

GUERNSEY BAR EXAMINATION

9.30AM, 23 APRIL 2018

COMPULSORY PAPER ONE

BAILIWICK LAWS, CONSTITUTION AND ADMINISTRATION

THREE HOURS

CANDIDATES ARE REQUIRED TO ANSWER ALL QUESTIONS

THE MARKS AVAILABLE FOR EACH QUESTION ARE SHOWN BELOW. NOT ALL QUESTIONS CARRY EQUAL MARKS.

- Question 1 - 25 MARKS
- Question 2 - 20 MARKS
- Question 3 - 15 MARKS
- Question 4 - 15 MARKS
- Question 5 - 15 MARKS
- Question 6 - 10 MARKS

PLEASE WRITE LEGIBLY AND ENSURE THAT YOU ANSWER EACH QUESTION ON A SEPARATE SHEET OF PAPER. PLEASE WRITE ON ONE SIDE OF THE PAPER ONLY AND LABEL EACH SHEET CLEARLY WITH:

- NAME OF PAPER
- CANDIDATE LETTER
- QUESTION NUMBER
- PART NUMBER OF QUESTIONS (if applicable)

QUESTION 1 (25 marks)

Protocol 3 of the UK's Act of Accession will come to an end when the UK leaves the European Union.

- 1.1 What are the main features of Protocol 3?
- 1.2 What are the consequences of Protocol 3 coming to an end (including consequences for the Bailiwick's relationship with the UK)?
- 1.3 How are legal rights, powers and obligations derived from European Union law currently given effect to in Guernsey law? How (if at all) will any legal rights, powers and obligations based on pre-exit European Union law have effect in the Bailiwick after exit?
- 1.4 When negotiating any agreement with other jurisdictions on behalf of the Bailiwick, how are the UK and the Bailiwick committed to act? What are the UK's duties to represent the interests of the Bailiwick in any such negotiations?
- 1.5 What is required before the Bailiwick can make any such agreement for itself?

After Brexit, the Bailiwick will still wish to have the ability to trade with the UK, the EU and other countries.

- 1.6 On what legal or other basis might the Bailiwick trade with the UK in future?

QUESTION 2 (20 marks)

The Policy & Resources Committee has announced that it wishes the States of Deliberation to consider whether to have an elected speaker instead of the Bailiff and will shortly publish a Policy Letter setting out its proposals.

Before the Policy Letter is published, a partner at your firm is asked to give a presentation on this subject to the Torteval Ormering Committee and you are asked to prepare a background note which will form the basis for it. The partner has asked for the note to address the following points:

- 2.1 the history and origins of the role of Bailiff;
- 2.2 the current and historic functions and powers of the Bailiff;
- 2.3 possible reasons for and against the replacement of the Bailiff as presiding officer of the States of Deliberation and States of Election (including references to any relevant Bailiwick of Guernsey jurisprudence); and, if considered relevant any other discussions/actions on this point;

QUESTION 3 (15 marks)

- 3.1 Explain, in respect of each of the three legislatures of the Bailiwick, the powers they have to enact legislation and the means by which legislation is enacted by them. Include in your answer the powers that the States of Deliberation have to enact legislation in respect of Alderney and/or Sark.

QUESTION 4 (15 marks)

- 4.1 “*The new system of government is not working*”. Discuss this recently expressed opinion. Your answer should include particular reference to the 2016 changes to the machinery of government and the structure of the States of Guernsey (describing those changes), and the effect upon government and the governmental and parliamentary process of those changes.

QUESTION 5 (15 marks)

Deputy André Engardes has come to you in a panic. He is convinced that Brexit will lead to international instability, and a breakdown in law and order in the UK and Europe, which will spread like a contagion to the Bailiwick. He thinks that the only way properly to protect Guernsey will be to create a Guernsey army, using legislative powers under the customary law.

His proposal is that there would be 1 year's military conscription for 18-60 year olds, which would be compulsory and backed by criminal penalties, to ensure that "a good body of men" would be available to serve at the start. He fears relying on the UK army "given what happened last time".

He is good friends with a Legionnaire de 2^e classe of the French Foreign Legion and thinks the Legion will be willing to help train the army. He would like to enter into a formal agreement with the Legion to secure their help "before the UK government gets wind of it". If there isn't a war, or a breakdown in law and order, he thinks the army could be usefully employed to repair the sea defences, and to clear the accumulated *vraic* from the L'Erée foreshore, close to his home.

5.1 Please advise the Deputy only on the legal and constitutional implications of these proposals (there is no need to touch on potential ancillary legal points such as planning or population management or detailed ECHR provisions for example), including but not limited to his proposal to legislate by means of the customary law.

QUESTION 6 (10 marks)

- 6.1 Name four publications, works or other documents that record or assist with establishing the customary law of Guernsey. In each case provide a brief description of the particular aspect or aspects of the customary law that the publication etc. deals with.
- 6.2 Name three different sources of Guernsey law other than the customary law and, in each case, provide a specific example of the source.
- 6.3 Of all the different sources of Guernsey customary law which, in your view, is the most important and why?

END OF PAPER