

(b) for "any document set out in the left-hand column of the First Schedule to this Law" there is substituted "any document for the time being prescribed by Ordinance of the States for the purposes of this Law",

^f Ordres en Conseil Vol. XXIV, pp. 74 and 236; Vol. XXV, p. 43; Recueil d'Ordonnances Tome XXVI, p. 139; Ordinance No. IX of 1996; Ordinance No. XXII of 2000.

- (c) for "at the rate set out opposite thereto in the right-hand column of the said Schedule" there is substituted "at the rate for the time being specified by Ordinance of the States in relation to that prescribed document".
- (3) Section 2 is repealed.
- (4) The proviso to section 3 is repealed.
- (5) For section 6^g there is substituted the following section –

"Ordinances relating to Document Duty.

- 6. (1) The States may from time to time by Ordinance –
 - (a) prescribe for the purposes of this Law the categories of document before registration of which document duty shall be paid in accordance with section 1 of this Law,
 - (b) specify the rate of document duty payable in relation to any prescribed document,
 - (c) add any category to, remove any category from, or modify the extent or description of any category within, the categories of prescribed documents,

^g Section 6 was substituted by the Indirect Taxes, Duties and Impôts (Miscellaneous Amendments and Repeals) (Guernsey) Law, 1974 (Ordres en Conseil Vol. XXIV, p. 236).

- (d) vary the rate of document duty payable, prescribe minimum and / or maximum amounts of document duty payable, or provide exemption from liability to document duty which would otherwise be payable, before the registration of any category or description of prescribed document.

(2) The States may from time to time make provision by Ordinance governing the collection, management, review and enforcement of document duty and liability thereto, including, without prejudice to the generality of the foregoing, provision for countering avoidance thereof.

(3) For the avoidance of doubt, an Ordinance under this Law –

- (a) may make provision in relation to all cases to which the power to make that Ordinance extends, in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases,
- (b) may make, as respects the cases to which the Ordinance applies –
 - (i) the full provision to which the power to make it extends, or any lesser provision (whether by way of exception or otherwise),
 - (ii) the same provision for all cases, or

different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,

(iii) any such provision either unconditionally or subject to any prescribed conditions,

(c) may include consequential, incidental, supplementary and transitional provisions,

(d) may include provisions as to the creation, trial and punishment of offences,

(e) may be amended or repealed by a subsequent Ordinance made under this Law."

(6) In section 7 (1) –

(a) the definition of "Friendly Society" is repealed,

(b) immediately after the definition of "this Island" the following definitions are inserted –

"prescribed" means prescribed by an Ordinance of the States made under this Law, and **"prescribed document"** has the meaning given by section 1(1) of this Law,

"rate" includes both a fixed sum and an

amount calculated by an ad valorem or other formula,

"the States" means the States of Guernsey."

(7) The First Schedule is repealed.

(8) In the Indirect Taxes, Duties and Imports (Miscellaneous Amendments and Repeals) (Guernsey) Law, 1974^h the entry in the First Schedule relating to the Document Duty (Guernsey) Law, 1973 is repealed.

(9) The Document Duty (Amendment) (Guernsey) Law, 1975ⁱ is repealed.

NOTE

The Document Duty (Guernsey) Law, 1973, in its application to the Island of Guernsey, has since been repealed by the Document Duty (Guernsey) Law, 2017, section 15, with effect from 15th November, 2017.

Interpretation.

6. (1) In this Law –

"congé" means a document issued by or on behalf of Her Majesty's Receiver General attesting receipt of the proper amount generally payable in accordance with the customary law in lieu of the treizième, and of agreement by the Seigneur of a fief to a transfer of realty included therein,

"conveyance of realty" means a document effecting, and not merely

h Ordres en Conseil Vol. XXIV, p. 236.

i Ordres en Conseil Vol. XV, p.43.

agreeing to effect, a transfer of the legal ownership of any realty,

"fief" includes a dependency of a fief,

"Her Majesty's Receiver General" means the person constituted and appointed by Warrant of Her Majesty to be Her Majesty's Receiver General in, of and for the Bailiwick of Guernsey, and any person appointed by Warrant of Her Majesty to act in the stead of Her Majesty's Receiver General,

"Ordinary Court" means the Royal Court sitting as an Ordinary Court,

"realty" includes a usufruit, and any other interest in land or other property, which itself constitutes real property under the law of Guernsey,

"States" means the States of Guernsey.

(2) Unless the context otherwise requires, a reference in this Law to any enactment (including an Act of Parliament) includes a reference to that enactment as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied, by or under any other enactment, including this Law.

Citation.

7. This Law may be cited as the Feudal Dues (General Abolition of Congé) (Guernsey) Law, 2002.

Commencement.

8. This Law shall come into force on such day as may be appointed by Ordinance of the States.

NOTE

The Law was brought into force on 1st April, 2003 by the Feudal Dues (General Abolition of Congé) (Guernsey) Law, 2002 (Commencement) Ordinance, 2003, section 1.

1 These words were previously substituted by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 2, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004.

2 The functions, rights and liabilities of the Treasury and Resources Department and its Minister arising under or by virtue of this Law were previously transferred to and vested in them, respectively, from the Advisory and Finance Committee and its President by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003, section 1, Schedule 1, paragraph 1(b), Schedule 2, paragraph 1(b), with effect from 6th May, 2004, subject to the savings and transitional provisions in section 4 of the 2003 Ordinance.