

PROJET DE LOI

ENTITLED

The Reform (Guernsey) (Amendment) Law, 2022

THE STATES, in pursuance of their Resolutions of the 19th August, 2020^a and 13th July, 2022^b, have approved the following provisions which, subject to the Sanction of His Most Excellent Majesty in Council, shall have force of law in the Islands of Guernsey, Herm and Jethou.

Amendment of the Reform Law.

1. (1) The Reform (Guernsey) Law, 1948^c ("**the Reform Law**") is amended as follows.

(2) In Article 20E -

(a) at the end of subparagraph (a) delete "or",

(b) in subparagraph (b) delete "a failure to comply with a code of conduct or", and at the end insert "or", and

^a Article X of Billet d'État No. XVI of 2020.

^b Article X of Billet d'État No. XII of 2022.

^c Ordres en Conseil Vol. XIII, p. 288. This enactment has been amended.

(c) after subparagraph (b) insert -

"(c) the Commissioner,".

(3) In Article 20F(2) -

(a) in subparagraph (b), for "such allegations and complaints", substitute "allegations and complaints falling within subparagraph (a)(ii)",

(b) in subparagraph (c), for "a panel to co-operate fully with it" substitute "a panel or the Commissioner to co-operate fully with the panel or the Commissioner (as the case may be)",

(c) in subparagraph (d), after "panel" insert "and Commissioner", and for "it" substitute "the panel or the Commissioner (as the case may be)", and

(d) in subparagraph (e), at the end of item (i) delete "or" and after item (i) insert -

"(ia) requiring the People's Deputy to apologise, or".

(4) In Article 20G, after the definition of "code of conduct" insert -

""**the Commissioner**" means the Commissioner for Standards appointed under the First Schedule,".

(5) After Article 20I, insert -

"Commissioner for Standards.

21. The First Schedule, which makes provision in respect of the Commissioner for Standards, has effect."

(6) For Article 77A, substitute -

"Power to amend First, Third and Fourth Schedules by Ordinance.

77A. The States may by Ordinance amend -

(a) Part 2, and paragraph 15, of the First Schedule,
and

(b) the Third and Fourth Schedules."

(7) After section 78, insert the Schedule as the First Schedule.

Interpretation.

2. In this Law -

"**code of conduct**" has the meaning given in Article 20G of the Reform Law,

"**commencement**" means the commencement of this Law,

"**the Commissioner**" means the Commissioner for Standards appointed under the First Schedule to the Reform Law inserted by this Law,

"**the Committee**" means the States' Assembly & Constitution Committee, and

"**the Reform Law**": see section 1(1).

Citation.

3. This Law may be cited as the Reform (Guernsey) (Amendment) Law, 2022.

Commencement and transitional provision.

4. (1) This Law shall come into force on the day appointed by regulations made by the Committee; and different days may be appointed for different purposes.

(2) An investigation into an allegation or complaint falling within Article 20F(2)(a)(i) of the Reform Law that, immediately before commencement, has been started (but not concluded) by a panel established under a code of conduct pursuant to Article 20F(2)(b), may, on commencement, be continued and concluded by the Commissioner (at his or her discretion) in accordance with the provisions of the First Schedule to the Reform Law inserted by section 1(7) in the same way as if the investigation had been started by the Commissioner, and in those circumstances that schedule shall be construed accordingly.

(3) Regulations made under subsection (1) may make such further transitional provision in respect of any investigation falling within subsection (2) as the Committee considers necessary or expedient for the purpose of ensuring that it can be continued and concluded by the Commissioner fairly and efficaciously.

(4) Article 77C of the Reform Law applies to regulations made under subsection (1) as it applies to regulations under that Law.

SCHEDULE

Section 1(7)

"FIRST SCHEDULE

COMMISSIONER FOR STANDARDS

Article 21

PART 1 - ESTABLISHMENT AND ADMINISTRATION

Office of Commissioner.

1. (1) There is established an office of Commissioner of Standards.

(2) A person who holds the office of Commissioner of Standards is referred to in this Law as the "**Commissioner**".

Appointment of Commissioner.

2. (1) The Commissioner shall be appointed by the States on the nomination of the Committee.

(2) The Commissioner shall be appointed on such terms and conditions as may from time to time be agreed between the Committee and the Commissioner, provided that none of those terms and conditions is inconsistent with any provision of this Schedule.

(3) Without prejudice to subparagraph (2), and subject to the provisions of this paragraph and paragraph 3 (vacancy in office), the Commissioner shall hold office for such term not exceeding five years as may be agreed between the Committee and the Commissioner at the time of appointment.

- (4) On being appointed the Commissioner shall cease to -
 - (a) hold any employment as an employee of the States, and
 - (b) be the holder of any public office in the Bailiwick.

(5) If the Commissioner ceases to hold office by reason of the expiration of the agreed term, he or she shall be eligible for reappointment.

Vacancy in office.

- 3. (1) The office of Commissioner becomes vacant if -
 - (a) the term of appointment of the person holding the office expires,
 - (b) the States resolves to revoke the appointment, or
 - (c) the person holding the office -
 - (i) dies,
 - (ii) gives the Committee written notice of resignation from the appointment,
 - (iii) stands for election to the office of People's Deputy,
 - (iv) becomes an employee of the States, or the holder of a public office in the Bailiwick,

- (v) is compulsorily detained or made subject to guardianship under the Mental Health (Bailiwick of Guernsey) Law, 2010,
- (vi) becomes bankrupt,
- (vii) whether in the Bailiwick or elsewhere, is convicted of an offence involving corruption, or
- (viii) whether in the Bailiwick or elsewhere, is ordered to be imprisoned following conviction for any offence.

(2) Subject to subparagraph (3), the Committee may appoint a person to carry out the duties of the office of the Commissioner while -

- (a) the office is vacant, or
- (b) the holder of the office is unable to perform the functions of the office.

(3) The Committee must report an appointment under subparagraph (2) to the States as soon as reasonably practicable.

Resources.

4. The States must ensure that the Commissioner is provided with such administrative and other support as the Commissioner may reasonably require for the purpose of discharging the functions of the Commissioner under this Law.

PART 2 - POWERS AND DUTIES

Commissioner's functions relating to investigations, complaints and other matters.

5. (1) The functions of the Commissioner are -
 - (a) to investigate a complaint to the Commissioner that a breach of the code of conduct has occurred,
 - (b) to initiate an investigation if the Commissioner believes that a breach of the code of conduct may have occurred,
 - (c) to report to the Committee on the outcome of any investigation referred to in item (a) or (b),
 - (d) on the Commissioner's own initiative or, if requested by the Committee, to give advice on any matter relating to standards of conduct of elected members of the States, including proposals to change the code of conduct, and
 - (e) all such other functions as may be assigned to the office of the Commissioner by Resolution of the States, or under any other enactment.
- (2) The Commissioner shall not investigate a complaint which -
 - (a) is made anonymously,

(b) in the Commissioner's opinion, is frivolous, vexatious or unsubstantiated, or

(c) is from a person who is not a member of the States regarding words spoken by, or actions of, an elected member during a meeting of the States.

(3) On receipt of a complaint described in subsection (1)(a), the Commissioner must decide whether there are grounds to investigate and shall either -

(a) notify the complainant that no such grounds exist (including, but not limited to, because the complaint falls into subparagraph (2)), or

(b) undertake an investigation,

save that (for the avoidance of doubt) the Commissioner is not required to notify the complainant under item (a) where the complaint has been made anonymously.

(4) The Commissioner shall determine the procedure and timing of any investigation.

(5) In making a report to the Committee under subsection (1)(c), the Commissioner shall state his or her conclusions and recommend what action, if any, should be taken.

(6) The Commissioner's conclusions and recommendations are not binding on the Committee.

Independence.

6. (1) The Commissioner must not be directed by any person on how any function of the office of Commissioner is to be carried out, including, in particular, whether or not to undertake an investigation referred to in paragraph 5(1)(a) or (b).

(2) The Commissioner may seek legal advice from His Majesty's Procureur on any subject relevant to the functions of the office of the Commissioner.

Statement of manner in which functions are to be discharged.

7. (1) The Commissioner may make and publish a statement of the manner in which he or she proposes to discharge his or her functions under this Schedule and any other enactment.

(2) The Commissioner shall keep under review and revise, as needed, any statement made and published under subparagraph (1).

(3) The Commissioner must, at the same time that a statement or revision is made, provide a copy of the statement or revision, as the case may be, to the Committee.

(4) The Committee must, as soon as reasonably practicable, lay any statement made under this paragraph, and any revision of it, before the States.

Duty to prepare annual report.

8. (1) The Commissioner shall, each year -

(a) make a report in respect of the activities of the office of Commissioner for the previous year, and

(b) at the same time as the report is made, provide a copy of it to the Committee.

(2) On receiving the report mentioned in subparagraph (1) the Committee shall, as soon as reasonably practicable, lay it before the States.

PART 3 – ENFORCEMENT AND OFFENCES

Power to require people to appear, answer questions and provide documents.

9. (1) Subject to subparagraph (2), the Commissioner may, in the exercise of his or her functions, do all or any of the following -

(a) require a person to appear before the Commissioner to give evidence or to produce a specified document, or to do both,

(b) require a person to answer questions,

(c) require a person who has access to a document to provide the information contained in it to the Commissioner in a legible and comprehensible form.

(2) For the avoidance of doubt, a person may at any time refuse to answer a question from, or produce a document to, the Commissioner on the ground of a privilege conferred by Article 20E.

(3) The power under subparagraph (1)(a) to require a document to be produced includes a power -

- (a) if the document is produced, to retain the document or to take copies of it or extracts from the information it contains, and
- (b) if the document is not produced, to require the person to whom the requirement was directed to state, to the best of his or her knowledge and belief, where it is.

(4) If documents are retained, a list of the documents must be supplied to the person from whom they were obtained.

(5) A document retained under subparagraph (3)(a) -

- (a) may be retained for one year, but
- (b) if within that year proceedings to which the document is relevant are commenced against any person, may be retained until the conclusion of those proceedings.

(6) If -

- (a) the Commissioner has retained a document under subparagraph (3)(a), and
- (b) a person reasonably requires the document for his or her business,

the Commissioner must provide the person with a copy of it as soon as reasonably practicable.

(7) In this Part, "**document**" has the meaning given in Part II of the

Schedule to the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016.

Offences

Disobedience to requirement of Commissioner.

10. (1) A person who, without reasonable excuse -
- (a) disobeys a requirement to produce documents to the Commissioner, to answer questions or to appear before the Commissioner to give evidence, or
 - (b) having so appeared, refuses to comply with a requirement to answer a question put by the Commissioner,

is guilty of an offence.

(2) A person guilty of an offence under subparagraph (1) shall be liable to a fine not exceeding level 5 on the uniform scale.

Interference with witnesses.

11. (1) A person is guilty of an offence if he or she, by fraud, intimidation, force or threat, by the offer or promise of any inducement or benefit, or by other improper means -

- (a) induces or attempts to induce another person who has been required to answer questions from, appear before or produce documents to the Commissioner, to refrain from doing as requested or formally required, or

(b) influences or attempts to influence another person in respect of any information given or documents produced in response to such a request.

(2) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

False or misleading information.

12. (1) If a person to whom subparagraph (2) applies -

(a) makes a statement which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,

(b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,

(c) produces or furnishes, or causes or permits to be produced or furnished, any information or document which he or she knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular, or

(d) recklessly produces or furnishes or recklessly causes or permits to be produced or furnished, dishonestly or otherwise, any information or document which is false, deceptive or misleading in a material particular,

he or she is guilty of an offence.

- (2) This subparagraph applies to a person ("P") who -
- (a) makes any statement or provides any information or document to the Commissioner, or to any officer, servant or agent of the Commissioner, when the Commissioner or that person is acting in the exercise of his or her functions, or
 - (b) otherwise than as mentioned in paragraph (a) makes any statement or provides any information or document to the Commissioner in circumstances in which P knows or could reasonably be expected to know that the statement, information or document would or might be used by the Commissioner for the purpose of exercising his or her functions.
- (3) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

Obstruction.

13. (1) A person shall be guilty of an offence if he or she hinders or obstructs a person in the exercise by that person of a function under this Schedule.

(2) A person guilty of an offence under subparagraph (1) shall be liable to a fine of level 5 on the standard scale, to a period of imprisonment not exceeding three months, or to both.

Destruction of documents.

14. (1) A person shall be guilty of an offence if, when required to produce a document under this Schedule or knowing that a document may be

required to be produced under this Schedule, the person, with intent to deceive, destroys the document or in any other way renders it unintelligible or useless, or difficult or impossible to retrieve.

(2) A person guilty of an offence under subparagraph (1) shall be liable to imprisonment for a term not exceeding two years, or to a fine, or to both.

PART 4 - FINAL

Immunity of persons appearing, answering questions and providing documents.

15. (1) Subject to subparagraphs (2) and (3) -
- (a) no civil proceedings or criminal proceedings may be instituted against any person in respect of any words spoken or written by that person -
 - (i) in a complaint to the Commissioner that a breach of the code of conduct has occurred, or
 - (ii) in the course of answering questions from, or appearing and giving evidence before, the Commissioner, and
 - (b) an answer given by a person to a question put to that person, or an oral or written statement made by a person in the course of the person's appearance before the Commissioner, shall not be admissible in evidence against the person in any other civil proceedings or criminal proceedings.

(2) Subparagraph (1) does not preclude the institution of criminal proceedings under paragraph 12 (false or misleading information).

(3) Subparagraph (1)(a) does not apply to a complaint that the Commissioner does not investigate in accordance with paragraph 5(2).

(4) Where a person ("A") provides, in compliance with a request made under this Schedule, a document in respect of another person ("B"), the provision of that document shall not be regarded as a breach of any duty owed by A to B.

Exclusion of liability.

16. (1) No person undertaking a function under this Schedule (including, but not limited to, the Commissioner) is to be liable in damages or personally liable in any civil proceedings in respect of anything done, or omitted to be done, after the coming into force of this Schedule in respect of that function, unless the thing was done or omitted to be done in bad faith.

(2) Subparagraph (1) does not prevent an award of damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Interpretation.

17. In this Schedule, unless the context requires otherwise -

"**bankrupt**", in relation to any person ("**P**"), means -

- (a) that P has been declared by the Court to be insolvent or that a Commissioner or Committee of Creditors

has been appointed by the Court to supervise or secure P's estate,

- (b) that P's affairs have been declared in a state of "désastre" at a meeting held before a Commissioner,
- (c) that a preliminary vesting order has been made against P in respect of any of his or her real property in the Bailiwick, or
- (d) that a composition or arrangement with creditors has been entered into in respect of P whereby P's creditors will receive less than 100p in the pound or that possession or control has been taken of any of P's property or affairs by or on behalf of creditors,

"**the code of conduct**" means a code of conduct within the meaning of Article 20G that is in force at the relevant time, and for these purposes "**the relevant time**" means -

- (a) for the purposes of paragraph 5(1)(a), the time of the alleged breach relating to the complaint,
- (b) for the purposes of paragraph 5(1)(b), the time of the suspected breach, and
- (c) for the purposes of paragraph 5(1)(d), the time the proposals for change are made,

the "**Commissioner**": see paragraph 1(2), and

the "**Committee**" means the States' Assembly & Constitution
Committee."