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CULTURE AND LEISURE DEPARTMENT

AMENDMENTS TO THE VALE COMMONS ORDINANCE 1932 – PROTECTING ORGANISED SPORTING AND LEISURE ACTIVITIES ON L'ANCRESSE COMMON

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

15th December 2015

Dear Sir

1. Executive Summary

1.1 This Policy Letter considers arrangements for the authorisation and control of organised sporting and leisure activities on the L'Ancresse Common (the Common).

1.2 For the past 80 years or so this has been one of the functions of an organisation known as the Vale Commons Council ("the Council") which was originally established by Ordinance of the Royal Court in 1932 (replacing an Ordinance of 1875). The Vale Commons Ordinance 1932 ("the Ordinance") also allows the Council to receive payment from those taking part in all games and entertainments on the Common as well as collecting specified fees from those people pasturing their animals at L'Ancresse.

1.3 Approximately one half of the Common is presently available for the playing of golf (although not exclusively) following an agreement that was originally established between the States and the Council in 1947 and which is due to expire on 31st December 2016. In view of this, the Culture and Leisure Department ("the Department") has for some years been in negotiations with the Council and the Royal Guernsey Golf Club and the L'Ancresse Golf Club ("the Clubs") in order to secure a long term renewal of the agreement. However, despite proposing new terms which are believed to be very reasonable, regrettably it has not been possible to reach an understanding with the Council with regards to the future playing of golf on the Common. In addition, subsequent efforts to reach an agreement with the help of some Vale Deputies acting as mediators were also unsuccessful.

1.4 In considering these proposals, it should be understood that neither the Council nor the States own the Common, which is a community asset for the enjoyment of all Islanders. The Department is very conscious that there are other issues

relating to the Common, including concerns relating to the funding of its upkeep and a small number of people who claim to have ancient rights in relation to the cutting of gorse. However, whilst these issues will ultimately require attention, they are not immediately or directly relevant to establishing new arrangements that will secure the future of Guernsey's only championship golf course, which is now becoming an urgent priority.

1.5 Against this background the Department is therefore seeking approval to amend the relevant sections of the Ordinance so as to transfer responsibility for the authorisation and control of organised sporting and leisure activities on the Common to the States, acting through the new Committee *for* Education, Sport & Culture.

2. Background

2.1 The Council was first established in 1932 following a petition to the Royal Court by a number of residents in the Clos du Valle who had concerns about the control over activities on the Common. As a result, the Ordinance was enacted which provides the Council with the authority to allow (or prohibit) games and entertainments on the Common and to seek payment for such activities if appropriate. The Ordinance also permits the Council to receive specified payments from people pasturing animals on the Common. It also requires any monies received to be allocated to maintaining the Common or meeting expenses incurred by the Council in the course of undertaking its functions.

2.2 In 1947, the Council entered into an agreement with the States for the playing of golf within a specified area which accounted for approximately one half of the Common. This was for an initial period of 50 years with an option to renew for a further 20 years. Having exercised this option in 1996, the agreement is due to expire on 31st December 2016. There is an additional time constraint in that the golf clubs are under increasing pressure to secure significant funds to invest in redesigning the course to address serious safety concerns about playing across the Mont Cuet and Jaonneuse Roads. The Department is advised that these funds cannot be secured until an agreement has been reached, further risking the continuation of the playing of golf on the Common.

2.3 However despite extensive discussions with the Council, the Department has, regrettably, been unable to reach an agreement that would allow golf to be played beyond the end of 2016. The Department is particularly disappointed with this because it is of the view that the annual payment being proposed is entirely reasonable and does not represent any form of subsidy from the taxpayer to the Clubs. Indeed many would argue that the proposal amounts to a considerable premium when comparing with payments made elsewhere, such as the United Kingdom or Jersey for example. In addition, it is important to point out that there have also been significant differences of opinion between the parties concerned with regards to other terms that would apply in a new agreement, including the length of term and other playing rights.

2.4 It would appear that the main reason behind the Council's refusal to accept the proposal put forward is because it considers that the Common requires a significant increase in funding to adequately address maintenance concerns, and is suggesting that the current annual grant received from the Environment Department represents only a fraction of what is really needed to look after the area. It is important to note that the tax payer and the Council are not required to invest any funds in the maintenance and upkeep of that part of the Common that is used, albeit not exclusively, for the playing of golf – this will be fully funded by the golf clubs in addition to the annual payment made for the use of the land.

2.5 A further issue which has been raised is that a relatively small number of people claim to have ancient rights to cut furze on the Common (referred to as *Fouilliage* owners).

2.6 In view of these differences the Department enlisted the support of Vale Deputies who had offered to help mediate in the situation but unfortunately, despite a series of separate meetings and what were considered to have initially been meaningful discussions, it has not been possible to make any progress. In view of this and taking all of the above issues into account, the Department has been left with no option but to submit this Policy Letter for approval in order to ensure that a fair and workable agreement can be secured in the near future.

3. Proposals Going Forward

3.1 Whilst the Department does not dispute the fact that the amount of funding required to maintain the Common and the due recognition of any legal rights (if proved) are important matters which will ultimately require careful consideration, neither is immediately or directly relevant to the establishment of a new agreement that is required to secure the future of Guernsey's only championship golf course. This agreement needs to reflect commercial, fair and affordable terms, as would be the case with all other sports. The need to resolve the situation is now an urgent priority and the Department is therefore of the opinion that maintenance funding requirements for the Common and consideration of possible third party rights should be for a separate discussion at a later date. **The proposals contained in this report do not resolve these issues but equally they do not interfere with the resolution of them.**

3.2 During discussions attention has focused on the Ordinance from which it has also become apparent that much of it is simply no longer fit for purpose given the many changes to our way of life over the past 80 years or so – taking account of modern health and safety requirements, environmental standards and present day expectations relating to good governance and accountability – and it is therefore expected that further changes will be required to the Ordinance in the next four years.

3.3 However, it is clear that this will involve a substantial amount of work (including a significant amount of advice from the Law Officers' Chambers and the Environment Department's professional advisors) which will not be achieved in a short space of time. Therefore, in view of the urgency of securing a new agreement as outlined above, this report is only seeking States approval for a more limited amendment of the Ordinance by transferring those powers of the Council, relating to the authorisation and control of games and entertainments on the Common, to the States (acting through the new Committee *for* Education, Sport & Culture). Any monies collected from those activities, including the playing of golf, would for the time being be passed to the Council for the purposes of maintaining the Common.

3.4 In considering these proposals it should be understood that neither the Council nor the States own the Common which is a community asset for the enjoyment of all Islanders. Whilst the Department acknowledges the work that the Council and its many volunteers do, it does not believe that its position with regards to the playing of golf (and certain other sporting and recreational activities on the Common for that matter) can in any way be considered to be reasonable.

3.5 Given the discussions that have taken place with the Clubs, the Department is confident that the proposals in this Policy Letter will pave the way for an agreement that is fair to all concerned to be reached relatively quickly and certainly before the expiry of the current agreement, securing the future of the Island's only championship golf course for the long term for the benefit of all Islanders.

4. Consultation

4.1 Consultation has taken place with the Guernsey Sports Commission (albeit not on the detail contained in this specific report). The Commission has made it very clear that it is keen to ensure not only for the long term security of golf at L'Ancresse, but also that other sports (whether arranged on a formal or informal basis) should not be subject to unnecessary charging or bureaucracy.

5. Resource Implications

5.1 It is not anticipated that these proposals will have any long term resource implications. While there will be a requirement for a new contract to be negotiated and drawn up, it is believed that any administration work associated with the authorisation of other organised activities is likely to be very limited and easily undertaken from within existing resources.

6. Conclusion

6.1 As outlined above, the Department has over the past few years been involved in extensive discussions with the Council with the aim of securing a new long term affordable agreement for the playing of golf. Regrettably, despite this and the

efforts of a number of Vale Deputies to mediate in the process, it has not been possible to make any meaningful progress. In view of the growing urgency of the situation it is the Department's opinion that the only practical solution is to transfer certain responsibilities of the Council to the States. This can be achieved through an amendment to the Ordinance that would provide the new Committee *for* Education, Sport & Culture with the authority to negotiate with sporting organisations wishing to use the Common and to apply appropriate controls so as to protect all relevant interests.

7. Recommendations

7.1 The Culture and Leisure Department recommends the States to:

1) Approve the amendment of section 12 of The Vale Commons Ordinance 1932 to transfer the function of authorising games and entertainments on the Common (including the game of golf) to the States;
2) Approve such consequential amendments as may be required in sections 2, 4, 14, 15 and 19 of that Ordinance to ensure the effective control and reasonable exercise of authorisations so given;
3) Include the functions thus transferred within the mandate of the Committee *for* Education, Sport & Culture;
4) Direct the preparation of such legislation as may be necessary to give effect to recommendations 1) and 2) above.

Yours faithfully

M G O'Hara
Minister

D A Inglis
D J Duquemin
F W Quin
P R Le Pelley
J Vidamour (Non-States Member)

(N.B. The Treasury and Resources Department notes that the Culture and Leisure Department expects there to be no additional resource requirements resulting from the implementation of the Policy Letter's recommendations. However, should any resource requirements arise as a result of the transfer of authorisation of games and entertainments on the Common then it is expected that the Culture and Leisure Department will manage these within its existing budgets.)

(N.B. The Policy Council is disappointed that, despite many years of discussions and negotiations, there remains an impasse between the Vale Commons Council and other interested parties over the terms for the use of L'Ancresse Common. While it would clearly be preferable to reach a negotiated agreement, the Policy Council understands the reasons why the Culture and Leisure Department now feels it necessary to assume legal responsibility for the Common's sporting and leisure activities, and supports the recommendation to amend the relevant Ordinance to achieve this.)

The States are asked to decide:-

II.- Whether, after consideration of the Policy Letter dated 15th December, 2015, of the Culture and Leisure Department, they are of the opinion:-

1. To approve the amendment of section 12 of The Vale Commons Ordinance, 1932, to transfer the function of authorising games and entertainments on the Common (including the game of golf) to the States.

2. To approve such consequential amendments as may be required in sections 2, 4, 14, 15 and 19 of The Vale Commons Ordinance, 1932, to ensure the effective control and reasonable exercise of authorisations so given.

3. To direct that the functions thus transferred be included within the mandate of the Committee *for* Education, Sport & Culture.

4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

HEALTH AND SOCIAL SERVICES DEPARTMENT

CAPACITY LAW

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

16th December 2015

Dear Sir

1. Executive Summary

1.1 Capacity is "the ability to make a decision"[1] and more particularly the ability for a person to "make a particular decision or take a particular action for themselves at the time the decision or action needs to be taken"[2].

1.2 Every one of us makes decisions every day of our lives, some of great significance and others of less importance. Although we may seek out further advice, information or support from others in making some of these decisions, most of us are able to take those decisions for ourselves and are therefore said to "have capacity".

1.3 However, some members of our community "lack capacity" to make certain decisions:

- the child who struggles to decide on an important issue due to their age and ongoing development;
- the mature adult who may not be able to express their wishes as e.g. they are in a coma after an accident or they have a severe learning disability;
- the older adult who cannot retain the information necessary for decision-making due to old age or dementia; and
- a person with mental illness who is unable to make decisions regarding treatment of a physical ailment.

1.4 Issues of capacity can therefore not only affect these groups of people but also every family member, carer or other professional who attempts to care for, support and treat them. Furthermore, others who currently have capacity may wish to

[1] Paragraph 4.1. of the Code of Practice Introduction to the Code of Practice for the 2005 Act.
[2] Introduction to the Code of Practice for the 2005 Act.

make provision for a time when they no longer have the ability to take certain decisions for themselves.

1.5 The States, on the recommendation of the Health and Social Services Department ("the Department"), have previously legislated in relation to children (The Children (Guernsey and Alderney) Law, 2008) but the Department has not made any proposals as to how the adults listed in paragraph 1.3 could be assisted to make decisions wherever possible or to ensure responsible decision-making on their behalf where they cannot do so.

1.6 Accordingly, the Department has considered best practice and legislation from other jurisdictions and, although this Policy Letter is informed by the provisions of the Mental Capacity Act 2005 ("the 2005 Act") enacted in England and Wales, the measures set out below are those which it considers would most effectively assist and protect members of the community across the Bailiwick whilst avoiding the bureaucracy and cost of systems adopted by larger jurisdictions.

1.7 The Department therefore proposes to introduce new legislation which reflects the 2005 Act and will:

- state the test for deciding whether or not a person has capacity to take a decision;
- allow a person to appoint another person to act on their behalf if they lose capacity to take decisions;
- allow a person to take legally binding decisions regarding their medical treatment after they have lost capacity;
- state what can be done when a person has lost capacity without appointing another person to take decisions on their behalf or without making legally binding decisions regarding their medical treatment; and
- permit appropriate safeguards for individuals without capacity where their treatment or care requires them to be deprived of their liberty in their best interests.

2. Background

2.1 In November 2013, the States of Guernsey agreed proposals for capacity legislation to be created, following consideration of the Policy Council's report on the Disability and Inclusion Strategy (Billet d'État XXII, November 2013, paragraphs 115-118). Specifically, the States agreed to direct the Department to research and develop options for capacity legislation and to report back on this matter no later than the end of 2016.

2.2 Subsequently, Deputy Perrot submitted a Requête in April 2014 (Billet d'État IX, Volume 2) following which the States directed an investigation into the introduction of lasting powers of attorney.

2.3 This Policy Letter addresses both of those States directions, and also addresses the lack of any legislative protection for those vulnerable people within the Bailiwick who require assistance to make decisions in their own best interests, but who do not fall within the remit of mental health legislation such as the Mental Health Act 1983 and the Mental Health (Bailiwick of Guernsey) Law, 2010 ("the 2010 Law").

2.4 Additionally, it is important to ensure that the human rights of all those who lack capacity are being considered and respected, especially since the incorporation of the European Convention for the Protection of Human Rights and Fundamental Freedoms into domestic law by the Human Rights (Bailiwick of Guernsey) Law, 2000. The absence of such legislation and protection leaves the States open to challenge under Article 5 of the European Court of Human Rights, an occurrence that has resulted in significant financial implications for Jersey.

2.5 The Department therefore considers it appropriate to introduce new legislation which has **the principal purpose of empowering people to make decisions for themselves wherever possible**.

2.6 These issues have been addressed in England and Wales through the introduction of the 2005 Act, which has been widely praised for its positive ethos of encouraging decision-making by the individual rather than simply allowing the views of others to be imposed on a person without capacity. This has therefore informed the content of this policy letter, subject to changes that reflect the unique context of the islands' communities and context, as well as the most recent learning from implementation in the United Kingdom.

2.7 A simple collection of principles underlies all of the proposals outlined, reflecting the approach of section 1 of the 2005 Act and the Department's current approach to capacity. These principles are:

- a person must be assumed to have capacity unless it is established that they lack capacity;
- a person is not to be treated as unable to make a decision unless all practicable steps to help them to do so have been taken without success;
- a person is not to be treated as unable to make a decision merely because they make an unwise decision;
- an act done, or decision made, under this legislation for or on behalf of a person who lacks capacity must be done, or made, in their best interests; and
- before the act is done, or the decision is made, regard must be had to whether the purpose for which it is needed can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

2.8 No person under the age of 18 shall be subject to these proposals and the law in respect of consent to medical treatment or other matters in respect of children under that age will not be affected[3].

3. Basic Principles

3.1 Decision Makers

3.1.1 In different situations, currently individuals such as family members, care professionals, financial advisers and others may provide care or assistance to people who they think may lack capacity to make a particular decision for themselves. These decisions may include day-to-day decisions about what to wear, important decisions about managing money, and even life and death decisions about health care. It is important therefore that a simple but rigorous process for assessing capacity to make a particular decision is at the heart of these proposals. If it is established that a person does not have capacity to make a specific decision, different routes are available to the decision maker who may, for example, have already been given power to make appropriate decisions e.g. in relation to financial matters under a Lasting Power of Attorney (see section 4.3) and under *curatelle* (see section 4.4).

3.2 Assessing Capacity

3.2.1 The Department proposes that the decision maker should employ a simple 2 stage test to assess whether, in relation to any matter, a person is able to make a decision for themselves:

- the diagnostic stage: does the person have an impairment, or a disturbance in the functioning, of the mind or brain (whether or not this is permanent or temporary, and regardless of its cause)?
- the functional stage: is there evidence that the person lacks capacity to make the particular decision at the time the decision needs to be made?

3.2.2 This test is a "decision-specific" and "time-specific" test; no-one should be labelled "incapable" or "incapacitated" as a result of a particular medical condition or diagnosis, whether it is permanent or temporary. It is important to recognise that lack of capacity should not be established merely by reference to a person's age, appearance, or any condition or aspect of a person's behaviour which may lead others to make assumptions about capacity.

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[3] The current approach under The Children (Guernsey and Alderney) Law, 2008 will continue for those under 18 so, for example, the overriding principle that "the child's welfare is the paramount consideration" (s.3(1)(b)) and the principles that "irrespective of age, development or ability, a child should be given the opportunity to express his wishes, feelings and views in all matters affecting him" (s.3(2)(e)) and "except where it is shown to the contrary, it is presumed that a child is capable of forming a considered view from the age of 12 years" (s.3(2)(f)) will still apply.

3.2.3 Under this test a person may have capacity to make a particular decision on a particular day about an aspect of their care and welfare, but may not have capacity to make a decision on that same day about an aspect of their financial affairs.

3.3 Diagnostic Stage

3.3.1 The most common medical reasons for which it is considered that a person has an impairment or disturbance in the functioning of the mind include:

- dementia;
- coma;
- stroke; and
- severe learning disability.

3.3.2 However, it is also possible for others temporarily to fall into this category due to intoxication through drink or drugs, or acute confusion due to physical illness.

3.4 Functional Stage

3.4.1 The Department proposes that a person may be treated as lacking the capacity to make a particular decision if there is evidence that the person is unable to do one or more of the following in relation to that decision:

- to understand the information relevant to the decision (provided that it has been explained in a way that it's appropriate to the individual and the circumstances e.g. using simple language, visual aids or any other means);
- to retain that information for an appropriate period (dependent on the nature and implications of the decision to be made);
- to use or weigh that information as part of the process of making the decision; or
- to communicate their decision, whether by talking, using sign language or any other means.

3.4.2 The Department also considers that a person should not be treated as unable to make a decision merely because they would make an unwise decision. Therefore, evidence that the person would or may make an unwise decision will not of itself be conclusive that the person lacks capacity to make the decision.

3.4.3 When assessing a person's capacity to make a particular decision (along with any other assessment or decision under the proposed legislation), the decision maker should weigh the evidence and make a decision on the balance of probabilities i.e. it is more likely than not. If the decision maker concludes that it is more likely than not that the person lacks capacity to make a decision, that person is to be taken as not having capacity in relation to that decision.

3.4.4 Even where a person does not have capacity, they should in any event be given all appropriate help and support to enable them to maximise their participation in any decision-making process.

3.5 Best Interests

3.5.1 If a person does not have capacity to make a particular decision, the Department proposes that, before the act is done or a decision is made on their behalf, the decision maker should establish what is in the person's best interests and act accordingly.

3.5.2 In establishing what is in a person's best interests, it will be important that assumptions are not made about the person by the decision maker on the basis of the person's age or appearance or any aspect of their condition or behaviour. Instead, the decision should reflect the wishes and feelings of the person affected when they had capacity. Therefore, the Department considers that the proposed legislation should include express provision outlining the factors that decision makers may consider when making best interests decisions.

3.5.3 When deciding what is in the best interests of a person, the decision maker should consider all the relevant circumstances and, where it is reasonably practicable to do so, encourage the person to participate as fully as possible in the decision making process. Therefore, the best interests of a person should be determined with particular regard to:

- whether it is likely that the person will at some time have capacity in relation to the matter in question, and when that may be;
- the person's past and present wishes and feelings, which may include any relevant written statements made before they lost capacity;
- the beliefs and values that would be likely to influence their decision;
- other factors that they would be likely to consider if they were able to do so; and
- whether the purpose for which a decision is being taken can be as effectively achieved in a way that is less restrictive of the person's rights and freedom of action.

3.5.4 Where practicable and appropriate, the decision maker may take into account the views of others who know the person when considering what would be in that person's best interests. In particular, the decision maker would look to discover any wishes, feelings, beliefs and values previously expressed by that person. The individuals consulted may include anyone named by the person, anyone involved in caring for them, anyone who has had a lasting power of attorney granted to them and any guardian. Due consideration would have to be given to confidentiality when this consultation took place. The decision maker may also need assistance from an independent person or body where the decision is a complex one.

3.5.5 The decision maker may also, where appropriate, be supported by an advocacy worker who will give an independent view in relation to the most significant decisions that may have to be made.

3.6 Excluded Decisions

3.6.1 It is recognised that some decisions should never be made on behalf of a person who lacks capacity because:

- those decisions are peculiarly personal to the individual, such as entering into or ending a marriage, conducting a sexual relationship, changing domicile, making a will, voting, consenting to the adoption of a child, discharging parental responsibilities in relation to matters other than a child's property; or
- other legislation already governs those decisions, where e.g. they concern treatment for mental disorder under the provisions of the 2010 Law.

3.7 Legal Protection for Decision Makers

3.7.1 The Department proposes that, as well as protecting the rights of persons who may lack capacity, the new legislation should provide greater legal protection for decision makers working with them. Therefore, it will be lawful for a decision maker to proceed as if the person had consented to the act if the decision maker considers on the balance of probabilities:

- after taking reasonable steps to establish whether a person has capacity, that the person does not have it, and
- that a particular course of action is in that person's best interests.

3.7.2 No legal liability will arise for the decision maker by virtue of the lack of consent, though they may still be liable in the normal way for loss or damage for negligence for the manner in which they carry out the act. In addition, if concerns are raised over the decision maker's acts and the safety of the person lacking capacity, a safeguarding referral may be made to the Department in order to protect that person from harm.

3.8 Wilful Neglect and Ill Treatment

3.8.1 There have been a number of cases in the United Kingdom[4] and Jersey[5] where the wilful neglect and abuse of vulnerable persons has caused harm. In Guernsey, section 85 of the 2010 Law makes it an offence for workers or others who have

[4] A high profile example was the *Winterbourne View* case, involving abuse and neglect in a residential care home.
[5] *AG v Breen* [2011] JRC057.

custody or care of patients under that Law to mistreat them[6]; however, this offence does not apply to those who are not subject to the 2010 Law.

3.8.2 With this in mind, the Department proposes to create a new, free standing offence to cover wilful neglect and abuse that applies to the treatment of people (i) living in care homes, or (ii) provided with domiciliary care or supported living arrangements.

4. Planning for the Future

4.1 Introduction

4.1.1 In keeping with the ethos of empowerment reflected in these proposals, the new legislation will make provision to ensure that everyone who currently has capacity can plan for a time when they may not do so. The Department proposes that this planning may take two forms:

- an Advance Decision to Refuse Treatment ("ADRT"), which could be made by a person with capacity to prevent the giving of a particular treatment in the future if they do not have capacity; and
- a Lasting Power of Attorney ("LPA"), which could be made to determine who is entitled to make certain types of decisions for a person, particularly when they lack capacity.

4.2 Advance Decisions to Refuse Treatment

4.2.1 There has been some uncertainty in Guernsey over the legal enforceability of advance decisions regarding treatment and whether a particular form or procedure must be used in order to confer validity on a person's wishes. The Department accordingly proposes that the new legislation should set out a clear process to be followed to create an ADRT (otherwise known as a living will or an Advance Directive) which would allow a person who currently has capacity to make a decision refusing specified future treatment when that person may no longer have capacity to decline it.

4.2.2 As the authority for these decisions is derived from "*the established legal right of competent, informed adults to refuse treatment, irrespective of the wisdom of their judgement*" (British Medical Association, 1995), the best interests principle does not apply to ADRTs. Medical professionals must therefore comply with a valid ADRT, even if they do not consider that it would be in the service user's best interests to do so.

4.2.3 It is further proposed that it is the responsibility of the person who wishes their ADRT to be followed to bring this decision to the notice of services likely to be

[6] A further offence was created in the *Loi relative à la protection des femmes & filles mineures, 1914* in relation to having sexual intercourse with a woman or girl of unsound mind (article 3). It is anticipated that the new sexual offences legislation will repeal and replace this offence in due course.

involved in their care in the future. However, where an ADRT is brought to the attention of the appropriate officials in the Department, it will be the Department's responsibility to note the ADRT and ensure that it is communicated to front line care teams.[7]

4.2.4 To avoid unnecessary complication, the Department suggests that no particular formalities should be required to make an ADRT in most cases and equally that it should be possible to withdraw an ADRT without any formality. However, the ADRT would not apply until the person loses capacity to consent to treatment and it must be specific about the treatment and circumstances to which it applies.

4.2.5 However, the Department proposes that strict formalities must be complied with where an ADRT concerns treatment which, in the view of the person providing healthcare for the person concerned, is necessary to sustain life. These formalities are that the ADRT must be in writing, signed and witnessed. In addition, there must be an express statement that it stands "even if life is at risk" which must also be in writing, signed and witnessed.

4.3 Lasting Powers of Attorney

4.3.1 The Department proposes that, like the United Kingdom, the provision for LPAs should allow a person (the "donor") to appoint another (the "donee") to make decisions on the donor's behalf. In order to make a valid LPA, the donor would need to have capacity to make the decision to appoint a donee when the appointment is made.

4.3.2 A donee will have the delegated power to make decisions on behalf of the individual in line with their beliefs and wishes. The Department proposes that there should be two types of LPA and that a person may choose to make either or both types and may appoint a different person as donee in each case. The two types of LPA will be (i) health and welfare, and (ii) property and financial affairs.

4.3.3 A health and welfare LPA would allow a donor to choose a donee to make decisions about things like their daily routine (e.g. what to eat and what to wear), medical care, moving into a care home and life-sustaining treatment. This type of LPA would not have any practical effect until such time as the donor loses capacity to make their own decisions.

4.3.4 A property and financial affairs LPA would allow the donor to choose a person to make decisions about money and property, such as paying bills, collecting benefits and selling assets such as the donor's home. This type of LPA could potentially be used while the donor still has capacity, if permission is given in the LPA for that to happen.

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[7] Should this be approved, the legal framework and related procedures would need to be thoroughly understood, applied, and audited. It would then be covered in the training to be provided to support implementation.

4.3.5 A donee may be appointed to act alone or jointly with another person. A person may also appoint more than one person as donee, but allow each of them to act separately (which may be appropriate where the person is unsure which of their donees will be available to act at a given time). The donor should also be able to stipulate that there are some matters in respect of which a donee must act jointly and others where they may act alone. Where donees are appointed jointly, or different donees are appointed under a health and welfare LPA and a property and financial affairs LPA, they would be under a duty to act in consultation and cooperation with one another, with provisions for application to a court if agreement could not be reached.

4.3.6 As the exercise of an LPA could have significant effects, there needs to be appropriate safeguards placed on the creation of LPAs. At the same time, it is important not to make these too burdensome or expensive as this may discourage people from making LPAs.

4.3.7 In the United Kingdom, an application for a LPA needs to be witnessed and, once the LPA has been completed, an application needs to be made to the Office of the Public Guardian, to register the LPA. In the United Kingdom it costs £110 to register a LPA and therefore £220 if a person wishes to register both a health and welfare LPA and a property and financial affairs LPA. Furthermore, as the forms used to appoint an attorney and register the LPA are complex, it is often the case that a person will need the assistance of a legal professional in order to complete the process. According to the Lords Select Committee Report, there is evidence that in the United Kingdom the complexity and expense of registering an LPA has had a negative impact on the number of people using them[8].

4.3.8 So far as it is possible to do so, the Department will look to streamline the process for making an LPA whilst ensuring that appropriate safeguards are in place. The proposed procedure would therefore include the following steps:

- an LPA would need to be registered by the donor in person when it is made (in order to prevent 3rd parties from registering false LPAs or persuading vulnerable donors to make LPAs in the 3rd party's favour);
- the LPA would be registered by Her Majesty's Greffier, the Alderney Greffier or the Seneschal (which would allow an independent person to ask basic questions so that any concerns over capacity could be raised immediately);
- the registration form would be similar to a passport application form and would require the signature of a counter-signatory who had met the donor recently and did not have any concern over that person's capacity to make an LPA (so as to ensure that the donor has the capacity to make a valid LPA but without the necessity of a medical practitioner's certificate to that effect); and

[8] Paragraph 182.

- the registration form would also include the details of 2 people, for example a family member and a close friend, to be notified of the LPA's registration (which would allow enquiries to be made if the donor might already have lost capacity, the making of the LPA was unexpected or an unsuitable donee had been chosen).

4.3.9 While such a procedure would by its nature be bureaucratic, it would afford an important opportunity to challenge inappropriate LPAs or resolve disputes about the terms of the LPA while the donor still has capacity. If there were any concerns which needed investigation, the Department Safeguarding Team (rather than the person raising the issue) would be responsible for making enquiries. There would be a cost of registration which would be passed on to those benefitting from LPAs in the form of an affordable fee. Furthermore, the Department proposes that a donor should be able to make both types of LPA on the same occasion and, if the donor, the donee(s) and the 2 persons to be notified are identical for both, only one fee should be payable.

4.3.10 If and when the donor lost capacity, the donee would be required to activate the LPA (unless the donor had already given permission in relation to a property and financial affairs LPA). The LPA would, in a similar way to the original registration, be activated by Her Majesty's Greffier, the Alderney Greffier or the Seneschal, thereby ensuring an independent check.

4.3.11 It is proposed that activation of the LPA would involve:

- a signature from a medical professional involved in the donor's care, such as a GP or a nurse, to state that the donor no longer had capacity (to ensure that an independent view is given rather than that of e.g. a family member); and
- the notification of the 2 people previously notified on registration of the LPA (which would again allow enquiries to be made for similar reasons as found in para. 4.3.8).

4.3.12 This process should save time and expense in the long term. However, the Department recognizes that it will be important to ensure the making, registering and activating an LPA is sufficiently simple that it can be completed by most people without the help of a professional adviser.

4.3.13 In order to simplify the position of a person who lives or holds property in other jurisdictions in the British Islands, the Department will also work towards attaining full recognition of an LPA validly made in Guernsey regarding care or assets on the mainland and the Crown Dependencies.

4.4 Guardianship

4.4.1 At present, where a person lacks capacity to deal with their own affairs, the Royal Court can be asked to make a one-off decision in relation to a specific issue or to

place the person under *curatelle* (customary law guardianship). The Department recognises the flexibility and continued usefulness of *curatelle* and therefore does not propose to introduce any new form of guardianship at this stage; it would nevertheless support any moves by the Royal Court to develop further the rules and practice regarding *curatelle*.

5. Deprivation of Liberty[9]

5.1 Introduction

5.1.1 It is now settled law that a person may be deprived of their liberty for the purposes of Article 5 of the European Convention on Human Rights where:

- that person is confined in a particular restricted place for a not negligible length of time;
- that person does not give valid consent to the confinement; and
- the confinement is attributable to the State.

5.1.2 Where the confinement is attributable to the State, it has recently been decided by the United Kingdom Supreme Court in *Cheshire West*[10] that a person will be deprived of their liberty when they:

- are placed under continuous supervision and control; and
- are not free to leave.

5.1.3 An order for detention under the 2010 Law and a sentence of imprisonment passed by a criminal court give legal authority for a deprivation of liberty to take place.

5.1.4 In the context of a person who lacks capacity, a deprivation of liberty could take place where the professionals caring for and managing that person exercise complete and effective control over that person's care and accommodation. The decision of the European Court of Human Rights in *HL v United Kingdom*[11] led to the introduction of statutory Deprivation of Liberty Safeguards ("DoLS")[12] in England and Wales as part of the 2005 Act; these provide legal protection for those vulnerable people who are, or may be, deprived of their liberty. The purpose of DoLS is to secure independent professional assessment of: (a) whether the person concerned lacks the capacity to make their own decision about where to

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[9] Whilst this is the terminology used e.g. in England and Wales, the Department intends to consult further on the use of this term to ensure the most appropriate language is used to reflect the nature of the protection offered.

[10] *P (by his litigation friend the Official Solicitor) (Appellant) v Cheshire West and Chester Council and another (Respondents); P and Q (by their litigation friend, the Official Solicitor) (Appellants) v Surrey County Council (Respondent)* [2014] UKSC 19, paragraph 49. Although this judgment is not binding on the Bailiwick, the members of the Supreme Court also sit on the Judicial Committee of the Privy Council and therefore account should be taken of this decision.

[11] (2004) 40 EHRR 761.

[12] See, for example, Schedule A1 of the 2005 Act.

be accommodated, the treatment or care to be given etc., and (b) whether it is in that person's best interests for the deprivation to take place.

5.1.5 Although the United Kingdom has addressed the issues raised by the decision in *HL*, there has been a great deal of criticism of the DoLS regime in England (collated in the report published by the House of Lords Select Committee on the Mental Capacity Act 2005[13]("The Lords Select Committee Report")) due to its complexity and limited application as it does not apply to placements outside hospitals and care homes. There has also been confusion about how the regime should be applied in combination with detention powers in mental health legislation.

5.1.6 The Department recognises that, as in England and Wales, it might sometimes be necessary to care for persons who lack capacity in circumstances that deprive them of their liberty. Appropriate statutory safeguards appropriate to the size and administrative resources of the Bailiwick will therefore be introduced to authorise these deprivations of liberty and to making arrangements so that such deprivations can be challenged. However, the Department is determined that lessons should be learned from the difficulties experienced with the DoLS framework under the 2005 Act and that the system should be appropriate to the size and administrative resources of Guernsey.

5.1.7 It should also be recognised at the outset that it will neither be necessary nor appropriate to formally authorise a deprivation of liberty in respect of every person who is cared for in a residential care home for the elderly or in a home for people with learning difficulties, as many will have capacity to decide where they should be cared for and others may not be deprived of their liberty.[14]

5.2 Proposals for a DoLS Framework

5.2.1 The Department's current range of proposals include a streamlined version of the system found in England and Wales, as well as a system of authorised establishments in which authorisation to deprive a person of their liberty could be given.

5.2.2 The main points of the proposed framework include:

(a) "Authorised establishment": the Department is currently considering the arrangements for the regulation of care quality and the need for an 'independent' or 'quasi-independent' body to support the legislation

[13] Mental Capacity Act 2005: post-legislative scrutiny, Chapter 7 (and in particular paragraphs 271-272).
[14] The issue of the threshold for determining that a person is being deliberately deprived of their liberty is one that will be developed and agreed across professionals and in further consultation with the Royal Court in the drafting of the legislation itself, and the policy and practice guidance underpinning it. It is not intended, for example, that every person with advanced dementia who is living in a care home, and who occasionally attempts to leave, would need to be subject to DoLS.

relating to this. This will be the subject of a future Policy Letter.[15] For the purposes of this Policy Letter these arrangements are referred to as the "Care Regulation Commission", although the title may change. The CRC, or similar, would authorise establishments to have the legal ability to deprive people of their liberty. Authorised establishments for the purposes of the proposed legislation would include hospitals, approved establishments under the 2010 Law, nursing homes, care homes and supported living schemes (including extra care accommodation and learning disability homes). Before authorisation could take place, the establishment would have to comply with standards and expectations set out by the CRC in relation to its physical environment and care processes.

(b) "Immediate authority to deprive": where an authorised establishment believed that it was urgently necessary to deprive a person in its care of their liberty, the senior member of staff (who would be registered with the CRC after receiving appropriate training) would grant an immediate authority to deprive that person of their liberty for a period of up to 72 hours. After granting an immediate authority, the senior member of staff would then be required to both (i) notify the CRC and a member of the person's family of the grant of the authority to deprive, and (ii) arrange for a medical practitioner to visit the authorised establishment during that period to carry out a capacity assessment and mental health assessment on that person.

(c) "Interim authorisation": where a medical practitioner subsequently carried out assessments under an authority to deprive and decided that the deprivation of liberty is or may be necessary, that medical practitioner could then grant an interim authorisation which authorised the deprivation of liberty for a period of up to 14 days (commencing when the authority to deprive was granted). The purpose of the interim authorisation would be to allow an application to be made to the CRC for a standard authorisation. After granting an interim authorisation, the medical practitioner would be obliged to notify the CRC and the person's nearest relative of that grant.

(d) "Standard authorisation": where either (i) a medical practitioner notified the CRC of the grant of an interim authorisation, or (ii) an authorised establishment notified the CRC that it wished to deprive a person of their liberty other than under an immediate authority or interim authorisation, the CRC would send a Care Coordinator (who would be a health or social care professional[16]) to carry out a best interests assessment on the person in order to decide whether any arrangements proposed which would deprive them of their liberty would be necessary and in their best interests. The Care Coordinator would require evidence from a medical practitioner

[15] Pending this Policy Letter being considered by the States, for the purposes of DoLS, interim oversight will be provided within HSSD, and resourced as part of the overall transformation programme for Health and Social Care

[16] They would usually be an occupational therapist, nurse or social worker.

that the person did not require an assessment for mental disorder, if that evidence had not been provided by the medical practitioner when an interim authorisation was granted. Where the Care Coordinator decided that an application for a standard authorisation should be made, the Care Coordinator would apply to the CRC for the grant of that authorisation. Where the CRC decided that it is necessary and in the patient's best interests for a standard authorisation to be granted, it could grant an authorisation for up to 6 months, which could be renewed on application to the CRC by the Care Coordinator for an initial period of 6 months and thereafter for subsequent periods of 12 months.

(e) Visits to authorised establishments: where a standard authorisation were to be in force, (i) the Care Coordinator would visit the authorised establishment regularly in order to monitor the terms and exercise of the standard authorisation, and (ii) the CRC would ensure that inspection visits are carried out on the authorised establishment at intervals of not more than 6 months.

(f) Review of authorisations: if the person subject to an authorisation (or a relative) wished to challenge the grant of that authorisation, that person could apply to the CRC to discharge an interim authorisation or the Royal Court to discharge a standard authorisation.

5.2.3 To avoid duplication of resources, the Department proposes to integrate the process for authorising deprivations of liberty with the new arrangements being put in place for the assessment and monitoring of long term care provision generally. It is intended that this process would capture the majority of the persons who may be deprived of their liberty, but provision should also be made to ensure that it is possible to authorise deprivations both: (i) when they arise between assessment and monitoring cycles and (ii) when they arise in situations in which those cycles are not applied.

5.2.4 In addition to the recommended procedure set out above, there should be a right for any person, including a care worker or family member, to request that a best interests assessment is carried out by the Care Coordinator. It is proposed that where such a request is made and a standard authorisation might be appropriate, the Care Coordinator should carry out the assessment within 5 working days.

5.2.5 In response to the Lords Select Committee Report suggesting reform of the DoLS framework, the Law Commission of England and Wales was requested to review the current provisions of the 2005 Act and suggest any amendments which could be made. Accordingly, the Law Commission has recently published a consultation document[17] moving away from the original approach and instead introducing new concepts of protective care and restrictive care and treatment. The Department

[17] Mental Capacity and Deprivation of Liberty; Consultation Paper No. 222.

will carefully monitor the comments made to the Law Commission, along with the conclusions reached by it, in order to inform the drafting of the legislation.

6. Restraint

6.1 Restraint is considered to be the use or threat of force where a person who lacks capacity resists, and any restriction of liberty or movement regardless of whether the person resists. It will therefore include situations where carers physically restrain a person from doing something or tell them that they will do so if they try.

6.2 The proposed legislation will permit a person to use restraint where:

- that person reasonably believe it is necessary to prevent harm to the person who lacks capacity; and
- the restraint used is a proportionate response to the likelihood and seriousness of the harm.

6.3 This provision will provide assurance to care professionals where they are caring for a person in a way which is consistent with current best practice, and that reflects the States policy and guidance on the method of restraint to be used to ensure that individuals are not harmed or injured should physical intervention be necessary.

7. Consultation

7.1 In developing the proposals contained in this Policy Letter, the Department has consulted with representatives of the States of Alderney and the Chief Pleas of Sark, the care home sector, voluntary organisations (including MIND, the Alzheimer's Society and MENCAP), service users and carers, the Royal Court and the Guernsey Bar, General Practioner practices in Guernsey, the Disability and Inclusion Strategy Steering Group (DISSG), the Policy Council, other States Departments (including the Home Department and the Social Security Department), Guernsey Police, St. John’s Ambulance, the Probation Service, the Department's older age psychiatrists, and the Legal Aid Administrator. This included discussion about the potential resource implications of the legislation and its implementation, based on an understanding of the costs and impact in Jersey and in England and Wales.

7.2 The Department has also consulted with the Law Officers of the Crown during the development of this Policy Letter, and their comments and views are incorporated.

8. Resources

8.1 The Department will carry the greatest resource burden in the implementation of the new Law, although there will be some, albeit small, implications for other Departments, such as Home, where the Police will be required to investigate the

new offence of wilful neglect, for example. However, the anticipated volume is small and this is not therefore expected to be resource intensive and can be absorbed in core business.

8.2 Costs for the administration of the LPA will be met by the charges for this service set by the Greffe, which will administer them. The main additional funding required will be to meet the additional administrative, assessment and regulatory implications. As stated previously (paragraph 5.2.2 (a)), the latter is an issue for further detailed review and a future Policy Letter, but will be considered as part of the transformation of health and social care through 2016 - 17.

8.3 Whilst it is planned to absorb the Department's costs of implementation within the Department's existing budget, these costs are not insignificant and are therefore set out below to highlight the additional pressures that will need to be considered through departmental re-profiling as part of the transformation of Health and Social Care. They are estimated based on the experience of implementation of Capacity Law elsewhere, including in Jersey, and whilst these costs will require further detailed work, they will be cost neutral for the Department in year one.

	2016	**2017**	**2018**	**2019**
Advocacy workers		£20,000	£60,000	£60,000
LPA Clerk		£10,000	£20,000	£20,000
DoLS Administrator		£20,000	£40,000	£40,000
Best Interest Assessors (existing social work and OT staff)		£40,000	£90,000	£90,000
Training		£25,000	£10,000	
Implementation Project Manager	£35,000	£35,000	£10,000	
Annual Total	**£35,000**	**£150,000**	**£230,000**	**£210,000**

8.4 Costs for 2017 are being considered as part of the ongoing redesign of Mental Health Services within the new Oberlands development. This will include the use of existing vacant social worker posts and draw upon other changes identified through the planned diagnostic of adult social care services which will take place in early 2016. In turn, this will inform the transformation programme and the 2017 Budget for health and social care.

8.5 However, it is important to note that the new Law is unlikely to be fully enacted until 2018, and future costs can only therefore be estimated at this stage. However, this lead in time gives the new Committee *for* Health and Social Care time to review priorities and to consider proposals for how service re-profiling will meet

the costs of this legislation in future years. Within this context, service provision will not be made beyond the ability of the Committee *for* Health and Social Care to prioritise and to make the required funding available.

8.6 The Policy Council and the Legal Aid Administrator have also pointed out the potential impact on the Legal Aid budget, but advise that it is impossible to predict the detailed cost implications until the new Law is drafted. In due course, the Committee *for* Health and Social Care will, therefore, need to liaise with the Committee *for* Employment and Social Security - which will be responsible for Legal Aid under the new system of government - to consider, in line with the relevant human rights obligations, what areas of the new law should fall within the scope of Legal Aid funding; in particular, whether certain aspects of it, such as deprivation of liberty, should be assessed on a "no means, no merits basis". Careful further analysis is likely to be required in order to ascertain the full implications of the proposals on the Legal Aid budget once the new Law has been drafted. Accordingly, the Committee *for* Health and Social Care should present the results of this analysis to the States before the legislation itself is presented for approval.

9. Conclusions

9.1 In order to protect and empower vulnerable members of our community, the Department considers that it is important to introduce new legislation, supported by underlying policies and procedures, which will facilitate decision making by individuals for the present and the future. These proposals aim to provide clear and efficient pathways, tailored to the needs of the Bailiwick, for this to happen. (N.B. Deputy Hadley has asked that it be recorded that he does not support the proposals.)

10. Recommendations

The States are asked:

1) To approve the proposals set out in this Policy Letter, and specifically to approve:

   a) the introduction of a general capacity test (sections 3.2-3.4);

   b) the exclusion from the legislation of the decisions listed in paragraph 3.6.1;

   c) the introduction of legal protection for decision makers on the basis set out in section 3.7;

   d) the creation of a criminal offence of wilful neglect and ill treatment (section 3.8);

e) the creation of statutory Advance Decisions to Refuse Treatment (section 4.2) and Lasting Powers of Attorney (section 4.3); and

f) the introduction of Deprivation of Liberty Safeguards as proposed in section 5.2.

2) To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

3) To note the additional resources required from 2017 to support the implementation of this legislation, which will be prioritised as part of the transformation programme for Health and Social Care.

4) To note the potential impact on the Legal Aid budget, and to direct the Committee *for* Health and Social Care to report to the States on this issue when the implications are clearer and before the legislation is presented to the States of Deliberation for approval.

Yours faithfully

P A Luxon
Minister

H J R Soulsby
Deputy Minister

S A James MBE
M K Le Clerc
M Hadley

R H Allsopp OBE (Non-States Member)
A Christou (Non-States Member)

(N.B. The Treasury and Resources Department notes that there are resource implications relating to implementation (including training) and staffing as a result of the recommendations of the Policy Letter. It is the intention of the Health and Social Services Department and subsequently the Committee *for* Health and Social Care to manage the resource implications within their existing resources as highlighted:

- **in paragraph 8.3 where it is stated that the Health and Social Services Department plans to "*absorb*" the costs of implementation "*within the Department's existing budget*",**

- **by the commitment made in recommendation 3 where resource requirements from 2017 onwards will be "*prioritised as part of the transformation programme for Health and Social Care*" and,**

- **in paragraph 8.5 where it is stated that "*service provision will not be made beyond the ability of the Committee for Health and Social Care to prioritise and to make the required funding available*".**

It is expected that any resource implications that arise in the future are managed by the Committee *for* Health and Social Care in a manner that is consistent with the wider reform of Health and Social Care and the outcomes and actions of the recent BDO Benchmarking Report.

The Treasury and Resources Department also notes that there are expected to be financial implications related to the provision of Legal Aid services and that, in accordance with recommendation 4, the Committee *for* Health and Social Care will report to the States on this issue "*when the implications are clearer and before the legislation is presented to the States for approval*". However, it should be pointed out that any increase in expenditure on the formula-led Legal Aid heading will inevitably result in reduced budget being available for other services.)

(N.B. A key workstream in the Disability and Inclusion Strategy approved by the States in November 2013, the introduction of this legislation will make a valuable contribution to the measures necessary to safeguard the interests of vulnerable adults in our islands.

The Policy Council, therefore, supports these proposals and is satisfied that they comply with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

III.- Whether, after consideration of the Policy Letter dated 16th December, 2015, of the Health and Social Services Department, they are of the opinion:

1. To approve the proposals set out in that Policy Letter, and specifically to approve:

   a) the introduction of a general capacity test (sections 3.2-3.4),
   b) the exclusion from the legislation of the decisions listed in paragraph 3.6.1,
   c) the introduction of legal protection for decision makers on the basis set out in section 3.7,
   d) the creation of a criminal offence of wilful neglect and ill treatment (section 3.8),
   e) the creation of statutory Advance Decisions to Refuse Treatment (section 4.2) and Lasting Powers of Attorney (section 4.3), and
   f) the introduction of Deprivation of Liberty Safeguards as proposed in section 5.2.

2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

3. To note the additional resources required from 2017 to support the implementation of this legislation, which will be prioritised as part of the transformation programme for Health and Social Care.

4. To note the potential impact on the Legal Aid budget, and to direct the Committee *for* Health and Social Care to report to the States of Deliberation on this issue when the implications are clearer and before the legislation is presented to the States for approval.

COMMERCE AND EMPLOYMENT DEPARTMENT

FINANCIAL MEASURES TO MITIGATE THE LIKELY ADVERSE CONSEQUENCES UPON EXISTING MILK DISTRIBUTORS OF THE DAIRY BEING FREE TO SELL MILK AND MILK PRODUCT TO ANY COMMERCIAL CUSTOMER

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St. Peter Port

17th December 2015

Dear Sir

1. Executive Summary

1.1 On 2nd October 2015, and following consideration of the Policy Letter entitled "Optimum Arrangements for the Distribution and Retailing of Milk and Milk Products" (Billet d'État XVI of 2015, Vol. 2) ("2015 Policy Letter"), the States directed the Commerce and Employment Department (the Department) to submit a report on financial measures to mitigate the likely adverse consequences upon existing milk distributors of the Dairy adopting a new trading policy under which it would be free to sell milk and milk products to any commercial business wishing to be a customer.

1.2 Following consultation with representatives of the Guernsey Milk Retailers Association ("GMRA"), the Department decided to commission an independent study of the case for mitigation, the possible total cost of an ex-gratia settlement, and the mechanism for distribution of such payments.

1.3 The Department, appointed the accountancy firm KPMG to conduct the study following a competitive closed quotation process. The Department is very grateful to KPMG for the manner in which it has completed and reported its study, a study which was carried out against very tight timescales to enable the finalisation of this Policy Letter. The study report is appended in full to this Policy Letter.

1.4 The study suggests that the option of no financial settlement, as proposed by the Department in its 2015 Policy Letter, remains a plausible approach and the study report comments that, as a consequence, "*the range of total potential compensation is between zero and £1.1 million …*".

1.5 Because of the speculative nature of a possible settlement, coming as it does in advance of the change which would see the Dairy adopting the "Option C" approach to distribution of its products, it is no surprise that the study identifies a wide range for the possible financial mitigation settlements that can be proposed from the information available.

1.6 The Department considers that, should any financial settlement be approved by the States, it is essential that payments are explicitly given as full and final settlement.

1.7 The Department is firmly of the view that the Guernsey Dairy should not be seen as the source of funding by the States to finance an ex-gratia payment for distributors.

1.8 The Department has looked at various options to bring about a solution to this matter, including a negotiated settlement. However, members remain unconvinced that there is a substantive case for financial mitigation and consider, by a majority, that matters such as these should be settled using the existing legal processes rather than be the subject of special, pre-emptive, payments funded, one way or another, by taxpayers.

1.9 In the light of this view, the Department recommends that no financial mitigation payment is made.

2. Background

2.1 At their meeting on 2nd October 2015, the States approved a number of recommendations regarding the future of distribution and retailing. In particular the States agreed with the proposals from the Department that:-

- the optimum distribution and retailing arrangements for the long-term sustainability and success of the Island's dairy industry are that the Dairy should be free to sell to any commercial customer. (This was 'Option C' recommended in the Department's 2015 Policy Letter);

- the resolutions of 30th October 2008 (in relation to Article IV of Billet d'État No. XIII), which gave a temporary period of limited exclusive rights for the distribution of Guernsey Dairy milk and milk products to existing milk distributors, should be rescinded with immediate effect;

- the statutory licensing of milk distributors should cease.

2.2 It was also resolved that the Department should report to the States at or before their meeting in March 2016 setting out financial measures to mitigate the likely adverse consequences upon existing milk distributors of moving to Option C.

The text of the Resolution is:-

"... to direct the Commerce & Employment Department to report to the States at or before their meeting in March, 2016 setting out financial measures to mitigate the likely adverse consequences upon existing milk distributors of moving to Option C; and it is understood that assessing such financial measures can be undertaken only with full openness and transparency of all distributors with regard to their accounting records."

2.3 In debate, and in view of the direction to report back to the States with a further report in March 2016, the Minister of the Commerce and Employment Department gave an undertaking that the Dairy would not alter its policy regarding the sale of milk to commercial customers before April 2016.

2.4 In its 2015 Policy Letter, the Department stated that it had given consideration to the question of the making of a payment to distributors in relation to the adoption of a "Dairy sells to any customer" trading policy and had not supported the idea.

2.5 The Department's position on this was set out in its 2015 Policy Letter as follows:-

> ***7. Mitigation***
>
> *7.1 The Department was directed to:*
>
> *"... examine and make recommendations upon whether it would be appropriate to put in place measures, financial or otherwise, to mitigate any likely adverse consequences upon existing milk distributors of moving to such arrangements."*
> *(Billet d'État XX 2014 article IX – resolutions of 25th September 2014).*
>
> *7.2 As discussed above, distributors do not have, nor ever have had, exclusive rights to distribute the Dairy's products or exclusive rights to particular territories. The Department therefore considers that the implementation of Option C in relation to the arrangements for distribution and retailing will restore the status quo that existed before the States Resolution of 30th October 2008.*
>
> *7.3 That being the case, the Department does not believe that any mitigation measures are necessary."*

2.6 In debate, States members put forward the view that, notwithstanding the legal advice (that those arrangements effectively represent the status quo and therefore that no mitigation measures are necessary) and the Department's conclusion built on that view, an alternative view was that milk distributors had enjoyed a long period during which time the Dairy had not given access for the purchase of milk for retail sale and distribution to any commercial entities other than licensed milk distributors (previously referred to as 'milk retailers'). It was said that, even if there had never been any legal impediment to widening the customer base of the

Dairy, the decisions to purchase and operate milk delivery rounds that were made by distributors had, to some extent, relied on the continuation of that status quo.

2.7 States members argued that the proposed change to 'Option C', which explicitly supported the opportunity for food service companies and other commercial concerns to purchase milk directly from the Dairy, could expose milk distributors to greater business risk.

2.8 As a consequence of this view, a majority of States members resolved that the Department should again look at the case for some form of ex-gratia payment, which should be made at the time of the introduction of a changed trading environment.

2.9 The Department took the view that, in the light of its firmly and often stated position on the question of financial mitigation, it should seek to minimise any perceptions of bias in the investigation of this matter. Therefore, following consultation with representatives of the GMRA and the Guernsey Farmers' Association ("GFA"), the Department decided that the most appropriate action to take would be to appoint an independent and suitably qualified and experienced accountancy professional to conduct a study into possible mitigation payments.

2.10 The Department worked closely with the procurement staff of Treasury and Resources Department to find an appropriate approach to the placing of a contract for the required study. In view of the shortness of time, it was recommended that a "closed quotation" approach was adopted. Following initial research, four locally based accountancy firms were invited to quote for this work via the States Tendering Portal on 30th October 2015.

2.11 The specification, which had been the subject of discussion with the GMRA, set out the following key requirements for the study:-

(a) Determine the most appropriate method of assessing the likely consequences of moving to Option C and provide a justification for the selected assessment method.

(b) Using the selected assessment method, calculate the total amount that would be required to provide financial mitigation as specified in the States' Resolution.

(c) Recommend, with justification, the most appropriate mechanism (in all the circumstances) to apportion compensation to distribution businesses, having regard to (but not limited to) the following factors :-

(i) The risk of adverse consequences to individual distribution businesses, or parts of these businesses, arising for the proposed change in distribution arrangements at the Dairy,

(ii) The potential impact of the proposed change on the perceived value of the individual distribution businesses,

(iii) The potential for individual distribution business to mitigate the "likely adverse consequences" of the adoption of 'Option C' on their operations.

(d) Calculate and report on the compensation that should be paid, under the proposed financial mitigation arrangements, to individual distributors.

2.12 The Department specified that the report would be appended in full to this Policy Letter and hence be in the public domain. It should not identify individual milk distribution businesses and would answer points (a) to (c) above. If necessary, a second report would be needed, which would be treated as completely confidential and would set out proposed payments to individual distributors as specified in point (d) above.

2.13 Following the procurement process, the contract for this study was awarded to KPMG Ltd, Glategny Court, Glategny Esplanade, St Peter Port.

3. Consultation and Meetings with Interested Parties

3.1 The Minister met representatives of the GMRA on 7th October 2015 to review the States' debate outcomes and consider the required investigation process specified in the States' resolution.

3.2 There were further meetings and numerous communications between Department staff and GMRA representatives in the period running up to the tendering process to appoint a suitably qualified and experienced accountancy firm to carry out an independent study.

3.3 The Department has held two consultation meetings with representatives of the Guernsey Farmers' Association (the GFA) since the September 2015 States meeting. In these meetings the GFA representatives made strong representations to the effect that they did not consider that any financial settlement, if one was made, should come from the Dairy's reserves but rather, if the States consider that it is appropriate for such payments to be made, then they should come from a central tax payer funded source.

3.4 In discussion, GFA representatives made the point that the States is reducing the money in the Dairy Farm Management Payments fund (which is directly linked to the Farm Biodiversity Action Plans and Dairy Farm Management Agreements) by an increasing amount each year, over a 5 year period. In 2015 £200,000 was removed from this fund and in 2016 an additional further £200,000 will be cut, leaving the fund £400,000 lower than it was in 2014.

3.5 By 2019, an annual total of £1,000,000 will have been taken from this vote, with the States saving £1,000,000 every year from 2019 onwards. As an illustration, with a settlement sum of some £500,000 which is within the range recorded in the appended independent report, the States will have saved more than this sum by the fourth quarter of 2016, with continuing savings in the future.

3.6 The policy proposal for a reduction in Dairy Farm Management Payments is one that has been strongly supported by the Department and is an important part of its strategic vision for the future of the involvement of the States' in supporting the dairy industry.

3.7 Furthermore, when proposing this to the States, it was always envisaged that the result would be that money would be directly removed from the farm income stream and this would have to be made up by a combination of efficiency savings on farms and at the Dairy, and by higher gate prices for Guernsey Dairy milk.

3.8 It was always expected that higher gate prices were likely to feed through to increased retail prices, although the extent of this would be affected by commercial decisions by retail outlets in the absence of retail price control, an arrangement that was in place with effect from 1st January 2015.

3.9 When setting out its 2014 proposals for a long term vision for a sustainable future for the local dairy industry, the Department proposed protecting milk distributors in the future and in particular putting them in no worse a trading position than they were in previously and did not envisage a situation when an ex-gratia settlement payment would be needed.

4. The Findings of the Independent Study into financial mitigation for Milk Distributors

4.1 Having reviewed the report from KPMG, the Department considers that the information gathering exercise for the study received very good, but not complete, support from GMRA members as specified in the States resolution of 2nd October 2015. In view of this, and the confidential route for the submission of data that was organised by the GMRA, the Department believes that the distributor who chose not to take part in the process of providing business information, should not be considered for a settlement if the States decide that they wish to make such payments.

4.2 Because of the speculative nature of the possible settlement, coming as it does in advance of the change which would see the Dairy adopting the "Option C" approach to distribution of its products, it is perhaps no surprise that the study identifies a wide range for the possible financial mitigation settlements that can be calculated from the information available to the analysts. It is interesting to note that the study suggests that the option of no financial settlement, which is the preferred approach of the Department as proposed in its 2015 Policy Letter, remains a plausible approach.

4.3 The key conclusions of the independent study (Appendix 1) are:-

(a) There is a risk that greater competitive pressures in the milk distribution sector will result in reduced gross profits and may lower business value in the future.

(b) There is a degree of uncertainty about this, and the authors expect that some businesses will be able to improve their performance in the future ("winners"), while others may experience a reduction in their business value ("losers").

(c) A method for estimating the impact of the proposed change in the Dairy's policy for the sale of milk to commercial customers is to estimate the difference between a current valuation of the milk distribution sector of the dairy industry in 2015 and a valuation following the adoption of changed arrangements controlling the Dairy's commercial options for the distribution of milk.

(d) The smallest calculated loss of sector business value is £0.4 million and the greatest is £1.1 million, the latter setting an upper limit for a settlement based on the presented analysis and calculation method.

(e) The scale of the loss of value is dependent on the size of the estimated loss of gross profit as a result of the change. The midpoint of these extremes is £0.75 million.

(f) With the inclusion of zero compensation as an option, which the study does not rule out, the range of potential settlement is in fact between zero and £1.1 million.

(g) The States will need to consider various factors in deciding on the level of a settlement, should they so decide, including:-

- the protected market for milk both in the past and the future;
- the legal basis for the adoption of Option C;
- that distributors will be free to continue to operate their businesses in the future;
- political and public sentiment.

(h) The distribution mechanism proposed is based on total milk sales and the proportion of the total milk sales revenue that is made by each distributor. This approach weights the allocations, taking into account different business structures - i.e. the proportion of milk sales conducted via doorstep or commercial and wholesale customers - and the different revenues arising from each type of sale.

4.4 The full report is appended to this Policy Letter.

5. The Financial Implications of the Financial Settlement as set out in the Independent Report

5.1 The independent study suggests a formula for a financial settlement which results in payments totalling between £0.4 and £1.1 million.

5.2 If the total payment fund were set at £500,000 for the sake of illustration, and applying the figures for the percentage allocations for the 21 milk distributers calculated by the study (but not published in view of the potential business confidentiality issues) 16 distributors would receive an ex-gratia payment of £25,000 or less.

5.3 Larger distribution businesses would receive a greater percentage of the total fund by this calculation method, although it is far from clear that they would be at a greater risk. Indeed the KPMG report notes (on page 12) that *"... larger companies are generally more stable, have broader client bases, enjoy scalability of internal processes and are more attractive to potential purchasers.*"

5.4 The Department believes that this is a significant consideration and thus takes the view that it would be correct to limit (= "cap") the total settlement payment that could be received by larger distribution businesses because the risk to their businesses would not follow the straight line model that is the consequence of the proposed allocation mechanism.

5.5 Furthermore, the Department is very concerned that money from taxpayers may be paid to distributors even before any impact on their businesses is seen, whilst the risk that legal action for damages might be brought at some time in the future by one or more distributors which, irrespective of merit, will incur significant legal and other expenses.

5.6 Should a financial settlement payment be approved, the Department considers that it is essential that any payments paid to milk distributors are explicitly given on the basis that they are in <u>full and final settlement</u> of all claims in this matter.

5.7 The Department is advised that distributors wishing to take a settlement should be required to sign an agreement by which they clearly waive their right to seek further damages through civil action.

5.8 The proposal to provide ex-gratia settlement payments to distributors brings with it the key question of the source of any funding. The Department's budget, after a number of years of effective belt-tightening, cannot conceivably be a source of funds for such a payment.

5.9 Another possible source is the Dairy which has been operating profitably for a number of years and has built up a valuable capital reserve which allows it to invest in essential improvements without the need to call on external sources.

5.10 The Dairy has a capital investment programme that in the short term will require some £1.5 million to upgrade vital production and quality control systems and also to replace its second and aging milk packaging line. The estimated reserves of the Dairy in December 2015 are £2.9 million of which £1.45 million has been specifically reserved for needed investment projects in the short term.

5.11 As stressed in the Department's 2015 strategic review of the dairy industry, the Dairy must also consider the medium and longer term need for a modernised facility (possibly on a different site), which will help reduce costs and may offer opportunities for a linked public access or visitor attraction to be developed which could be of long term value for the Island. Reduction in the operating cost of the Dairy was an important part of the package proposed for the future of the industry which would help resist upward pressure on the gate price.

5.12 Key to this will be that the Dairy has sufficient reserves and a sufficient income stream to fund such a development. Draining its reserves now, even in part, thus delaying important and necessary investment in equipment will put a burden on its finances and the farming industry and ultimately put upward pressure on the Gate Price of Milk, which in turn will have an impact on Retail Prices and the Dairy's loyal customer base.

5.13 The Department does not consider that it is correct that the Dairy should be seen as a convenient source of funding by the States to make an ex-gratia settlement payment to distributors.

6. Consideration of the Findings of the Independent Study and the Department's View of Financial Mitigation

6.1 The Department is grateful for the efforts of KPMG to produce a well set out and argued report from their study of this situation against an extremely tight timescale and providing a possible approach to the estimation of the total cost of an ex-gratia settlement fund to provide financial mitigation to milk distributors.

6.2 The Department considers that the study by KPMG has delivered some independent insight and a contribution to the debate, but it has, in fact, illustrated the near impossibility of generating an objective and truly reliable calculation to answer the States direction to compensate businesses for potential risk changes that may or may not take place in the future.

6.3 The Department notes that the report's findings mean that the level of any settlement fund that the States may decide should be created is inevitably going to be a matter of subjective judgement to some degree, with any final amounts agreed upon being a measure of the strength of feeling on this matter rather than the reliability or persuasiveness of the financial analysis.

6.4 Against the background that the legal case is clear and unsupportive of financial mitigation, members of the Commerce and Employment Department are not confident that spending significant sums of public money (be it money raised from taxation or from the sale of milk to consumers) should be done in this way.

6.5 Whilst the point of view of those wishing to see a payment made to distributors at this time of possible commercial change is understood, the Department remains unconvinced that it is correct that an ex-gratia payment is made at all.

6.6 Milk distribution businesses will not be prevented from continuing in business as a result of the proposals in its 2015 Policy Letter. Furthermore, and as set out in past policy letters (Billet d'Etat XXII 2014 and Billet d'Etat XVI 2015), the Department wants these businesses to continue. In the words of the Distribution and Retailing Review Working Group in their report appended to the 2015 Policy Letter and fully endorsed by the Department:-

"A diverse and privately operated distribution system, as exists at present, offers the best solution for the industry and Island consumers. This recognises the settled and successful distribution system that operates at the present time through such a mechanism, and will allow the most efficient operation of the Dairy. All existing delivery routes to customers will be able to continue."

6.7 If there is a change that we can be sure will be introduced by the adoption of Option C, it is that distributors will have, once and for all, to address the fact that they are engaged in a commercial activity that will succeed on the basis of their ability to provide a service that is needed at a price that is acceptable to their customers, whilst maintaining the viability of their businesses. These essential features of commercial activity remain unchanged.

6.8 It is also the case that the legal basis of the operation of milk distribution businesses has not changed, from that which has been the case since the coming into force of the first Milk (Control) Ordinance in 1958 (save only for the time-limited period of limited exclusivity awarded in 2008).

6.9 The environment for any business is never static and the milk distributors are no different to all other business people in this regard. So, while they might have enjoyed what they viewed as some stability in an aspect of the operation of their businesses (namely the Dairy's trading policy in respect of the gate sales of milk) in the past, they had no reason to believe it was a right given to them in perpetuity.

The Department therefore remain opposed to the principle of making of an ex-gratia payment to the existing milk distributors and does not believe that the independent report changes that view.

6.10 By a majority, and with all due respect to the intentions of States members when directing the Department to make a further study of this matter, the Department resolved that it could not propose the payment of financial mitigation, even if it

was seen as a way of ending the debate surrounding provision of the Dairy with a realistic level of commercial flexibility to operate for the good of the Island and in support of the strategic vision for the dairy industry.

7. Other Consultation

7.1 In addition to the parties described in section 3, the Department can confirm that legal advice, on the matters raised in this Policy Letter and the contents of the Policy Letter itself, has been obtained from the Law Officers' Chambers.

8. Resources

8.1 The recommendations in this Policy Letter have no resource implications. However, the Department remains concerned that the States might decide that ex-gratia settlement payments should be made and should be funded from the Dairy's capital reserves. Any such payment will have a negative impact on the industry and on the Dairy's ability to invest and develop as a vital part of the strategic vision for the dairy industry.

9. Recommendations

9.1 The Department recommends that the States does not approve the payment of financial mitigation to milk distributors.

Yours faithfully

K A Stewart
Minister

A H Brouard
Deputy Minister

D de G De Lisle
G M Collins
L S Trott

Advocate T Carey
(Non-States Member)

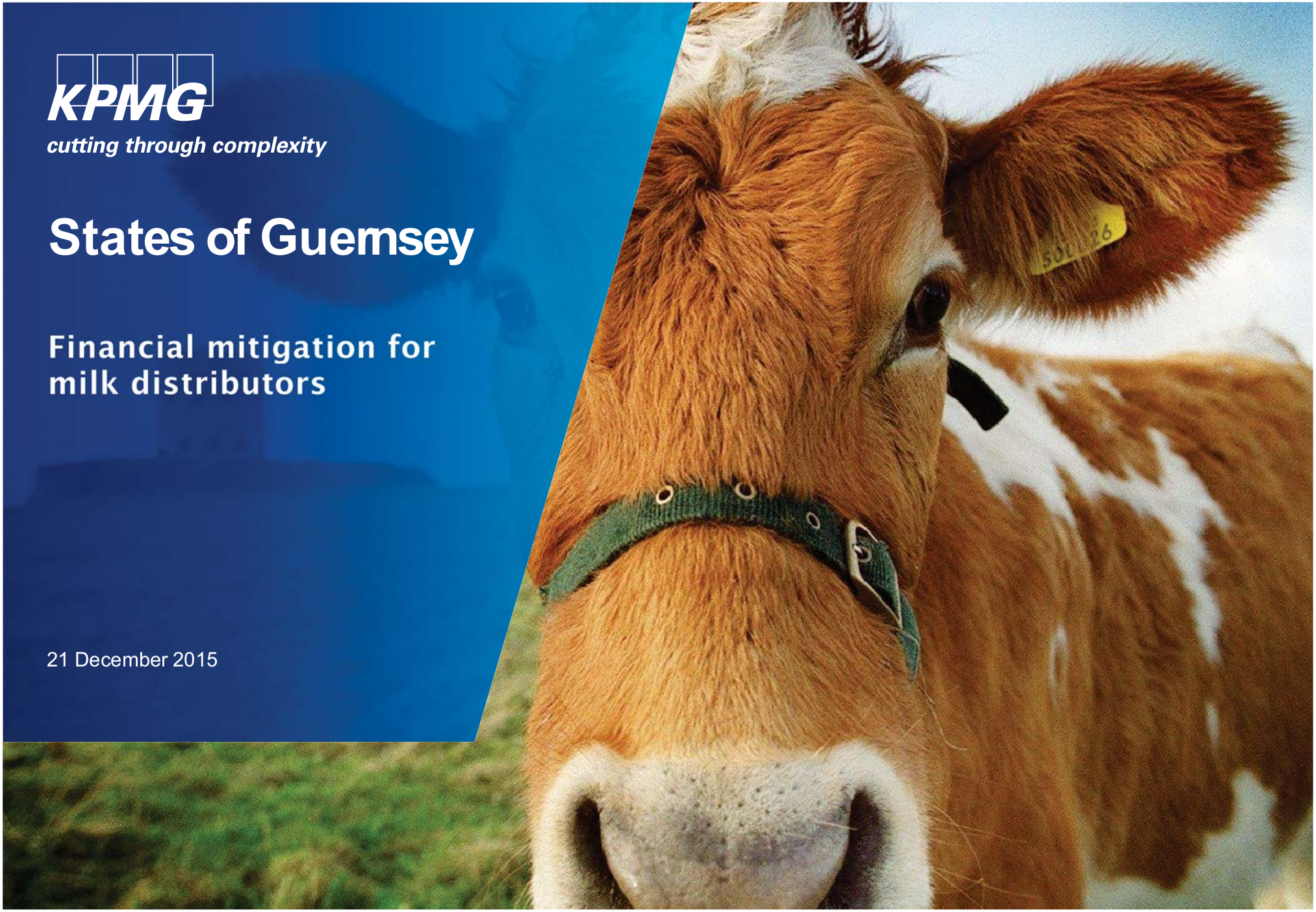
KPMG

cutting through complexity

States of Guernsey

Financial mitigation for milk distributors

21 December 2015



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APPENDIX 1

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Private and confidential

21 December 2015

Commerce and Employment Department
Raymond Falla House
Long Rue
St Martin
Guernsey

GY1 6AF

Dear Sirs

Financial Mitigation for milk distributors

In accordance with our engagement letter dated 11 December 2015 (our 'Engagement Letter'), KPMG Channel Islands Limited ('KPMG', 'we', 'us', 'our') enclose our final report on the financial mitigation for milk distributors. As stated in our Engagement Letter, any decisions taken in relation to the work performed remains your responsibility. The important notice on the following page should be read in conjunction with this letter.

Our final report is for your benefit and information only and should not be copied, referred to or disclosed, in whole or in part, without our prior written consent, except as specifically permitted in our Engagement Letter. The scope of work for this report has been agreed by you and, to the fullest extent permitted by law, we will not accept responsibility or liability to any other party (including the addressees' legal and other professional advisers) in respect of our work or the report.

Yours faithfully

KPMG Channel Islands Limited

Important notice

- This report is prepared solely for use by the States of Guernsey. It is confidential to you and it is given on the understanding that it is not to be communicated, in whole or in part, to any third party without our prior written consent. We consent to its release to the public as part of the Policy Letter for inclusion in the March 2016 Billet as directed by the States of Guernsey, on the basis that it is reproduced in its entirety and that only the final refined report shall be made publically available. To the fullest extent permitted by law, we will not accept responsibility or liability to any other party (including the addressee's legal and other professional advisers) in respect of our work or the report.
- Our work commenced on 24 November 2015 and our fieldwork was completed on 18 December 2015. We have not undertaken to update the report for events or circumstances arising after that date.
- In preparing our report, we have relied upon financial statements and management accounts provided by members of the Guernsey Milk Retailers Association as well as data on milk sales provided by Guernsey Dairy. We have not verified any of the information presented in this report. We do not accept responsibility for such information which remains the responsibility of Management. We have satisfied ourselves, so far as possible, that the information presented in the report is consistent with other information which was made available to us in the course of our work in accordance with the terms of our Engagement Letter. We have not, however, sought to establish the reliability of the sources by reference to other evidence.
- This engagement is not an assurance engagement conducted in accordance with any generally accepted assurance standards and consequently no assurance opinion is expressed.
- We draw your attention to the significant limitations in the information available to us. In particular, we have not been provided with a full data set of financial statements. We have provided an overview of data received in Appendix IV.
- The report makes reference to "KPMG Analysis"; this indicates only that KPMG has (where specified) undertaken certain analytical activities on the underlying data to arrive at the information presented; KPMG does not accept responsibility for the underlying data.
- All values expressed herein are in terms of £ Sterling except where specifically noted.
- Our analysis is prepared using excel and may produce small rounding errors.

Glossary of terms

C&E	The Department of Commerce and Employment
Capex	Capital Expenditure
Current Market valuation	Valuation of the total milk distribution market prior to the implementation of Option C
EBIT	Earnings Before Interest and Tax
EBITDA	Earnings Before Interest Tax, Depreciation and Amortisation
Future Market valuation	Valuation of the total milk distribution market subsequent to the implementation of Option C
GMRA	the Guernsey Milk Retailers Association
Gross Profit or GP	The product of the Net Milk Revenue multiplied by the volumes for milk distributors. Per the distributors financial statements, this equates to revenue minus cost of sales
GP Multiple	The multiple applied to gross profit to calculate the total market value
Market	The milk distribution market
Net Milk Revenue	The difference between the gate price (currently 88p) and the price at which milk distributors sell each litre unit of milk
Option C	The distribution system implemented by the States of Guernsey which allows any commercial customer to purchase milk directly from Guernsey Dairy
the Dairy	Guernsey Dairy
the States	The States of Guernsey

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Contents

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Executive summary

Overview

Historically milk distributors have operated in a restricted market which has evolved into 23 operators of varying size

The States of Guernsey have decided to adopt Option C – we understand legal opinions received by them suggest that no legal obligation to pay compensation exists

The move to Option C leads to increased business risk for all 23 distributors – politically the States may decide to compensate distributors for this increased risk

Milk distribution market

There are currently 23 milk distributors of varying size that distribute Guernsey Dairy's ("the Dairy") milk - these businesses are represented by the Guernsey Milk Retailers Association ("GMRA"). Milk distributors operate within three segments; door-to-door sales, commercial customers and retail outlets. Distributors generally operate within a mix of these three segments as dictated by their geographical zones within Guernsey (some zones may contain only a single retail outlet). The geographical zones have evolved over a long period of time through market practice. Purchasers of milk are currently restricted to acquiring milk from the distributor operating within their zone although domestic consumers are able to purchase milk from any retail outlet on the Island.

Change in distribution system

The States of Guernsey ("the States") decided to implement the 'optimum distribution system' ("Option C") for the Dairy milk and milk products in the Billet XVI 2015 2nd October 2015. Option C states that the Dairy is open to do business with any commercial customer (commercial quantity restrictions are put in place) seeking to buy its products "from the cold store". The Dairy will play no role in the control or management of the distribution of its products once collected by the distributor.

The Commerce and Employment Department ("C&E") was instructed by the States to report on the financial measures to mitigate the likely adverse consequences upon existing milk distributors of moving to Option C. KPMG have been engaged to prepare a report for the C&E highlighting a methodology for calculating the financial mitigation for the milk distributors and the mechanism for allocation of this to the distributors.

Rationale for compensation

We understand that it is the States' view (based on legal opinions received) that milk distribution licences are not transferable and that this suggests there is no legal obligation for the payment of any compensation for the move to Option C. We understand that C&E have previously recommended that no compensation should be paid.

Our understanding is that the rationale may be a political desire to compensate for the associated increase in business risk (for example increased competition and perceived removal of geographical zoning) affecting all 23 businesses as the industry moves to Option C.

It is important that the States are clear over their rationale as this may affect any compensation payable.

Overview

It is likely that the total industry Net Milk Revenue currently enjoyed by the 23 milk distributors will fall once Option C is adopted

This would reduce the expected business valuation associated with milk distribution in Guernsey

Impact of moving to Option C

The rationale for the introduction of Option C was to move to a freely competitive, efficient distribution model. It should lead to the freedom for customers to negotiate and acquire milk from any distributor, or commercial businesses (eg. retailers and caterers) to acquire directly from the Dairy assuming a minimum volume of milk.

Whilst it is not possible to fully assess the final state of the marketplace we believe the following aspects are worthy of note:

- The retail price for milk was until early 2015 fixed at £1.12 – on 1 January 2015 the fixing of the price was removed (although anecdotally there has been no change to the retail price charged for Guernsey milk across the Island)
- We have seen some evidence of imported milk being sold at a discount store on the high street at a lower amount. We understand legislation is being introduced however to prevent non-Guernsey milk being imported into the Island in the future
- It is expected that there will be increased competition between distributors affecting different aspects of the marketplace
  - Retailers and caterers will have greater choice as to who to source milk from (and assuming volumes can be guaranteed they will be able to purchase directly from the Dairy). This is likely to drive down the price that retailers and caterers currently pay for milk (we have estimated that the average Net Milk Revenue per litre unit across the whole industry is 18p, and the price at which distributors sell each litre of milk is therefore calculated to be £1.06 per litre on average). We are aware that the Dairy gate price will shortly rise by 5p to (and be fixed at) 93p, however, for the purposes of this report, we have assumed that the gate price stays constant
  - It is possible that some of the savings enjoyed by retailers may ultimately be passed onto consumers by a reduction in the retail price charged
  - We understand that the total market for Guernsey milk has not materially changed over the last 15 years and has been inelastic to price increases – for this analysis we have assumed that there will be no change in total demand for Guernsey milk
  - Whilst those distributors serving door to door deliveries will not be prevented from continuing to serve their communities they will no longer have their perceived protection of their geographical zones provided under the current system. The price that they deliver milk for may come under further competitive pressure if retailers do reduce the retail price of milk
  - The businesses of door to door distributors operating across different geographical zones may be impacted differently by the move to Option C but it is not possible to determine exactly how the distributors operating in this area of the market will adjust to it
- It is possible that some geographic pockets within Guernsey may no longer be provided a door to door service – we understand this part of the industry has already been declining for a number of years

Based on this analysis, in summary, it is likely that the total industry Net Milk Revenue currently enjoyed by the 23 milk distributors will fall once Option C is adopted. This would reduce the expected business valuation associated with milk distribution in Guernsey.

Financial mitigation calculation

The range of total potential compensation is calculated to be between zero and £1.1m

Methodology for calculating the movement in total distribution market valuation

If compensation is determined by the States to be payable, then the calculation of any compensation amount should be based on the difference between the valuation of the total milk distribution industry in Guernsey assuming (i) current distribution market with no adoption of Option C, and (ii) future distribution market post Option C adoption.

Ultimately the market will determine the outcome in terms of the effects of Option C. Due to this uncertainty we have applied formal valuation techniques to value the current and future market. Our current distribution market valuation has been based on a multiple of gross profit as our primary valuation technique (consistent with historic market practice), supported by comparable transactions analysis. We have used FY14 actual gross profit figures provided by the distributors and an analysis of historic transactions to determine an appropriate multiplier. These figures have been deemed to be appropriate as the milk volumes, and retail prices have remained constant. We have calculated the total current distribution market valuation to be £2.3m.

Our Future Market valuation has been based on our expected composition and characteristics of the future market outlined in the previous section. We have assumed that gross profit achieved by the distributors on a litre of milk will fall by between 3 and 9 pence. We have calculated the Future Market valuation to be £1.2m to £1.9m.

The difference between the Current and Future Market valuation is therefore in the range of £1.1 m (£2.3m less £1.2m) and £0.4m (£2.3m less £1.9m).

Range of total potential compensation

The range of total potential compensation is between zero and £1.1m, where zero is based on a view that no consideration should be payable, and £1.1m is the maximum difference between the Current Market with no adoption of Option C and Future Market post Option C adoption.

In recommending the total level of compensation, if any, to be offered, the States should consider:

- That the distributors have benefited from a perceived protected market for a number of years
- The strength of the legal basis of adopting Option C
- Political sentiment and public opinion
- The right for milk distributors to continue to operate post Option C is not being removed – any compensation amount appears therefore to be an ex gratia payment for the increased risk of operating their businesses

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Allocation mechanism

We believe that an appropriate method for allocating any compensation would be to allocate to each of the 23 milk distributors based on the proportion of each of their milk revenues against the total milk revenue for the milk distribution industry in Guernsey

Compensation mechanisms

There will inevitably be winners and losers from the policy change, however ultimately all distributors are facing increased risk to their revenues from moving to Option C.

We believe that an appropriate method for allocating any compensation would be to allocate to each of the 23 milk distributors based on the proportion of their milk revenues against the total milk revenue for the milk distribution industry in Guernsey.

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Market valuation

Market valuation

Current Market Valuation

The Current Market has been valued at a total market level using the GP Multiple method, supported with Comparable Transaction analysis

The calculated Current Market value is £2.3m

GP Multiple valuation	
	Amount (£)
Revenue (Note 1)	6,955,871
Cost of sales (Note 1)	(5,751,404)
GP	1,204,467
GP Multiple (Note 2)	1.91
Market Value	**2,295,898**

Comparable Transaction valuation	
Adjusted Net Profit (£) (Appendix II)	492,361
Depreciation and amortisation (£)	29,269
Adjusted Industry EBITDA (£)	**521,629**
Comparable Transaction EBITDA Multiple	
Robert Wiseman Dairies Plc	5.80
Discount factors	
Listing discount (Note 3)	-20%
Size discount (Note 4)	-20%
Restriction premium (Note 5)	15%
Revised EBITDA Multiple	4.35
EBITDA Valuation (£)	**2,269,087**
Adjusted Industry EBIT (£)	492,361
Comparable Transaction EBIT Multiple	
Dairy Crest, Dairies operations	4.80
Discount factor	
Size discount (Note 4)	-20%
Restriction premium (Note 5)	15%
Revised EBIT Multiple	4.56
EBIT Valuation (£)	**2,245,164**
Average comparable transaction valuation (£)	**2,257,126**

Source: Capital IQ and KPMG analysis.

Note 1 – Revenue and cost of sales

The revenue and cost of sales are based on the FY14 historical financial statements of the individual milk distributors. Please see Appendix IV for reconciliation of cost of sales.

Note 2 – GP Multiple

We understand that historically the value of a distribution business in the local market has been calculated based on a multiple of GP. In order to calculate the GP Multiple the goodwill amount and additions to capital at acquisition were obtained from the historical financial statements. These were then divided by the corresponding GP to give a weighted average multiple of 1.91, as shown in Appendix I. The GP Multiple represents the additional value the buyer is purchasing, namely the goodwill, contacts and ability to operate in a restricted area.

Comparable Transaction EBIT and EBITDA Multiples

The Comparable Transaction method involves the review of companies from international public markets to determine implied ratios and multiples to use for the valuation of the distribution industry. Transactions involving Robert Wiseman Dairies Plc (2012) and Dairy Crest (2015) have been selected as they most closely match the industry and nature of the milk distribution industry. The multiples have been adjusted for the below factors and the average of the two adjusted multiples applied to the FY14 Industry EBITDA and EBIT respectively.

Note 3 – Listing discount

The selected comparable transaction is for a listed company and thus shares are readily tradable and comparatively more liquid than the milk distributors in Guernsey, making them more attractive to potential investors. The Dairy Crest transaction relates to the sale of an operating subsidiary which is not listed, hence no listing discount has been applied.

Note 4 – Size discount

Larger companies are generally more stable, have broader client bases, enjoy scalability of internal processes and are more attractive to potential purchasers.

Note 5 – Restriction premium

The comparable transactions were for companies that operate in a freely competitive market and hence a premium has been added to the multiple to reflect the perceived protected licence system in Guernsey.

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Future Market assumptions and sensitivity analysis

In the Future Market scenario, increased competition and economies of scale will lead to a reduction in the Net Milk Revenue that distributors are able to obtain. The sensitivity of the market valuation to changes in the Net Milk Revenue is shown here

GP Multiple Sensitivity Analysis			
	Base case (12p)	High case (15p)	Low case (9p)
Total Market Gross Profit	811,388	1,007,927	614,848

The key factor in the calculation of the market value is the Net Milk Revenue, calculated at 18 pence in the Current Market (average distributor selling price of £1.06 on the gate price of 88p). Our analysis in Appendix II calculates the Future Market Net Milk Revenue to be 12 pence (average selling price of £1.00).

Due to the inherent uncertainties in estimating the Future Market, we have performed sensitivity analysis based on the following:

- Base case – a distributor selling price of £1 per litre, resulting in a mark up of 12 pence per litre
- Low case – a distributor selling price of 97 pence per litre, resulting in a mark up of 9 pence per litre
- High case – a distributor selling price of £1.03 per litre, resulting in a mark up of 15 pence per litre

Effect on GP Multiple calculation

A reduction or increase in the selling price by 3 pence will result in a 24% reduction or increase in the GP and market valuation, when compared to the base case.

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Future Market Valuation

The Future Market has been valued at a total market level using the GP Multiple method. The effects of Option C on the market have been modelled based on an efficient market characterised by increased competition, which will reduce margins.

The calculated Future Market value, post Option C is within the range £1.2m - £1.9m

GP Multiple valuation			
	Base case (£)	**Low case (£)**	**High case (£)**
Revenue (Note 6)	6,562,792	6,366,252	6,759,331
Cost of sales (Note 7)	(5,751,404)	(5,751,404)	(5,751,404)
GP	811,388	614,848	1,007,927
GP Multiple (Note 8)	1.91	1.91	1.91
Market Value	**1,549,751**	**1,174,360**	**1,925,141**

Note 6 – Revenue

The revenue has been calculated to take into account the increased competition. Based on a farm gate price for milk of 88 pence we have calculated that the industry bought 6,551,230 litres of milk. As the distributors do not have cold storage facilities it is assumed they also sold 6,551,230 litres of milk giving an average price of £1.06 per litre sold. On average milk retailers were able to obtain a Net Milk Revenue of 18 pence per litre. With increased competition it is believed that a Net Milk Revenue of 12 pence per litre is more likely. The sensitivity of the market value to this assumption is shown in the table above.

Note 7 – Cost of sales

The cost to distributors is fixed at 88 pence per litre.

Note 8 – GP Multiple

Post the introduction of Option C, it is our belief that there will be consolidation within the industry resulting in a few stronger distribution businesses. As a result of this we have not changed the GP Multiple used in the Current Market valuation for calculating the Future Market valuation. The introduction of free competition has been considered through the movement in Net Milk Revenue for the future market.

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Appendices

Appendix I

GP Multiple calculation

The GP Multiple has been calculated based on observed multiples in previous transactions. The weighted average calculated is 1.91 which has formed part of our Current and Future Market valuations.

The more recent transactions (last 3 years) support the weighted average GP Multiple

Historical transaction multiples				
Reference	Goodwill	Additions to capital account	GP	GP Multiple
GP Multiple 1	93,000	7,644	35,260	2.85
GP Multiple 2	15,000	4,700	15,687	1.26
GP Multiple 3	60,496	5,971	56,394	1.18
GP Multiple 4	34,500	7,000	15,197	2.73
GP Multiple 5	50,000	2,463	27,754	1.89
GP Multiple 6	46,900	2,349	29,378	1.68
GP Multiple 7	55,000	1,410	25,827	2.18
GP Multiple 8	31,166	4,368	15,874	2.24
Weighted average				**1.91**
Average				**2.00**

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Appendix II

Net Milk Revenue breakdown

Calculation of industry cost of delivery	
Number of litres	**6,551,320**
	£
Industry GP	1,204,467
Other operating costs	(322,512)
Other Income	1,406
Salary adjustment	(391,000)
Adjusted Profit before tax	**492,361**
Net Milk Revenue	0.18
Adjusted Profit per litre	0.08
Cost of delivery per litre	**0.10**

We have calculated the Current Market average Net Milk Revenue for distributors to be 18 pence per litre.

Based on the financial statements provided by the distributors, operating cost is currently 4 pence per litre. It should be noted that the majority of the distributors are sole traders and thus the operating costs shown do not include salary costs. An adjustment has been made to the operating costs to take this into account.

The salary adjustment of £23,000 p.a. has been based on salaries for delivery drivers in the United Kingdom, working 6 days a week.

Based on the above adjustment the Industry Profit before tax is £492,361 which would result in an Industry Profit before tax per litre of 8 pence per litre and a cost of delivery per litre of 10 pence.

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Future Market assumptions for cost of delivery

Under an efficient and competitive market, we would expect to see a reduction in both profit per litre and cost of delivery per litre.

Profit per litre (8p per litre)

To reflect increased competition and new entrants to the market we have assumed a 50% fall in adjusted profit to 4p per litre for our base case

Cost of delivery per litre (10p per litre)

To reflect consolidation in the industry and increased economies of scale, we have assumed a 20% fall in cost of delivery

The Future Market average Net Milk Revenue is estimated to be 12 pence. These assumptions have been sensitised on slide 12

Appendix III

Methodology

We have valued the industry at the total market level using the GP Multiple as a primary methodology and Comparable Transaction as a supporting methodology

Current Market valuation pre-Option C

- **GP Multiple (primary)**
- Based on discussions with the GMRA it was ascertained that historically when distribution businesses were sold they were valued based on a multiple of GP. We assessed the market value based on the GP Multiple. The GP has been extracted from the financial statements of the milk distributors. The GP Multiple has been calculated based on historical transactions.

- **Comparable Transaction (support)**
- We have reviewed companies from international public markets to determine implied ratios and multiples for a group of CoTran's to use for the valuation of the total market. The CoTran's multipliers have been discounted to reflect additional risk factors of the local market
- The maintainable earnings (adjusted EBITDA) figure is applied

Market Valuation pre-Option C

Analyse effects of Option C

- We have analysed the potential effects of Option C on the distribution market

Future Market valuation post-Option C

- **GP Multiple**
- We have calculated the average Net Milk Revenue under current conditions and have adjusted this to reflect assumed efficient market conditions for the future. In determining the change in margin, we have calculated the actual cost of distribution per litre.

Market Valuation post-Option C

The difference between the Current and Future market value represents the maximum amount to be paid to milk distributors assuming compensation is deemed payable

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Appendix IV

Information received

Information received

The report has been based on individual financial statements received from the GMRA in respect of the milk distributors, which were prepared by independent accountants. We received information for 22 out of the 23 distributors and understand that the omitted distributor is a relatively small operator.

The information provided for one of the distributors was not prepared by financial accountants and was therefore not included in the information used.

We have reconciled the known industry volumes of milk sales to the aggregated milk sales from the financial statements of the milk distributors. We consequently believe the financial statements received provide the necessary revenue information which can be used to allocate any compensation

As a reasonableness check we carried out the following calculation based on independent information relating to volumes and the farm gate price:

Reconciliation of Cost of sales	
	£
Independent volumes*	6,508,514
Farm gate price	0.88
Cost of sales	5,713,824
Provided by the GMRA	
Cost of sales	5,751,404
Difference	**(37,579)**

* The volumes have been extracted from the Dairy Management Board Business Plan 2012/13

The difference above is deemed to be within reason given fluctuations in volumes. Based on this independent high level analysis and the fact that the basis of the valuations was independently produced financial statements, we believe we can place reliance on the information provided.

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

(N.B. The Policy Council has noted the arguments put forward by the Commerce and Employment Department, together with the accompanying report from KPMG. However, by a majority, the Policy Council is of the view that it may be argued that there is a case for fair and equitable ex gratia payments to milk distributors.

The Policy Council further considers that if ex gratia payments are agreed by the States, the logical source for them should be from Dairy funds, provided this does not have adverse effects on its capital investment programme and the price of milk.)

The States are asked to decide:-

IV.- Whether, after consideration of the Policy Letter dated 17th December 2015, of the Commerce and Employment Department, they are of the opinion not to approve the payment of financial mitigation to milk distributors.

HEALTH AND SOCIAL SERVICES DEPARTMENT

REVIEW OF ADOPTION LAW – SECOND PHASE

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

16th December 2015

Dear Sir

1. Executive Summary

1.1 In Guernsey, Adoption is governed by The Adoption (Guernsey) Law, 1960, and a number of subsequent laws, rules, ordinances and regulations which have been enacted in a rather piecemeal fashion. That set of laws and secondary legislation is hereafter referred to as "the Law". Adoption practice and procedure is based on the Law, which in many respects reflects the standards of society over fifty years ago.

1.2 Although the Law has facilitated many successful adoptions over the years, it is becoming increasingly evident that it is no longer fit for purpose in the 21st Century, as our way of life has changed a great deal since the introduction of the Law in 1960. It is now necessary to consider how to amend the Law in order better to reflect society's needs.

1.3 In June 2015 (Billet d'État XI), following consideration of proposals put forward by the Policy Council for the review of the Law, the States of Deliberation approved changes so that unmarried and same sex couples could jointly adopt. It was noted in that report that the Health and Social Services Department ("the Department") was intending to carry out a full review of the legislation.

1.4 This Policy Letter and its proposals are the fulfilment of that stated intention. It is a continuation and second phase of the review of the Law and therefore the previous Policy Letter that was approved by the States in June 2015 is shown in full as Appendix 1.

1.5 The main purpose of reviewing and proposing changes to the Law is to enable modern adoption practices and procedures to be put in place which will provide permanence as quickly as possible for children who, for the sake of their welfare, cannot live with their birth parents by:

- Removing unnecessary restrictions on potential adopters to widen the pool of suitable permanent families for children;

- Removing duplication and other possible barriers to an effective and efficient adoption process;

- Investigating alternatives to adoption to achieve permanence; and

- Ensuring that the adoption process is supported by legislation that is easy to understand; that balances authority with accountability; and is consistent with recognised modern standards for protecting the child's welfare.

1.6 Following consultation with stakeholders and expert advice from CoramBAAF[1], this Policy Letter now sets out further proposed changes to adoption legislation in order to address the remaining identified deficiencies in the Law.

2. Background

2.1 A child's welfare is normally best served by being brought up within his own family and community[2]. Resources are properly focussed on seeking to support families in meeting their child's needs and keeping them safe.

2.2 For those children for whom it is not possible to be brought up by one or both of their birth parents there are a range of long-term care options which can give children security, stability, and love, through their childhood and beyond.

2.3 Over the last three decades there has been an increasing focus on permanency planning for children with an emphasis on the importance for children of being able to move on to an alternative permanent family if they cannot remain with or return to their birth family.

2.4 In many cases adoption has been considered to be the best option for providing vulnerable children, including many with complex needs and a history of ill treatment, a home with a permanent family.

2.5 Research demonstrates that adoption is an important service for children, offering a positive and beneficial outcome: *"Research shows that generally adopted children make very good progress through their childhood and into adulthood compared with children brought up by their own parents and do considerably better than children who have remained in the care system throughout most of their childhood. Adoption provides children with a unique opportunity for a fresh*

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[1] An independent membership organisation for agencies and individuals in the UK, which services include adoption related research; policy and development; professional advice and professional development.

[2] See the child welfare principles set out in The Children (Guernsey and Alderney) Law, 2008

start as permanent members of new families, enjoying a sense of security and well-being so far denied them in their young lives."[3]

2.6 Adoption was legalised in Guernsey on 22nd March, 1939; however, there was no law in place until The Adoption (Guernsey) Law, 1960, was enacted. The Law applies to Guernsey, Herm and Jethou, while most of its provisions have been applied in Alderney, through The Alderney (Application of Legislation) (Adoption) Ordinance, 1974, and The Adoption (Alderney) Rules, 1974. At present, there are no adoption laws in Sark. Although the focus of this review is on adoption laws in Guernsey and Alderney, it might assist in informing the development of adoption laws in Sark in due course.

2.7 Adoption in Guernsey and Alderney is a legal order that can only be made by the court and it is subject to a right of appeal. An adoption order is irrevocable[4] and is one of the most significant legal steps that can be taken in a child's life. The adopted child is treated in law as though he had been born to the adoptive couple or single adopter. Upon the making of an adoption order, parental responsibility for the child is given to the adopters and at the same time, the order operates to extinguish permanently the parental responsibility which any person had for the child immediately before the making of the order.

2.8 The vast majority of adoptions in Guernsey and Alderney are *agency adoptions;* that is adoptions that are facilitated by the Health and Social Services Department, (which is currently the only body entitled to act as an adoption agency). Experienced social workers within the Department will assess those cases for which adoption is the best placement option for the child and the Department's adoption service recruits and trains prospective adopters.

2.9 The Department, as an adoption agency, acts on the recommendations of an independently chaired Adoption Panel that has access to specialist advisors. That Panel considers and advises upon:

- whether adoption is in the child's best interest;
- whether people should be approved as adoptive parents (and if so, any limitation on the age and number of children they are approved to adopt); and
- the matching of a child with prospective adopters.

3. The Case for Change

3.1 The Law was drafted at a time when many adoptions were of relinquished babies, often to mothers who became pregnant outside of marriage[5]. The majority of

[3] Local Authority Circular LAC(98)20 'Adoption – Achieving the Right Balance'
[4] Save in very limited circumstances
[5] The Law actually refers to 'infant' throughout although this is defined as a person less than 18 years of age

adoptions now involve children who have come into the care of the State due to the inability of the child's parents (or extended family) to provide adequate long term care. Adoption has increasingly become a valuable care option for older children and an alternative to long term foster care or residential care.

3.2 As noted previously, the Law reflected the standards of society over fifty years ago. For example, the expectation that only married couples should form a family and that a single man should not usually adopt a female child. This restricts the pool of adopters for children and fails to reflect the reality of modern family life.

3.3 In January 2010, The Children (Guernsey and Alderney) Law, 2008 ("The Children Law") was introduced in Guernsey and Alderney, which modernised the majority of legislative provision relating to the care, welfare and protection of children. It had originally been intended that the out of date adoption laws would form part of that reform process but a decision was made that such reform would follow in due course. Accordingly, there is a lack of continuity between the new Children Law and the existing 1960 Adoption Law. This has resulted in a potential for duplication and delay for a child for whom the plan is one of permanence by way of adoption.

3.4 In the circumstances, the Department considers that the current adoption legislation should be repealed and a new Adoption Law enacted, the provisions of which are intended to work alongside the Children Law to form a coherent framework for the provision of services for children. It further suggests that any new legislation should be based on those provisions of the Adoption and Children Act 2002 that relate to adoption. This will, in particular, provide those child care and adoption professionals working in the field in the Bailiwick (the majority of whom are familiar with and trained in English adoption procedures and practices) to use their skills and experience most effectively for the benefit of Bailiwick children and adopters.

3.5 The purpose of reviewing the Law and suggesting change is to assist with the introduction of practices and procedures intended to bring permanence as quickly as possible for children who, for the sake of their welfare, cannot live with their birth parents by:

- removing unnecessary restrictions on potential adopters to widen the pool of suitable permanent families for children;

- removing duplication and other possible barriers to an effective and efficient adoption process;

- investigating alternatives to adoption to achieve permanence; and

- ensuring that the adoption process is supported by legislation that is easy to understand; that balances authority with accountability; and is consistent with recognised modern standards for protecting the child's welfare.

4. Consultation

4.1 The Department has sought professional advice from CoramBAAF, an independent membership organisation for agencies and individuals in the United Kingdom, which services include adoption related research; policy and development; professional advice and professional development.

4.2 The Department held a half-day workshop, facilitated by representatives of CoramBAAF, with 58 invited stakeholders and sent out a follow-up survey seeking stakeholder views for the benefit of those who could not attend, which had 17 responses and two further written comments. Consulted stakeholders included adoptive parents, adoptees, social workers, advocates, and the judiciary.

4.3 The Department has consulted with colleagues in Alderney and Sark, as referred to in Section 14, and with the Law Officers of the Crown, whose comments are given in Section 15.

5. First Principles – the Child's Welfare

5.1 The current Law requires that the court has to be satisfied that the adoption order, if made, will be for the welfare of the child[6]. Accordingly the child's welfare is only *one consideration* for the court and not an overriding or paramount consideration.

5.2 The Children Law introduced a legal requirement in Guernsey and Alderney that, in considering any function under that Law[7], a public authority (and that includes a court) shall carry out that function having regard to the *overriding principle that the child's welfare is the paramount consideration*.

5.3 The United Nations Convention on the Rights of the Child ("the UNCRC") requires that in all actions concerning children, the best interests of the child shall be a primary consideration[8]. The draft Children and Young People's Plan 2016 – 2022, due to be considered by the States at their meeting of March 2016, contains a commitment to work towards signing up to the UNCRC and reflecting these principles in everything that is done. Work is already underway and nearing completion to submit the application for signing up to the Convention.

5.4 The fact that our adoption Laws do not make the child's welfare a primary/paramount consideration is out of step with other local laws on children and international conventions.

5.5 Stakeholders who participated in the consultation unanimously supported the new Law requiring the welfare of the child as the paramount consideration above all other factors.

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[6] S.8(1)(b) of the Adoption (Guernsey) Law 1960.
[7] With some limited exemptions- see S.3(3) of The Children (Guernsey and Alderney) Law, 2008
[8] Article 3

5.6 **The Department recommends that the new Law requires that the paramount consideration of public authorities (i.e. including the court or adoption agency) must be the child's welfare, throughout his or her life.**

5.7 The Children Law introduced a welfare checklist, the purpose of which is to ensure that decision making has regard to appropriate aspects of a child's welfare. The current adoption Laws do not include a 'welfare check list' although one is set out in The Royal Court (Adoption) (Guernsey and Alderney) Rules, 2006[9].

5.8 England and Wales introduced a welfare checklist in the Adoption and Children Act 2002, modelled on the welfare checklist set out in their Children Act 1989.

5.9 The Department is recommending that the new Adoption Law should include a provision that public authorities (which includes the adoption agency and court) are required to have regard to a child welfare checklist, which should be consistent with that set out in the Children Law. There should be a uniform checklist that applies across all decision-making in relation to children in their whole journey through and exiting the care system.

5.10 The Department has been advised of the experience in England and Wales that there is sometimes delay in placing a child with an adoptive family due to placing too much weight to a particular criterion in the welfare checklist. For example, an agency might hold off on matching a child with prospective adopters while trying to find a family that matches the child's ethnicity[10].

5.11 The Department considers the proposed welfare checklist should include the provision that the court or adoption agency must at all times bear in mind that, in general, any delay in coming to the decision is likely to prejudice the child's welfare.

5.12 Consulted stakeholders unanimously supported the inclusion of a welfare checklist in the legislation. There was general agreement that the overriding principle has to be the welfare of the child and avoiding delay in achieving permanence for that child. Other considerations need to be framed in such a way that they are helpful in guiding decision-makers, but – learning from the experience in England and Wales - not restricting or in danger of being taken as absolutes.

5.13 **The Department recommends that the new Law include a child welfare checklist, consistent with that in The Children (Guernsey and Alderney) Law, 2008, to ensure that decision making has regard to appropriate aspects of a child's welfare, in particular avoiding delay in finding permanence.**

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[9] At Schedule 2& 4

[10] England and Wales Adoption and Children Act 2002 (5) In placing the child for adoption, the adoption agency must give due consideration to the child's religious persuasion, racial origin and cultural and linguistic background.

6. Identity of Adopters

6.1 A core objective of the Department in reviewing adoption legislation is to widen the pool of potential adopters and remove discrimination.

6.2 The current Law includes other restrictions on who can adopt that may no longer be appropriate and unnecessarily narrow the pool of potential adopters in such a way as to impact adversely on the welfare of the islands' children.

6.3 **The Department considers that, as a general principle, the legislation should not impose any restriction on eligibility to adopt unless there is a clear and evidence based case to do so for the welfare of the child that would apply in every case. This is because, on a case by case basis, the courts and adoption agency are required to consider the welfare of the child before approving any adoption.**

Unmarried and Same-Sex Couples

6.4 Under the current adoption Laws unmarried and same sex couples are unable to adopt jointly.

6.5 As a matter of practice, in agency adoptions, an unmarried or same sex couple will be considered for assessment and approval as permanent carers for a child, but only one of the couple will be able to apply to adopt the child. This means that only one of the couple will be treated as the child's parent on adoption. The non-adopting carer can apply for parental responsibility but this does not carry the same permanence or rights as adoption and the non-adopting carer will be at risk of losing parental responsibility.

6.6 This restriction on unmarried and same sex couples jointly adopting does not fit with modern society, where a significant number of couples in settled and enduring relationships are not married, or are not recognised as married by the adoption Laws. Many of these couples are well placed to provide children with appropriate permanent homes and the current restrictions narrows the pool of potential carers for children in the Bailiwick, which is not in the best interests of those children.

6.7 Following consideration of the June 2015 (Billet d'État XI) proposals, the States determined to direct that the adoption Law be amended so that, in addition to single people and married couples, it provides that a child may be adopted jointly by a couple who are:

a) in a civil partnership; or
b) in another legally recognised relationship between two people; or
c) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship

with each adoptive carer having equal rights and parental responsibility.

6.8 **The States of Deliberation has already directed the drafting of amendments to the Law to allow unmarried and same-sex couples to jointly adopt.**

Gender Restrictions

6.9 There is currently a restriction on a sole male applicant adopting a female child, except in 'special circumstances' that justify the making of an adoption order as an "exceptional measure". No such restriction exists for a sole female applicant adopting a male child.

6.10 England and Wales do not impose any restrictions on the adoption of male or female children by applicants of any gender.

6.11 **The Department recommends removing this restriction based on gender from the new Law. The Royal Court and the Department as the adoption agency will consider the appropriateness and suitability of all potential adopters according to the welfare of the child.**

Age Restrictions

6.12 The Law sets a minimum age requirement of 25 years for non-relative adoption, and 20 years for relatives of the child. The exception to the age limit is when a prospective adopter is the spouse of the birth parent when they must be 21 years of age to adopt their spouse's child, and the birth parent must have reached 18 years of age.

6.13 While the minimum age remains at 25 years in Jersey, it is 21 years in England and Wales.

6.14 The majority of respondents to the stakeholder consultation felt that a minimum age of adopters should be applied for the welfare of the child, with the majority supporting that this should be 21 years of age. One respondent felt this was because children need consistency and people are more likely to be settled in their plans for the future at an older age. Another respondent who is an adoptive parent advised *"Adopting a child is challenging and adoptive parents are usually faced with additional "issues" which parents of birth children would not expect to be faced with. A degree of life experience and maturity would be necessary to cope with these."*

6.15 The agency should in any event be required to have regard to the capability and capacity of adopters to meet the child's physical and emotional needs. However, it would support the agency to have clear guidance with a legislative basis regarding the suitability of adopters for approval. In the Department's view, based upon the consultation responses, this should include a minimum age for adopters.

6.16 **The Department recommends a minimum age requirement of 21 years of age to adopt a child.**

Residence

6.17 The current adoption Law requires applicants to be domiciled in Guernsey (or Alderney) and that the applicant(s) and child reside in the Island[11]. Domicile can be a complex concept to define, particularly in the context of an internationally mobile population and Guernsey's current laws in relation to residence.

6.18 International treaties on adoption and child protection tend to link eligibility to apply for an order in a particular jurisdiction with the applicant's habitual residence in that jurisdiction, instead of domicile.

6.19 Habitual residence is an easier concept to define and allowing those who are habitually resident in Guernsey (or Alderney) would widen the pool of adopters to include those who have settled in the Island but may not be domiciled.

6.20 England and Wales allows adoption where at least one of a couple is domiciled in the British Islands or where both have been habitually resident for at least a year.

6.21 Legislation safeguards that a child would be placed with prospective adopters only if it is in the welfare of the child, which will include consideration of the likelihood of the adoptive family leaving Guernsey or Alderney. For example, the child welfare checklist in the Children Law includes that a public authority shall have regard to, inter alia: "*(g) the effect or likely effect of any change in the child's circumstances, including the effect of the child's removal from Guernsey or Alderney."*

6.22 The Department agrees with the majority of stakeholders consulted that there should be a requirement for applicants to be habitually resident for at least a year before being able to adopt.

6.23 The Department is persuaded that there is good argument for retaining domicile as well as habitual residence as an option for qualification as an adoptive parent. There may be prospective adopters who are temporarily located overseas, for example if they are in the armed forces or if they are on a time-limited contract at an overseas office for an international company that is based on-Island. The HSSD consider that it would not wish these people from being precluded from applying to become adoptive parents in certain circumstances where they are domiciled in the Islands but not currently habitually resident.

6.24 **The Department recommends that under any revised adoption legislation a prospective adopter must be domiciled, or have been habitually resident for at least one year, in Guernsey or Alderney and, in the case of a couple, that at least one of them must be so domiciled or that both individuals should have been so habitually resident.**

[11] S.2(1) and (5) The Adoption (Guernsey) Law 1960

7. The Adoption Process

7.1 A key objective of the review of the Law is to remove duplication and other possible barriers to an effective and efficient adoption process.

Preliminaries to Adoption

7.2 It is recognised that there would need to be a minimum period of time during which a child is living with his prospective adopters before any adoption order is granted to ensure that the child is settled and the placement is properly assessed over a reasonable period of time to ensure that the child's needs are being met. There are differences between jurisdictions as to whether that mandatory period of time is before the **application** to adopt or before the **adoption order** can be finalised.

7.3 There is currently no restriction in the Law as to when an adoption application can be made. However, the Law does impose a three month time period during which the child should live with the applicant(s) before an **adoption order** can be made (not counting any time before the date on which the child attained the age of six weeks).

7.4 In England and Wales there are restrictions on when an **application** for an adoption order can be made. No application can be made until the child has lived with the prospective adopters for a specified period which varies according to the circumstances:

1) 10 weeks - child placed for adoption by an agency
2) 6 months - child being adopted by a partner of a parent
3) 12 months - child being adopted by foster carers
4) 3 out of the previous 5 years - in all other cases (primarily non-agency adoptions)

(In the case of foster carers and non-agency adoptions the court may give leave to make the application despite the residence requirement not having been met.)

7.5 The longer period of time for adoptions where the child has not been placed by an agency is to allow the local authority where the child lives time to establish whether the child is properly placed before an application is made.

7.6 Introducing such pre-application waiting times may not be justified in the case of agency adoptions particularly if the adoption agency continues to carefully assess and review applicants and courts and adoption agency are required to consider the welfare of the child and welfare checklist before approving any adoption.

7.7 There is little if any evidence that the absence of pre-application waiting times has created difficulties in either agency or non-agency adoptions locally.

7.8 The majority of stakeholders consulted agreed that there should be a minimum period of time for the child to live with the prospective adopters before the Adoption Order is granted, with most advocating retaining the current provision of 3 months. Views were evenly split as to whether there should be a pre-application waiting period, as in England and Wales.

7.9 There may be circumstances (for example someone who already has a consistent carer relationship with a particular child but may not have been living with them) where the authorities may wish to consider an exception to the general rule. Some respondents to the consultation were also attracted by the ability in the England and Wales legislation to set out varying time periods for specific circumstances.

7.10 In the light of the above, the Department considers that the three month time period during which the child should live with the applicant(s) before an **adoption order** can be made should be retained in the new Law. However, the Department considers that the Law should provide for flexibility and allow the States to determine alternative provisions for particular circumstances by Ordinance.

7.11 **The Department considers that a three month waiting period prior to the Adoption Order should be required in the Law, or other such period or periods as the States may by Ordinance prescribe.**

Placement of children for adoption

7.12 The majority of children coming to adoption will have been the subject of an application by the Department for a Community Parenting Order ("CPO") to take them into the care of the State. If the CPO involves a plan of adoption it will be followed, in due course, by adoption proceedings.

7.13 In England and Wales, the Court can make a *Placement Order* that effectively enables any opposition to adoption for the child to be dealt with before the child moves to live with prospective adopters. This provision in the Children and Adoption Act addressed the concern that in many cases the first opportunity a birth parent might have to challenge a placement in court might be months after a placement is made, by which time the child would be settled in his new family. The Placement Order reduces the likelihood of the child's parents engaging in direct litigation with prospective adopters, while still allowing the parents an opportunity to have their objections to the process heard. Such an order provides a valuable bridge between a care order and an adoption order.

7.14 In England and Wales, a Placement Order may only be made if the child is subject to a care order, or the court is satisfied that the 'threshold criteria' for the making of a care order have been met, or the child has no parent or guardian. The court also has to be satisfied that the parents' consent should be dispensed with, in that the child's welfare requires adoption.

7.15 The intention would be to establish two routes by which the Department as an adoption agency may be authorised to place a child for adoption:

- Placement with parental consent;
- Placement under a placement order.

7.16 A placement order would usually be sought immediately following a court granting a CPO in those cases in which the court has approved the Department's plan for adoption.

7.17 The birth parents would have an opportunity to oppose a plan of adoption at the time the CPO and Placement Order applications are determined. However, once a placement order is made, a birth parent may only apply to revoke it with the permission of the court, which will only be given if there has been a **significant** change in circumstances since the order was made. No application to revoke a placement order may be made after the child is placed for adoption.

7.18 The Department would then be able to place the child with prospective adopters who would gain parental responsibility at placement and share it with the Department.

7.19 The potential benefits of such an order would be to:

- Reduce delay in achieving permanence for children;
- Give some confidence to adopters that the issue of parental consent to adoption has been resolved before the child is placed;
- Reduce duplication of process between CPO proceedings and adoption proceedings;
- Lessen anxiety and distress for birth parents, adopters and children;
- Create savings in social work time, court time; safeguarder services time and legal aid resources;
- Increase the pool of prospective adopters as some may be discouraged from applying locally at present by the absence of a placement order; and
- Improve the quality of the initial pre-adoption placement period for the child by reducing anxieties for adopters around contested court proceedings (the issue having been resolved in advance of placement).

7.20 There would also be a potential cost saving to the Department of approximately £30,000 per annum, as it should no longer be necessary to fund legal representation to the adoptive parents when the Adoption Order is being considered.

7.21 The stakeholders consulted unanimously supported the principle of bringing the birth parents opportunity to challenge a decision to place their child for adoption to a stage before any adoptive placement is made. There was strong support that an Order similar to a Placement Order would support the placement of children from care.

7.22 **The Department recommends that any new Adoption Law includes provision for the granting of a Placement Order before the child is placed with prospective adopters.**

Making Adoption Orders where the parents do not consent

7.23 The current adoption Laws provide that an adoption order can only be made with the consent of every person who is a parent (with parental responsibility) or guardian.

7.24 Although some adoptions do proceed by way of consent, many do not. It is not unusual for a birth parent to accept that they are, unfortunately, not able to care for their child long term, but they are not able to take the step of actively giving their consent to adoption. Some of these parents express the view that they are concerned as to what their child will think in later life if they consent to the adoption.

7.25 The adoption Laws enable consent to be dispensed with. An application to dispense with consent can be made on a number of grounds[12], including:

- that the person whose consent is required has abandoned, neglected or persistently ill-treated the child;
- that the person cannot be found or is incapable of giving his consent or is withholding his consent unreasonably; and
- that the person has persistently failed without reasonable cause to discharge the obligations of a parent or guardian of the child.

7.26 This largely 'fault based' approach to dispensing with consent is out of step with the modern emphasis on the welfare of the child. In England and Wales the test for dispensing with consent is simply that the child's welfare requires it.

[12] S.6 Adoption (Guernsey) Law, 1960

7.27 It would remain the case that the Department would have had to demonstrate the reasons why the child's welfare required removal from their parents' care. In addition, the birth parents would have had opportunity to contest the decision to remove their child and then to place their child for adoption. However, enabling the court to dispense with the parent's consent due to the best welfare of the child removes stigma from the court judgement and may encourage some birth parents to consent.

7.28 Moving to the welfare test would reflect a focus on the child's welfare rather than the conduct of the birth parents. The majority of stakeholders responding to the consultation supported this.

7.29 **The Department recommends that the new Adoption Law enables consent of the parents to the adoption of their child to be dispensed with if the welfare of the child requires it.**

8. Protected Children

8.1 The current adoption Laws include the concept of a *protected child*[13] covering the period between placement of the child with prospective adopters and a final adoption order being made. Essentially, this makes the child subject to a degree of supervision by the Department which has a duty to:

- visit that child from time to time to satisfy itself as to the well-being of the child; and
- to give advice as to the child's care and maintenance, as may be needed.

8.2 Additionally, the Department can:

- impose conditions on such placements;
- prohibit individuals taking on the care of a child with the intention of adopting them in a non-agency adoption; and
- ask the Court to exercise its power to remove a protected child from prospective adopters or to prevent a child's placement with such prospective adopters if satisfied that the child is being kept or is about to be received by a person who is unfit to have his care, or is in contravention of a prohibition imposed, or the premises in which he is kept (will be kept) are detrimental (or likely to be detrimental) to his welfare.

8.3 The above regime and powers do not sit comfortably with the Children Law which has introduced a duty on the States to ensure the welfare of the islands' children and introduced alternative routes to ensure the welfare of all children, whether or

[13] S.26-28 The Adoption (Guernsey) Law, 1960

not they are in pre-adoptive placements. This includes referral to the Children's Convenor and potentially on to the Child Youth and Community Tribunal.

8.4 In England and Wales, the concept of a *protected child* was not repeated in their updated 2002 Law[14] but introduced a new regime for the State to:

- investigate a child's circumstances when notice of intention to adopt is given;
- in 'non-notice cases', to monitor the child's welfare under private fostering provisions as a child living with somebody who is neither a relative nor has parental responsibility for him.

8.5 The majority of consultees favoured changing the protected child provisions to one more consistent with the Children Law.

8.6 **The Department recommends that the 'protected child' regime for children living with prospective adopters be replaced by provisions which are more consistent with those set out in The Children (Guernsey and Alderney) Law, 2008.**

9. Adoption Agencies and their Functions

9.1 The current Law provides that only the Department shall have power to participate in the adoption of children and makes it an offence for any other body of persons to do so. In other jurisdictions, there may be a number of different agencies making arrangements for adoption from both the State and private and voluntary sectors. Such an approach may create difficulties in our jurisdictions with small numbers of adoptive placements each year.

9.2 However, it may be beneficial to future-proof the Law to provide for the possibility that the Department may wish to approve other agencies to deliver aspects of the arrangements for adoption, subject to them satisfying particular requirements.

9.3 The Law currently enables the States, by Ordinance, to make provision as to the exercise of the Department's functions in relation to adoption, but it is otherwise silent as to what these might be. An Ordinance was issued in 1961 and amended in 2002[15] setting out some basic functions. The 2002 amendment gave the Department the powers to establish an Adoption Panel to assist in the exercise of the Department's functions (see paragraph 2.9).

9.4 As previously noted, the passing of five decades since the Law was introduced has seen a shift in emphasis in adoption from relinquished babies to older children and children in the care system. This has seen a corresponding shift in the

[14] The Adoption and Children Act , 2002

[15] The Children Board (Regulation of Adoption Arrangements) Ordinance 1961 and The Children Board (Regulation of Adoption Arrangements)(Amendment) Ordinance 1992

functions of the Department in relation to adoption which may not be reflected by the current Laws.

9.5 The Department largely follows current good practice in England and Wales as to its functions in making arrangements for adoption. For example:

- it maintains an Adoption Panel with an independent chair and specialist advisors;
- it provides information, advice and support to prospective adopters and adoptive families;
- it undertakes assessment of children and prospective adopters;
- it provides advice and support to birth families; and
- it maintains information relating to adopted children and their birth families.

9.6 **The Department recommends that the new Law sets a duty on an adoption agency to provide the minimum functions shown in 9.5 and provides that the States may specify more detailed arrangements in secondary legislation.**

9.7 **It is further recommended that the Department should have the power by Regulation to approve other agencies to carry out any of the functions of an Adoption Agency.**

10. Adoption Support Services

10.1 Adoption is a major event. The impact of adoption on the child, adopters and birth family does not end on the making of the adoption order. The people whose lives have been affected by adoption may need advice, help and support at various times in their lives.

10.2 Adopting a child can be rewarding and sometimes challenging. Many adoptive families find that at some point their family could benefit from outside advice and support, from people who understand that adopted children and their parents have particular issues to cope with during childhood and beyond. The provision of effective and properly targeted help and support can help to make adoptive placements more successful and reduce the rate of placement disruption and breakdown.

10.3 Birth families that are affected by adoption benefit from access to professional advice and support through the adoption process and often find it helpful to talk to someone about their experiences of losing a child to adoption. If there are contact arrangements with their adopted child, they may need help and support to maintain this contact in the child's best interests.

10.4 In 1997, powers were introduced for the Department to pay adoption allowances[16] although the accompanying regulations were not issued until 1999 and payment of such allowances is discretionary.

10.5 It remains the case that there is currently no requirement in Guernsey and Alderney to provide post-adoption support services. This used to also be the case in England and Wales on the basis that the child became the child of the adopters and the placing local authority had no further responsibility for that child. The child's needs were expected to be met by universal services and financial support was restricted. Any allowance payable had to be agreed at the time of matching, to meet identified special needs or to secure a placement that would not otherwise be possible.

10.6 However, increased understanding of the multiple and specialised difficulties experienced by many children adopted from care has led to the development of specialised adoption support services in England and Wales with certain duties placed upon local authorities, for example:

- requiring a local authority to maintain an adoption support service;
- requiring adoption support services to be provided to those prescribed by regulations (children adopted from care);
- permitting adoption support services to be provided to others;
- giving the right to prescribed adopted children and adoptive parents to request an assessment for adoption support services at any time;
- providing for regulations clarifying responsibility for adoption support when a family moves out of the area.

10.7 There is greater awareness of the need for adoption support services. Although adoption support services are provided by the Department there is no duty to do so and the detail of those services (other than the payment of adoption allowances) is not set out in law.

10.8 Services can include running preparation programmes for prospective adopters, advice and support, financial support (by way of an adoption allowance or one off payment for specific purposes) and access to therapeutic services. Post adoption support can include advice on how to help the child come to terms with his history and background, assistance with managing contact with birth families and support if the placement runs into difficulties or breaks down.

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[16] The Adoption (Amendment)(Guernsey) Law, 1997 and accompanying Adoption Allowance Regulations, 1999.

10.9 The provision of effective and wide ranging adoption support services can:

- help to improve outcomes for adopted children;
- reduce the rate of disruption and placement breakdown;
- improve the adoption experience for adoptive carers;
- act as an incentive to persons coming forward to adopt and thereby increasing the pool of potential adopters;
- reduce the long term costs to the States arising from poorly supported placements.

10.10 Stakeholders taking part in the consultation process agreed unanimously that it is essential to make it a right to access an assessment of support needs and to provide support services to birth families, adoptive families and the adopted children. The nature and extent of such support will require further consultation at the point that the secondary legislation is being drafted.

10.11 **The Department recommends that the new Law creates a duty to provide a minimum of adoption support services as set out in paragraph 10.6, with more detailed arrangements to be prescribed by secondary legislation.**

11. Disclosure of Information about an Adoption

11.1 Originally the expectation of an adoption was that the child would become the child of his adopters and would never find out his birth identity. The birth parents relinquished their child and expected never to hear anything more about him.

11.2 Over time these expectations have changed and a number of changes were made to our adoption Laws in 2001[17]:

- enabling an adopted person to obtain their birth certificate, subject to counselling. The birth certificate enables an adopted person to trace birth family; and
- the establishment of an adoption contact register, which enables birth relatives and adopted persons to be put in touch with each other, should both apply to put their names on the Register.

11.3 However, restrictions remain in relation to adopted persons accessing more detailed information relating to their adoption. The importance for an adopted

[17] S.20A- 20F Adoption (Guernsey) Adoption Law, 1960 as amended by the Adoption (Amendment)(Guernsey) Law, 2000

person's sense of self-identity of understanding their background, their genetic roots and the reasons behind their adoption are being increasingly recognised. Even those who do not want to have any contact with their birth family may benefit from being able to access family medical history.

11.4 In England and Wales, regulations allow an adoption agency to share information with an adopted person about the circumstances of their adoption and their 2002 law extended the right to apply for information about an adoption to birth family and to descendants of adopted people.

11.5 For people adopted before the commencement of the revised English and Welsh legislation, any information has to be shared through an intermediary agency, and the adopted person has the right to veto any information being passed to birth family, but post-commencement adoption information may be sought by any person. The decision to release any information about the adopted person must consider the adopted person's welfare and the wishes of any person named in the records sought. The only person with a right to information is the adopted person.

11.6 In England and Wales, these disclosure rights are subject to an independent review mechanism to review a decision concerning the release of adoption information. If such extended rights were introduced locally, any review might be through existing mechanisms such as the complaints and appeals procedures.

11.7 Stakeholders consulted unanimously supported the right of the adopted person to access their records and disclosure under appropriate circumstances to others.

11.8 **The Department recommends that the new Law provides that the only person with a right to information is the adopted person. However, provision should be made for any person to apply for access to adoption information, provided that the decision to release the information must consider the adopted person's welfare and the wishes of any person named in the records sought.**

12. Special Guardianship

12.1 For those children for whom it is not possible to be brought up by one or both of their birth parents there are a range of long-term care options which can give children security, stability, and love, through their childhood and beyond. Although adoption has many positive attributes, it is not always the most suitable legal framework for some children/carers.

12.2 The Department is of the view that there is a gap in the available legal orders that can be made for those children who need a greater degree of permanence than can be provided by voluntary arrangements or a residence order but for whom adoption may not be ideal.

12.3 Consideration has been given to introducing an order similar to the Special Guardianship order[18] available in England and Wales. This is an order that provides for permanence for a child by:

- giving their carers overriding parental responsibility for the child without removing parental responsibility from their birth parents; and

- restricting others applying for residence of the child without prior permission of the court.

12.4 The order was introduced as a way of taking children out of the care system and giving them a secure family without adoption. It may be a suitable option for carers of older children who did not wish to be or could not be adopted and for children and carers in cultures that do not accept adoption.

12.5 Any person, other than the child's parent, may be a special guardian. To some extent the requirements for the making of a special guardianship order echo those for the making of adoption orders, for example:

- an applicant for a special guardianship order must give notice to children's services which must then prepare a report for court;
- a prospective special guardian must undergo an assessment, very similar in nature to an assessment of prospective adopters;
- support services are provided to those caring for children under a special guardianship order.

12.6 In England and Wales, the court has the power to make a special guardianship order of its own motion in any family proceedings in which the welfare of the child is being considered. This has meant that it is possible for a special guardianship order, intended to be permanent, to be made before the child has lived with the carer at all.

12.7 Respondents to the stakeholder consultation, by a strong majority, considered that an Order that gives overriding parental responsibility to carers without totally severing the child's legal relationship with birth parents, is one that would meet the needs of some children locally. Views were mixed as to whether such an Order should be available to the court without a formal application by the carer. It was also considered that there should be a requirement for the child to have lived with the carer before an Order can be made, in line with the time restriction for adoption.

12.8 It was felt that the children and their carers in a Special Guardianship should be entitled to support services, especially considering that the children for whom such an Order may be appropriate are likely to have complex needs.

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[18] Introduced into the Children Act 1989 by the Adoption and Children Act 2002 (England and Wales).

12.9 Following the views of consultees, the Department considers that it would be inappropriate to make different provision for related and non-related carers.

12.10 **The Department recommends the inclusion in the new Law of a Special Guardianship Order that, if granted by the court, would give the carer(s) overriding parental responsibility without entirely severing the child's legal relationship with birth parents.**

13. Adoptions with an International Element

13.1 Since the adoption Laws were drafted in the 1960's, Guernsey and Alderney have developed an increasingly international and mobile population. It is also the case, that with fewer relinquished babies becoming available for adoption, some prospective adopters have looked to other jurisdictions from which to adopt.

13.2 The law relating to international adoptions is complex and an international element can arise in a number of different circumstances. These might include:

- a foreign child has been 'adopted' abroad and brought into the Islands by his adopters;
- a foreign child, who has not already been adopted, is brought into the Islands in order to be adopted here;
- a Guernsey or Alderney child is to be sent out of the jurisdiction to be adopted elsewhere.

13.3 These circumstances might raise issues such as immigration (entry clearance) for 'adopted' children coming into the Islands, the recognition of orders as between jurisdictions and the entitlement to support services of children and families coming into the Islands.

13.4 In cases of intercountry adoption, the Department currently works closely with the Intercountry Adoption Casework Team of the Department of Education in England, and PACT Adoption Services (a charity that provides services in relation to international adoption). Although current practice largely mirrors that in England and Wales, local legislation has been adopted in a piecemeal fashion and needs updating to provide an appropriate legal framework for adoptions with an international element.

13.5 The 1993 Hague Convention on Protection of Children and Co-operation with respect to International Adoption ("the Hague Convention") is an important international agreement on adoption. The Convention is essentially a framework setting out minimum standards for the movement of children between states for adoption. Although the Convention has full effect in the United Kingdom it has not yet been extended to the Bailiwick.

13.6 The Department is of the view that the Hague Convention should be so extended, however, this will require our domestic adoption Laws to apply the basic principles of the Hague Convention. It is intended that the revised Adoption Law will meet this requirement.

13.7 Amongst other matters, Guernsey and Alderney will need to provide a Central Authority to administer the requirements of the Hague Convention or utilise the Central Authority in the United Kingdom. The Central Authority will need to certify potential adopters as suitable for inter-country adoption in cases where a child is being brought into the country for the purpose of adoption and to maintain a list of children suitable for inter-country adoption.

13.8 **The Department recommends that the new Adoption Law (and associated Regulations) should make suitable provision for adoptions with an international element including provisions that will enable compliance with the Hague Convention on Intercountry Adoption and implementation of similar safeguards for adoptions from non-Hague countries.**

14. Alderney and Sark

14.1 The States of Alderney will be considering the proposals in due course in order that they may determine whether they wish the provisions of the new Law to be applied to Alderney.

14.2 Although the focus of this review is on adoption Laws in Guernsey and Alderney, it might assist in informing the development of adoption laws in Sark in due course. The Sark Chief of Pleas is currently reviewing laws relating to children in Sark and has been consulted as part of this review.

15. Legislative and Financial Implications

15.1 The Law Officers of the Crown have been consulted in connection with the proposals set out in this Policy Letter. They have confirmed that in order to implement the proposals, it will be necessary for the States to enact a new Adoption Law to replace the existing Laws governing adoption, including the Adoption (Guernsey) Law, 1960.

15.2 In relation to the drafting of the necessary Projet de Loi, the Law Officers have indicated that the Law is likely to be lengthy and in places complex. They acknowledge the suggestion of the Department that the provisions of the Adoption and Children Act 2002 that relate to adoption should form a precedent upon which to base a new Law, subject to suitable variations as indicated in this Policy Letter and as may otherwise be required to ensure that the legislation is suitable for the circumstances of both Guernsey and Alderney.

15.3 In terms of drafting time, it is thought that it might take a calendar month to produce something that would be suitable as a first draft of a Law. The Law

Officers have noted that preparation of suitable subsidiary legislation under the Law might take longer to draft. However this is an issue that will need to be explored further with the Department and the Committee *for* Health & Social Care at a later stage.

15.4 The proposals set out in this Policy Letter are not anticipated to have any additional cost implications at the point that any new Law is approved by the States, but the anticipated secondary legislation that would follow in order to give practical effect to the Law, particularly in respect of adoption support services that would be provided, would have cost implications. It would be for the new Committee *for* Health & Social Care to develop its proposals for what the secondary legislation should include and to allocate resources accordingly at that time.

16. Conclusion

16.1 Adoption is an important issue that impacts on all those involved. The current Law is no longer fit for purpose in the 21st Century, as our way of life has changed a great deal since its introduction. Its provisions unnecessarily restrict the pool of potential adopters and do not best support finding permanence as soon as possible for children who have had poor early experiences in life.

16.2 This Policy Letter sets out proposals for the replacement of the Law with a new primary law that will be consistent with modern and international standards of practice.

17. Recommendations

17.1 The States are recommended:

(i) To agree that The Adoption (Guernsey) Law, 1960 and all relevant legislation relating to adoption be replaced with new legislation that in the case of primary legislation is based, insofar as reasonably practicable, on the provisions of the Adoption and Children Act 2002 and:

a. requires the paramount consideration of public authorities to be the child's welfare, throughout his or her life (as set out in paragraphs 5.1-5.6);

b. requires public authorities to have regard to a child welfare checklist, consistent with that in the Children (Guernsey and Alderney) Law, 2008, to ensure that decision making has regard to appropriate aspects of a child's welfare, in particular avoiding delay in finding permanence (as set out in paragraphs 5.7 - 5.13);

c. requires people to be at least 21 years of age to adopt a child (paragraphs 6.12 - 6.16);

d. requires adopters to have been habitually resident for at least one year **or** at least one adopter to be domiciled in Guernsey or Alderney (as set out in paragraphs 6.17 - 6.24);

e. requires the child to have lived with the prospective adopter(s) for at least three months prior to the granting of an Adoption Order, or other such time period(s) as the States may prescribe by Ordinance (as set out in paragraphs 7.2 - 7.11);

f. provides that a Placement Order must be granted by the court, dispensing with any further opportunity for birth family to contest the adoption save for an exceptional and significant change in circumstances, ahead of the child being placed with prospective adopters (as set out in paragraphs 7.12 - 7.22);

g. provides that consent of the parents to the adoption of their child to be dispensed with if the welfare of the child requires it (as set out in paragraphs 7.23 - 7.29).

h. requires the Department to:
   - Investigate a child's circumstances when notice of intention to adopt is given;
   - In 'non-notice cases', to monitor the child's welfare under private fostering provisions as a child living with somebody who is neither a relative nor has parental responsibility for him;

   (removing the status of 'protected child' in the current adoption Law) (as set out in Section 8);

i. requires the Department to provide the following functions:
   - It maintains an Adoption Panel with an independent chair and specialist advisors;
   - It provides information, advice and support to prospective adopters and adoptive families;
   - It undertakes assessment of children and prospective adopters;
   - It provides advice and support to birth families;
   - It maintains information relating to adopted children and their birth families; and
   - Any other functions as may be prescribed in secondary legislation.

   (as set out in paragraphs 9.3 - 9.6);

j. enables the Department to authorise other agencies, besides the Department itself, to provide any of the functions of an adoption agency (as set out in Section 9);

k. requires the provision of an adoption support service to be provided to those prescribed by regulations (as set out in Section 10);

l. grants the right to prescribed adopted children and adoptive parents to request an assessment for adoption support services at any time (as set out in Section 10);

m. requires the Department to consider requests for access to information from any person with the paramount consideration being the adopted person's welfare and the wishes of any person named in the records sought. The only person with a right to information being the adopted person (as set out in Section 11).

n. provides for the court to grant a Special Guardianship Order that gives the carer(s) overriding parental responsibility without entirely severing the child's legal relationship with birth parents (as set out in Section 12);

o. makes suitable provision for adoptions with an international element, to comply with the Hague Convention of Inter-Country Adoption, with similar safeguards applied to adoptions from non-Hague countries (as set out in Section 13).

(ii) To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

Yours faithfully

P A Luxon
Minister

H J R Soulsby, Deputy Minister
M P J Hadley
M K Le Clerc
S A James MBE
R H Allsopp OBE (Non-States Member)
A Christou (Non-States Member)

Appendix 1: **Article 5, Billet XI June 2015, p. 1170**
Policy Council *Review of Adoption Law*

POLICY COUNCIL

REVIEW OF ADOPTION LAW

1. Executive Summary

1.1 There are a number of deficiencies in the current adoption legislation; namely, the Adoption (Guernsey) Law, 1960, (hereafter 'the Law') which has needed to be updated for a number of years.

1.2 The Health and Social Services Department is planning to carry out a full review of the Law but, in the meantime, there is one change that could be made to the Law that would tie in with the work of the Policy Council's Social Policy Group.

1.3 The issue in question regards the inequality of unmarried and same sex couples in adoption legislation and processes and this Report recommends a change to the Law to address this issue. It also briefly touches on the scope of a full review of adoption legislation and services.

1.4 Further deficiencies in the legislation, to be included in a later full review of the Law by the Health and Social Services Department, are outlined in the Appendix to this report, and include the age requirements and gender restrictions for prospective adoptive carers; illegitimacy records on birth certificates; domicile requirements for prospective adopters; support services for adoptive families and birth parents; rights to access birth records; and the implementation of a new court order to authorise the States to place a child for adoption.

2. Background

2.1 Adoption is a way of providing a new family for children who cannot be brought up by their own parents. Adoption continues to provide an important service for children, offering a positive and beneficial outcome. Generally, adopted children make very good progress through their childhood and into adulthood compared with children that have remained in the care system.

2.2 There are a range of long-term care options which can give children security, stability, and love, through their childhood and beyond, but in many cases adoption is the best option, and gives vulnerable children, including many with complex needs and a history of ill treatment, a home with a permanent family.

2.3 Adoption was legalised in Guernsey on 22nd March 1939; however, there was no law in place until the Adoption (Guernsey) Law, 1960, was enacted. The Law applies to Guernsey, Herm and Jethou, while most of its provisions have been

applied in Alderney, through the Alderney (Application of Legislation) (Adoption) Ordinance, 1974, and the Adoption (Alderney) Rules, 1974.

2.4 Although the Law has facilitated many successful adoptions over the years, it is becoming increasingly evident that it is no longer fit for purpose in the 21st Century, as our way of life has changed a great deal since the introduction of the Law in 1960. It is now necessary to consider how to amend the Law in order better to reflect society's needs.

3. Introduction

3.1 An initial review of the Adoption Law took place in 2006 which sought to address some issues regarding practices, pending substantive reform of the current Law. This reform is still outstanding.

3.2 While it is normal practice for the Department responsible for the legislation involved, which in this case is Health and Social Services, to submit proposals for change to the States of Deliberation, there are occasions where it is appropriate for another Department to bring forward policy and legislative proposals. In this instance, this Report has been prepared by the Policy Council, as a consequence of the Social Policy Group's involvement in the Children and Young People's Plan. The Health and Social Services Department supports this approach.

3.3 Furthermore, under proposals for maternity leave and adoption leave (Billet d'État IV, February 2012, Volume 1), the Policy Council will shortly be seeking to amend the Employment Protection Law and the Sex Discrimination Ordinance to improve equality for same sex and unmarried couples. Therefore, it seems logical to address this issue in the Adoption Law.

4. Unmarried and same sex couples

4.1 Under the 1960 legislation, unmarried and same sex couples are unable to adopt jointly. Couples are currently able to be assessed and approved as permanent carers for a child, but only one of the couple will be able formally to adopt the child.

4.2 The introduction of the Children (Guernsey and Alderney) Law, 2008, provided the other carer with the option to obtain parental responsibility for the adopted child through an application to the Court for a Parental Responsibility Order. Although this allows both carers to have parental responsibility, this does not put them on an equal footing, as one carer will, by Law, be given a lesser status in relation to the adopted child. The Adoption Law currently means that only one of them will be treated as the parent, while the other carer does not appear on the child's new birth certificate, and can be at risk of losing the parental responsibility granted.

4.3 This restriction on unmarried and same sex couples does not fit with modern society, where a significant number of couples in settled and enduring relationships are not married, or recognised as married by the Adoption Law. This therefore

potentially reduces the likelihood that some couples would apply to become adoptive carers for children in the Bailiwick, which is not in the best interests of those children.

4.4 In England and Wales, a child can legally be adopted by an unmarried couple of any gender. Couples who are not married, or in a civil partnership, must be considered to be in an 'enduring family relationship' in order to adopt jointly. Under Jersey legislation, cohabiting couples may not adopt jointly, while a single person, married couple, or civil partners, including same sex couples, may adopt a child with equal parental rights.

4.5 Unmarried and same sex couples who are domiciled and/or habitually resident in Guernsey can adopt a child through the courts in England and Wales, which will be recognised in Guernsey. That option is, however, subject to a number of practical and legal obstacles and is therefore not popular with potential adoptive couples.

4.6 The States are recommended to direct that the Adoption (Guernsey) Law, 1960, be amended to provide that a child may be adopted jointly by a couple who are:

- married (as currently); or
- in a civil partnership; or
- in another legally recognised relationship between two people; or
- two people (whether of different sexes or the same sex) living as partners in an enduring family relationship;

with each adoptive carer having equal rights and parental responsibility. As currently, a single person would still be able to adopt.

4.7 This would not change the stringent requirements which currently apply for prospective adopters to undertake a preparation to adopt course, and to undergo a rigorous assessment process. A social worker is allocated to each prospective adopter to ensure that the needs of adopted children can be met, and that prospective adopters are fully prepared and able to meet those needs. Interviews are undertaken at home and sometimes in the adoption team's offices and a home study report is completed. The Independently Chaired Adoption and Permanency Panel make recommendations to the Agency Decision Maker (the Chief Officer within the Health and Social Services Department) on the approval of prospective adopters and the matching of individual children with prospective adopters.

5. Review of the Adoption (Guernsey) Law, 1960

5.1 In order to address the deficiencies (see Appendix) with the current legislation and bring it up to date, it will be necessary to undertake a full review of adoption in

Guernsey. The Health and Social Services Department has agreed to undertake this work in consultation with relevant stakeholders.

5.2 *Timeframe for review*

5.2.1 Work on the development of a new Adoption Law is likely to be resource intensive and require expert advice. Consideration will also need to be made throughout the review process of how the developments will fit with the Children (Guernsey and Alderney) Law, 2008, (hereafter the 'Children Law'). Consultation will also need to be undertaken on the review with people in Guernsey and Alderney, some businesses and the third sector, as well as other States Departments.

5.2.2 The Health and Social Services Department has advised that this work is of high priority, as it is important to overcome the deficiencies within the current legislation as soon as possible. It is understood that the Health and Social Services Department would hope to bring forward a States Report on wider reform of the Adoption Law for consideration within this term.

5.3 *Scope of the review*

5.3.1 Owing to the links with other legislation and policy requirements, further research into the practices of other jurisdictions, as well as stakeholder consultation, and research into the requirements of adoption legislation in Guernsey and Alderney, will need to take place to design a new fit for purpose strategy.

5.3.2 The key issues that the Department will address in its review of the Law are set out in the Appendix to this report.

6. Consultations

6.1 The States of Alderney, the Legal Aid Service and Liberate (a Guernsey charity representing the interests of the Lesbian, Gay, Bisexual, Transgender and Questioning community) have all been consulted on the contents of this Report.

7. Resource Implications

7.1 It is not anticipated that there will be any resource implications arising from this Report.

8. Consultations with the Law Officers

8.1 The Law Officers have been consulted in the preparation of this Report.

9. Principles of Good Governance

9.1 The Principles of Good Governance have been followed in the preparation of this Report.

10. Conclusion

10.1 There are a number of fundamental issues that need to be addressed through a review of current adoption legislation and services, in order to modernise the legislation and make it fit for the islands' children in the 21st Century. These issues are outlined in the Appendix to this Report, and are to be investigated by the Health and Social Services Department as a matter of priority.

10.2 However, the Policy Council is now seeking the States' agreement for a legislative change to enable unmarried and same sex couples to be formally considered as adoptive parents, as a first step in the review of the Law that will also ensure consistency with forthcoming amendments to legislation relating to maternity and adoption leave.

11. Recommendations

a. The Policy Council recommends the States to direct that the Adoption (Guernsey) Law, 1960, be amended, so that in addition to single people and married couples, it provides that a child may be adopted jointly by a couple who are:

- in a civil partnership; or
- in another legally recognised relationship between two people; or
- two people (whether of different sexes or the same sex) living as partners in an enduring family relationship

with each adoptive carer having equal rights and parental responsibility.

J P Le Tocq
Chief Minister

27th April 2015

A H Langlois
Deputy Chief Minister

G A St Pier	P L Gillson	R W Sillars
Y Burford	K A Stewart	P A Luxon
D B Jones	M G O'Hara	S J Ogier

(Appendix 1 Continued - Article 5, Billet XI June 2015, p. 1170 Policy Council Review of Adoption Law)

Appendix - Deficiencies with the current Adoption (Guernsey) Law, 1960

The existing Adoption Law is more than fifty years old and is no longer compatible with modern day adoption practice or the evolution of the family unit over the past five decades. As a result, there are a number of deficiencies with the current system, which are outlined in this Appendix.

Age requirement

Within current legislation there is a minimum age requirement of 25 years for non-relative adoption, and 20 years for relatives of the child. While the minimum age remains at 25 years in Jersey, it is 21 years in England and Wales. None of these jurisdictions has an upper age limit, although potential adoptive carers must demonstrate that they would be likely to have the ability to raise a child to adulthood; and adoption agencies will not usually place a child with adopters where the age gap between the child and the adopters is more than 45 years unless the child has special needs.

The exception to the age limit is when a prospective adopter is the spouse of the birth parent. They must be 21 years of age to adopt their spouse's child, and the birth parent must have reached 18 years of age.

Gender restrictions

There is currently a restriction on a sole male applicant adopting a female child, except in 'special circumstances' that justify the making of an adoption order as an 'exceptional measure'. While this restriction also applies in Jersey under the Adoption (Jersey) Law, 1961, the UK does not impose any restrictions on the adoption of male or female children by applicants of any gender.

Domicile requirements

The Law currently limits applications to persons domiciled in the Island. The requirement of local domicile potentially excludes many suitable carers who reside in Guernsey but retain a domicile of origin in another jurisdiction, thereby reducing the pool of potential adoptive carers. . In England and Wales, the requirement is of domicile or habitual resident for a period of not less than one year in a part of the British Isles, which provides for a much wider pool of potential applicants.

Support services

It is generally acknowledged that the trauma children can suffer in very early childhood can impact on them throughout their lives, and can result in adopted children, as well as many other looked after children, having significant needs that are beyond what is expected for the wider population of children. Throughout the UK it is now common

practice that post-adoption support is available for families to access; however, there is currently no such requirement within Guernsey legislation.

It is considered that this is a potential barrier to those considering adopting a child, who will understandably be apprehensive about the process, and anxious to make a success of the adoption for the sake of all parties involved. A good post-adoption support service would be advantageous for adoptive parents, adoptive children, and birth parents.

Placement Orders

Many children placed for adoption have been subject to previous court proceedings, typically an application for a Community Parenting Order (CPO). In Jersey, they have a 'freeing order' which removes parental responsibility in advance of the adoption proceedings. In England and Wales, the court can make a Placement Order at the same time as it makes a Care Order, which is broadly equivalent to the CPO. This is an order that effectively authorises a local authority to place a child for adoption with any prospective adopters who may be chosen by the authority and deals with parental consent to adoption at an early stage, avoiding the need for that issue to be re-litigated within the subsequent adoption proceedings.

The current Guernsey legislation does not have provision for either Freeing Orders or Placement Orders, and the introduction of Placement Orders would speed up the adoption process.

International Conventions and Inter-Country Adoptions

In October 2005, the States of Deliberation resolved that the Policy Council should request Her Majesty's Government to seek the extension, in respect of Guernsey, of the Government's ratification of the provisions of a number of international conventions relating to children. This included the Hague Convention on Protection of Children and Co-operation in respect of Inter-Country Adoption (1993). Subsequently, the Ministry of Justice has invited Guernsey to consider extension of the European Convention on the Adoption of Children (Revised). To date, the view has been taken that reform of the domestic law on adoption is required before seeking extension of these Conventions. Reform of the Adoption Law is key to extending these conventions and bringing Guernsey into line with its neighbouring jurisdictions.

There is limited legislation in place to recognise automatically adoptions made in certain other jurisdictions. However, at present, there is currently no overarching legal framework dealing with inter-country adoption to ensure that inter-country adoption takes place in the best interests of the child and puts in place a system of co-operation between member states.

(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:-

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

1. To direct that the Adoption (Guernsey) Law, 1960, be amended, so that in addition to single people and married couples, it provides that a child may be adopted jointly by a couple who are:

   a) in a civil partnership; or

   b) in another legally recognised relationship between two people; or

   c) two people (whether of different sexes or the same sex) living as partners in an enduring family relationship

   with each adoptive carer having equal rights and parental responsibility.

2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

(N.B. The Treasury and Resources Department notes that there are no immediate resource implications relating to the recommendations aside from a potential saving in legal related services.

The Treasury and Resources Department also notes that there are potentially significant resource implications that will result from any secondary legislation subsequently proposed in order to give effect to the Law. It should be clearly understood that, in approving these recommendations, there is no commitment being made to make resources available for implementing secondary legislation.

It is essential that any resource implications that will arise in the future are fully assessed and funded through a reallocation of existing resources (i.e. by reducing some current services which are considered to be of lower priority).

It is also expected that any reallocation of existing resources is made in an informed manner that is consistent with the outcomes and actions of the recent BDO Benchmarking Report.)

(N.B. The Policy Council welcomes these proposals to modernise the outdated adoption legislation for Guernsey and Alderney. They are particularly timely given the Scrutiny Committee's recent review of the implementation of the Children Law and the presentation to the States of a new Children and Young People's Plan. They will also contribute to the Island signing up to the United Nations Convention on the Rights of the Child.

The Policy Council, therefore, supports these proposals and is satisfied that they comply with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

V.- Whether, after consideration of the Policy Letter dated 16th December 2015, of the Health and Social Services Department, they are of the opinion:

1. To agree that The Adoption (Guernsey) Law, 1960 and all relevant legislation relating to adoption be repealed.

2. To agree that new primary legislation relating to adoption be enacted based, insofar as reasonably practicable, on the provisions of the Adoption and Children Act 2002 including, for the avoidance of doubt, provisions to implement or enable the implementation of the following specific matters and principles:

    a. that the paramount consideration of public authorities shall be the child's welfare, throughout his or her life (as set out in paragraphs 5.1-5.6);

b. that public authorities shall have regard to a child welfare checklist, consistent with that in The Children (Guernsey and Alderney) Law, 2008, to ensure that decision making has regard to appropriate aspects of a child's welfare, in particular avoiding delay in finding permanence (as set out in paragraphs 5.7 - 5.13);

c. that adopters must be at least 21 years of age to adopt a child (paragraphs 6.12 - 6.16 refer);

d. that, adopters must have been habitually resident for at least one year **or** at least one adopter must be domiciled in Guernsey or Alderney (as set out in paragraphs 6.17 - 6.24);

e. that in order to qualify for adoption, a child must have lived with the prospective adopter(s) for at least three months prior to the granting of an Adoption Order, or other such time period(s) as the States may prescribe by Ordinance (as set out in paragraphs 7.2 - 7.11);

f. that the court should have power to make Placement Orders which, once made, restrict any further opportunity for birth family to contest an adoption save for an exceptional and significant change in circumstances, ahead of the child being placed with prospective adopters (as set out in paragraphs 7.12 - 7.22);

g. that consent of the parents to the adoption of their child may be dispensed with if the welfare of the child requires it (as set out in paragraphs 7.23 - 7.29);

h. that the Health and Social Services Department (and its successor Committee) shall be required to:
   - investigate a child's circumstances when notice of intention to adopt is given; and
   - in 'non-notice cases', monitor the child's welfare under private fostering provisions as a child living with somebody who is neither a relative nor has parental responsibility for him;

i. that the Health and Social Services Department (and its successor Committee) shall be required to discharge or provide the following functions and services:
   - maintain an Adoption Panel with an independent chair and specialist advisors;
   - provide information, advice and support to prospective adopters and adoptive families;
   - undertake assessment of children and prospective adopters;
   - provide advice and support to birth families;
   - maintain information relating to adopted children and their birth families; and

- Any other functions or services as may be prescribed in secondary legislation.
  (as set out in paragraphs 9.3 - 9.6);

j. that the Health and Social Services Department (and its successor Committee) is enabled to authorise other agencies, besides the Department itself, to provide any of the functions of an adoption agency (as set out in Section 9);

k. that the provision of an adoption support service be provided to those prescribed by regulations (as set out in Section 10);

l. that the right is granted to prescribed adopted children and adoptive parents to request an assessment for adoption support services at any time (as set out in Section 10);

m. that the Health and Social Services Department (and its successor Committee) is required to consider requests for access to information from any person with the paramount consideration being the adopted person's welfare and the wishes of any person named in the records sought. The only person with a right to information being the adopted person (as set out in Section 11);

n. that the court is empowered to grant a Special Guardianship Order that gives the carer(s) overriding parental responsibility without entirely severing the child's legal relationship with birth parents (as set out in Section 12 refers); and

o. that suitable provision is included for adoptions with an international element, to comply with the Hague Convention of Inter-Country Adoption, with similar safeguards applied to adoptions from non-Hague countries (as set out in Section 13 refers).

3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

CODE OF CONDUCT – SUBMISSION OF REPORTS TO THE STATES

The Presiding Officer,
The States of Deliberation,
The Royal Court House,
St. Peter Port

14th January 2016

Dear Sir,

EXECUTIVE SUMMARY

This Policy Letter proposes a minor change to the Code of Conduct for Members of the States of Deliberation (the Code of Conduct) to ensure consistency with a previous change, namely to clarify beyond doubt whose recommendations are to be submitted to the States in respect of a report on a complaint against a Member of the States.

REPORT

1. In March 2015 (Article 7 of Billet d'État VI of 2015) the States agreed to a recommendation from the Committee that section 33 of the Code of Conduct should be amended to clarify whose recommendations are to be submitted to the States in respect of a complaint. On the infrequent occasions when the Committee has been obliged to lay before the States a report from a Code of Conduct Panel on the conduct of a States' Member, there had been some debate as to whether the Committee could put its own recommendations to the States or whether it simply acted as a conduit to lay the Panel's recommendations before the States. The Committee believed that the previous version of section 33 of the Code of Conduct implied that the expectation on the Committee was to lay the Panel's recommendations before the States. Nevertheless it proposed an alteration to section 33 to put that beyond doubt and that was agreed.

2. It has noticed since then that the same previous version of the words appears in section 34 which deals with the process for the submission of Code of Conduct panel reports to the States when the Member who is the subject of the complaint is the Chairman or a member of the States' Assembly & Constitution Committee. This policy letter therefore proposes that section 34 be amended in identical fashion to the changes made last year to section 33 and for the same reasons.

CONSULTATION / RESOURCES / NEED FOR LEGISLATION

3. The Law Officers have not identified any reason in law why the proposals set out in this policy letter cannot be implemented.

4. The approval of the recommendations would have no financial or other resource implications for the States.

RECOMMENDATIONS

5. The States' Assembly & Constitution Committee recommends the States to resolve:

   That the Code of Conduct for Members of the States of Deliberation shall be amended with immediate effect as follows:

   In section 34 delete all the words after the second occurrence of the word "Committee" and replace them with "who, in turn, shall submit that report to the Presiding Officer for inclusion in a Billet d'État with the recommendations of the Panel".

Yours faithfully,

Deputy M J Fallaize
Chairman

The other Members of the States' Assembly & Constitution Committee are:
Deputy R Conder (Vice-Chairman)
Deputy E G Bebb
Deputy A H Adam
Deputy P A Harwood

The States are asked to decide:-

VI.- Whether, after consideration of the Policy Letter dated 14th January, 2016, of the States' Assembly and Constitution Committee, they are of the opinion, to amend Section 34 of the Code of Conduct for Members of the States of Deliberation to delete all the words after the second occurrence of the word "Committee" and replace them with "who, in turn, shall submit that report to the Presiding Officer for inclusion in a Billet d'État with the recommendations of the Panel".

SCRUTINY COMMITTEE

LEGACY REPORT FOR THE TERM OF OFFICE MAY 2012 TO APRIL 2016

The Presiding Officer
The States of Guernsey
Royal Court House
St. Peter Port

8th January 2016

Dear Sir

Executive Summary

1. The Legacy Report of the Scrutiny Committee is appended to this Policy Letter.

2. This Policy Letter outlines the work undertaken by the Scrutiny Committee during this term[1].

Resources

3. There are no financial or staff resource implications associated with this Policy Letter.

Recommendation

4. The Scrutiny Committee recommends the States:

(i) To note the Legacy Report of the Scrutiny Committee.

Yours faithfully

Deputy R.A. Jones
Chair

Scrutiny Committee:
Deputy P. Le Pelley (Vice-Chair)
Deputy G. Collins
Deputy C. Green
Deputy Lester Queripel
Deputy A. Wilkie
Deputy P.A. Sherbourne
Deputy B. Paint
Deputy Laurie Queripel

[1] Due to their size the reports produced by the Scrutiny Committee have been summarised in Appendix II with links to the full texts. Copies of all reports have been provided in the States Members' Room at Sir Charles Frossard House.

SCRUTINY COMMITTEE
THE STATES OF GUERNSEY

Scrutiny Committee

Legacy Report

2012 - 2016

Table of Contents

1. Executive Summary

1.1. This Legacy Report outlines the Scrutiny Committee's (the Committee) work undertaken in this political term and highlights the areas where we believe progress has been made.

1.2. It affords the Committee an opportunity to comment on the effectiveness of the scrutiny function during this Parliament. It sets out areas that may be of interest to our successor committee; the Scrutiny Management Committee (SMC) and has provided the Committee the opportunity to consider actions taken by government departments and committees in respect of the issues and recommendations outlined in the Committee's reports.

1.3. This Legacy Report allows an opportunity for the Committee to present the reports it has produced during this political term to the States Assembly.

2. Chairman's Commentary

2.1. When I reflect on our achievements since May 2012 I have the following thoughts. The Committee and Panels have all been working diligently to review matters which hold Ministers, government departments and agencies to account. These reviews have looked at policies including *the security of strategic air links*, *a review of the implementation of the Children Law*, *a review of Guernsey's security of electricity supply* and an *urgent investigation into the "AFR" affair*. The Committee believe that these reviews have had a direct influence on shaping future policy. The recommendations have largely been accepted by government departments which demonstrate effective, credible scrutiny. In addition the application by the Committee of "soft" power has led to significant action within government. On many occasions this has included letters, questions and face to face meetings which have allowed issues to be progressed.

2.2. The role of the Committee is to ensure all government departments and committees are meeting the policy objectives that have been outlined by the States and are delivering their services effectively, in conjunction with the collective parliamentary scrutiny process that is undertaken by individual members of the States Assembly.

2.3. I would like to thank all the Members who have served on the Committee during this term for their commitment and support and recognising the importance of working as a team.

2.4. The current level of resources and the absence of powers available to the Committee have limited the volume and scope of the work undertaken. With the benefit of hindsight it is clear that the general public and the media have unrealistic expectations on the level of activity that can be undertaken with the current level of resources. According to some commentators all the problems within government should be resolved by the Committee.

2.5. We believe the recommendations of the States Review Committee (SRC) to significantly strengthen the resources and powers available to the new Scrutiny Management Committee (SMC) will start to address the imbalance between expectations of the public, the media and of some Members of the States Assembly. Once implemented they will enhance the ability of the new Committee to deliver meaningful scrutiny.

2.6. Finally, the Committee wish to acknowledge the major part played by the late Paul Arditti, the former Scrutiny Committee Chairman, who championed political scrutiny across the Bailiwick and whose unique drive and commitment was central to the progress made throughout this political term.

3. Background

3.1. The Committee was formed in May 2004 and comprises nine States Members who are all elected to the Committee by the States of Deliberation. The function of the Committee is, through a process of political scrutiny, to subject government departments and committees to regular reviews to determine the effectiveness of government policies and services.

3.2. The Committee is mandated to scrutinise and challenge the policy development, policy implementation and service delivery of government departments or committees.

3.3. The mandate includes identifying areas of policy or service delivery that might be inadequately or inappropriately addressed; identifying new areas of policy or service delivery that may require implementation; determining how well a new policy or service or project has been implemented and promoting

changes in policies and services where evidence persuades the Committee that they require amendment.

3.4. It also includes holding reviews into such issues and matters of public importance that the Committee may determine from time to time and, liaising with the Public Accounts Committee (PAC) to ensure there is appropriate co-ordination of the entire scrutiny process.

3.5. The Committee has worked increasingly closely with the PAC during this term. The Chair of the Scrutiny Committee[1] is also a member of the PAC. The two Committees have a shared team of staff under the leadership of a joint Principal Officer.

3.6. Members of the Committees choose which subjects to investigate and inquiries may range from simple one-off evidence sessions or multiple evidence session inquiries running over several months. Oral and written evidence are gathered and a report produced often containing recommendations for the Government, and sometimes for other organisations, to consider. In many cases the work of the Committee that is visible to the public is literally the “tip of the iceberg”; many queries are addressed without the need for formal review.

3.7. One of the most important reflections on the work of the Committee during this term is that the limited resources allocated to the Committee, has undoubtedly limited the scope and impact of political scrutiny in Guernsey.

3.8. When the late Paul Arditti was elected as Scrutiny Chair in 2012 he and the then Committee began to raise its profile within the Government and move the method of operation towards the “Westminster” select committee model. This change in emphasis was based in part on the recommendations within the Crowe Report[2] which had examined the scrutiny functions within Guernsey Government.

3.9. The report's author, Belinda Crowe had said in her report: "The present system of scrutiny lacks a sense of pace and urgency" and she recommended the formation of an over-arching Scrutiny Management Committee. Ms Crowe, a former senior civil servant at the Ministry of Justice in the UK, said: "The barriers to effective scrutiny in Guernsey go wider than the functions

[1] The current Scrutiny Committee Chair is also chair of the Legislation Select Committee
[2] The Scrutiny Committees of the States of Guernsey – An independent Review – Belinda Crowe March 2012

and operation of the scrutiny committees themselves. The problems are endemic and require systemic change".

3.10. It is important to understand that this was the background against which the Committee was elected in 2012. From this initial position of perceived weakness significant progress has been made and with the additional resources and powers that will be provided to the new SMC resulting from the SRC proposals scrutiny will continue to flourish.

4. Lessons Learned

4.1. Although it is sometimes difficult to demonstrate definitively what direct impact the Committee has had, we believe that our work during this Parliament has had a major effect in a number of areas. Proving a causal link to the Committee's work is often difficult because understandably, once the Committee undertakes a review, an effected government department will often aim to address any weaknesses on a chosen topic before they are pointed out in a public manner.

4.2. We can say with confidence that we are not convinced that progress would have been made, at the pace it has, in the areas reviewed without the Committee. The ability of the Committee to influence the actions of government departments and other organisations during this period includes:

- the work on the Memorandum of Understanding for air services to and from Alderney
- the increased Guernsey Financial Services Commission consultation with industry
- the Parry report into the Health & Social Services Departments children's social care
- the publication of Aurigny Air Services Limited's (Aurigny) financial accounts
- the Freedom of Information developments following the 'AFR' review/hearing
- the role of the Channel Islands Competition and Regulatory Authority being updated
- the SMC mandate changes within SRC report
- the review of the Treasury &Resources' sub-committee roles regarding Aurigny & Guernsey Electricity Limited
- the policy review for the future of Aurigny

4.3. Throughout this Parliament we have sought to improve the way in which the Committee operates. The Westminster select committees have been subject to two major evaluations in recent years. Both studies point to subtle forms of influence that can be gained by scrutiny activity as opposed to a tally of recommendations accepted by government. The evaluations reveal the tension between the options of long-term enquiries, to establish the Committee as an authoritative commentator, and the alternative of public hearings held at short notice on 'events' which have received media attention. The two options are hard to combine and, in its most extreme form, the media-focussed approach can undermine the credibility of the Committee as an opinion-former. Another difference is between committees that seek to have an impact on formal decisions which government itself is due to take, as opposed to committees which have a broader objective of influencing government policy through creating a climate for change.

4.4. A committee's choice of objective will therefore have an impact on its ways of working. In some cases, committees would be better advised to spend more time cultivating their 'softer' sources of influence, such as expertise and relationships, and be less quick to resort to their formal status and powers. For those which seek the media spotlight, the opposite may apply. Whichever approach is taken, however, there is value in predictable scrutiny, even in 'pester power'; and, additionally, the impact of the enquiry process itself can often be as important as the Committee's formal outputs.

4.5. In this context therefore we have to ask the question, have this Committee's reports had an impact in raising issues that may otherwise have been neglected? This is where the public hearings, if they work well, highlight issues that may otherwise have been ignored. For example, in the security of strategic air links enquiry: the disproportionate impact of Aurigny's timetable changes on Alderney (travellers could not complete a day-return to Jersey): the difficulty of making bookings at certain times under the codeshare arrangement between Guernsey and Jersey; and, Treasury & Resources' lack of relevant technical advice independent of Aurigny, are examples which were not apparent when the Committee commenced its enquiries.

4.6. The Committee believe that significant developments have taken place in the areas of Financial Services Regulation, the security of Guernsey's electricity supply, the implementation of the Children Law and the security of strategic air links. Clearly, on occasions it is difficult to know whether some of these

developments would have taken place without the lens of scrutiny being applied. However, what we do know is that significant changes have occurred.

5. The Scrutiny Committee Mandate

5.1. The Committee made the case, in its submission to the States in response to the SRC's recommendations, for an extension of its mandate to include those agencies providing services which formerly would have been provided by the Government.

5.2. The States resolved in November 2015 as a result of successful amendment by Deputies Heidi Soulsby and Robert Jones to the SRC's Third Policy Letter that the powers of the SMC would be strengthened further by affording it the right to scrutinise, and to call witnesses and gather evidence from, a greater range of agencies which are in receipt of public funds, or which have been established by legislation, subject to the appropriate legislation being put in place.

5.3. The Committee supported this change to allow the inclusion of scrutiny of the wider 'agents' of government. One of the key concerns for the Committee is the potential for the scope of investigations to be limited by the existing Scrutiny Committee mandate. Since 2004 the methods of delivery of government programmes have diversified to encompass third sector organisations, private sector providers and a number of other agents of government, to supply services. In 2012, the Government provided grants and subsidies totalling over £30 million to such organisations in Guernsey.

5.4. However, while an extension of the Committee's mandate is welcome, it is not the only change that is required. Westminster select committees have the power to compel witnesses to attend hearings and to produce documents; armed with this power, arguments over a committee's mandate become less of an issue.

5.5. In Guernsey there has been is a tendency by some to reach for the Committee mandate in the hope of finding a technicality through which scrutiny can be avoided. This is a problem which can only be answered by change in culture. Parliamentary scrutiny must be seen as a legitimate part of Guernsey's democracy and a process which benefits all: good scrutiny means good government.

5.6. In the view of the Committee one notable omission from the SRC proposals, is the ability in certain contexts, to be able to review the internal legal advice provided to government departments, committees and the holders of Public Office. The Committee believe that the content and rationale of the advice provided to politicians and staff by the officials within St James's Chambers, should be subject, when appropriate, to review by Parliament. The mechanisms for accomplishing this task need to be thought through carefully to ensure the suitability of the new arrangements.

5.7. Guernsey is not Westminster, the States Assembly does not have exclusive cognisance[3], nor does it have legislative supremacy. Nevertheless, we should be able to go about our work on the understanding that not everything which involves court processes is "off-limits". To comment on the administration of justice is not to comment on Court decisions. Our mandate requires us to determine "how well a new policy or service or project had been implemented". That is our instruction from the States; if we choose to review the effectiveness of a law passed by the States and if Court processes are a factor in the implementation of that law then they must also be a legitimate area for our investigation and comment.

6. Member & Staff Personal Development

6.1. Since the current Committee was formed a number of personal development activities have been undertaken by both elected members and staff. This took the form of in-house training, visits to study alternative parliamentary scrutiny arrangements and formal qualifications being undertaken as appropriate. Undoubtedly the effectiveness of Members undertaking scrutiny has been enhanced by the experience of participating in Committee activities.

6.2. Of particular significance during this political term, delegates from this Committee and the PAC visited Westminster to evaluate its parliamentary scrutiny arrangements. The purpose of the visit was to assess the applicability of those processes within the States of Guernsey model. The visit was also intended to allow Members to compare their existing practice in terms of political and financial scrutiny with Westminster custom and practice.

[3] The corollary of Parliament's immunity from outside interference is that those matters subject to parliamentary privilege fall to be regulated by Parliament alone. Parliament enjoys sole jurisdiction—normally described by the archaic term "exclusive cognisance"—over all matters subject to parliamentary privilege.
(http://www.publications.parliament.uk/pa/jt201314/jtselect/jtprivi/30/3004.htm)

6.3. The visit helped the Committees to identify a number of potential improvements that could be implemented within the context of political and financial scrutiny in Guernsey. The key learning points of the visit are identified in the sections below.

6.4. The Head of Media and Communication Services (Select Committees) House of Commons spoke to the Committee about the potential for using 'twitter' as an additional communication channel. This was then discussed and the Committee agreed to use this technology channel in Guernsey. It has generally been seen to be a positive development.

6.5. The Chair of the Public Administration Select Committee spoke to the Committee at length about his work on modernising the work of the Civil Service in the UK, much of which is relevant in Guernsey. He also spoke on the potential applicability of Committee pre-appointment hearings for ministerial appointments to public office.

6.6. A National Audit Office (NAO) Director spoke to the delegation about NAO's approach to speeding up the production of reports and the techniques they employ.

6.7. The Chair of the Justice Select Committee (and the Liaison Committee) discussed the UK's relationship with the Crown Dependencies in the context of effective scrutiny of the law officers and the judiciary within a Guernsey context. This dialogue informed the two Committees' submissions to the States Review Committee (SRC) on the future powers that are appropriate to support future political and financial scrutiny.

6.8. A Member of the Westminster Public Accounts Committee discussed the way that the PAC can respond rapidly to events because they have access to resources including MPs, facilities and staff in short-notice situations. This intelligence was included in the two Committees' submissions to the States Review Committee (SRC) on the future powers that are considered appropriate to support future political and financial scrutiny.

6.9. Attending a number of Committees, the Members observed a number of different styles of questioning and different approaches to managing interaction with witnesses. Specifically, this experience informed Members in the questioning of future witnesses within the public hearing context.

6.10. Attending the meeting of the Communities and Local Government Select Committee on the Jay Report into Child Sexual Abuse in Rotherham the Committee was able to observe the way select committees handle evidence from independently-appointed commissioners on a given topic. This experience was particularly valuable when the Committee questioned their independent reviewer, Kathleen Marshall, regarding her Report on the implementation of the Children Law.

6.11. The Chair of the Standards and Privileges Committee spoke to the Committee about the importance of Members "leaving their politics at the door" when they work on the Standards and Privileges Committee and how disputes of this nature are dealt with in Committee. This was particularly important for the Committee in terms of formulating future operating procedures that are appropriate to support political scrutiny.

6.12. Members spoke to numerous House of Commons staff & MPs, many of whom praised the quality of the research and statistical support available to MPs at Westminster and which allowed them to act effectively in scrutinising government.

Additional Training

6.13. PRINCE2 (an acronym for PRojects IN Controlled Environments) is a de facto process-based method for effective project management. Used extensively by the UK Government, PRINCE2 is also widely recognised and used in the private sector, both in the UK and internationally.

6.14. All Officers are now accredited to at least foundation level.

6.15. Managing Successful Programmes (MSP®) was developed as a best practice guide on Programme Management. MSP represents proven programme management best practice in the successful delivery of transformational change through the application of programme management.

6.16. The Principal Officer and a Scrutiny Officer have gained Practitioner level accreditation.

6.17. Covey Seven Habits of an Effective Manager is provided within the States of Guernsey as a standard package of management training. Scrutiny officers have engaged with this in-house training programme.

7. Membership

7.1. The original Committee that was elected in May 2012 has changed significantly over the current term.

Membership	Membership Changes	Date Appointed	End Date
Alderney Representative E. P. Arditti (Chair)*		May 2012	Jan 2014
Deputy R. A. Jones	Chair from March 2014	May 2012	
Deputy P. R. Le Pelley	Vice-Chair from March 2014	May 2012	
Deputy M. J. Fallaize		May 2012	Nov 2012
Deputy A. R. Le Lièvre		May 2012	May 2013
Deputy P. L. Gilson		May 2012	April 2013
Deputy P. A. Sherbourne		May 2012	
Deputy H. J. R. Soulsby		May 2012	Nov 2014
Deputy S. J. Ogier		May 2012	Nov 2014
Deputy L. C. Queripel	Deputy M. J. Fallaize	Dec 2012	
Deputy B. J. E. Paint	Deputy A. R. Le Lievre	June 2013	
Deputy L. B. Queripel	Deputy P.L. Gilson	May 2013	
Deputy C. J. Green	Deputy H. J. R. Soulsby	Dec 2014	
Deputy G. M. Collins	Deputy S. J. Ogier	Feb 2015	
Deputy A. M. Wilkie	Alderney Representative E. P. Arditti	May 2014	

* Alderney Representative E. P. Arditti passed away on the Monday 20th January 2014

8. Public Engagement

8.1. A Committee Twitter account was set up in 2015 with the aim of communicating additional information regarding scrutiny events, in particular the dates and times of public hearings and the release of reports to the public. This additional communication channel has been enthusiastically embraced by members of the Committee, members of the public and the media.

8.2. The current Committee would support formal public hearings being televised/sound broadcast on the same basis as the States Assembly.

9. Conclusions

9.1. The Committee believes that over the last four years it has played a major role in scrutinising a number of key areas of policy. It has done so, not just through increasingly public hearings and reviews but also when possible through influencing government policy.

9.2. It is clear that many areas of policy would benefit from additional scrutiny. However the current level of resources available and the absence of powers available to the Committee have limited the volume and scope of the work undertaken. With the benefit of hindsight it is clear that the general public and the media have unrealistic expectations on the level of activity that can be undertaken with the current level of resources.

9.3. However we believe the recommendations of the States Review Committee to significantly strengthen the resources and powers available to the Scrutiny Management Committee (SMC) will start to address the imbalance between the expectations of the public, the media and of some Members of the States Assembly. Once implemented they will significantly enhance the ability of the new Committee to deliver meaningful scrutiny.

Appendix 1- Scrutiny Reviews in this Term

Review/Report	Status	Year
AFR (Urgent Business Review)	Completed	2013
Guernsey's 'Security of Electricity Supply' Review	Completed	2014
The Security of Strategic Air Links	Completed	2015
The Children Law	Completed	2015
"Who 'regulates' the Financial Services Regulator?" Review	Suspended	2013

Review - AFR (Urgent Business Review)

The Committee considered the decisions made by the Home Department to not disclose information relating to a settlement with AFR Advocates. An urgent business review was undertaken and the report was published in March 2013.

The enquiry was an example of the Committee reacting to an event of major public interest which simultaneously held implications for the States' approach to transparency. The review was in a sense a test case for the principle of good governance, where the contentious issue was – could the decision to go against the principle of transparency be justified on the grounds of public interest?

The Scope

- The reasoning behind the decisions taken by the Home Department regarding non-disclosure relating to the settlement with AFR Advocates.
- The extent to which the Home Department gave consideration to the principles of good governance, particularly in relation to transparency, in its decisions not to disclose information relating to the settlement with AFR Advocates.
- The extent to which the Home Department's decisions to not disclose information relating to the settlement with AFR Advocates was in the public interest.

The Panel

Alderney Representative E. P. Arditti (Chair),

Deputy P. L. Gillson
Deputy R. A. Jones
Deputy P. R. Le Pelley

Conclusions

The Panel concluded that there were insufficient grounds for the Home Department to justify its decision not to disclose information relating to the cost of the settlement with AFR Advocates.

The Panel also concluded that, at the point where the negotiation of the settlement ceased to be a matter to be resolved amongst individual parties and became a matter of spending public money on behalf of the individuals concerned, the Home Department abrogated political oversight of the process. It did this by failing to support the Chief of Police in his negotiations, which was itself the result of its failure to provide the political safeguards necessary to ensure that it was the Department and not the Chief of Police that was responsible for exercising political judgement on this matter.

Review - Guernsey's 'Security of Electricity Supply' Review

The Committee completed its review of the security of Guernsey's electricity supply and published its report on 18th June 2014.

The Scope

1. Clarify how the States of Guernsey seeks to ensure security of electricity supply for Guernsey;

2. Determine how effectively the security of electricity supply policy (the 'n-2' policy) is implemented and adhered to;

3. Assess whether Guernsey's current security of electricity supply policy is fit for purpose. This will include determining:
    a. How the policy is planned for;
    b. What considerations are taken into account;
    c. How the policy is monitored and reviewed;
    d. Who is accountable for the policy's development and adherence.

4. Evaluate the outcomes and impact of the current security of electricity supply policy;

5. Make evidence-based recommendations to ensure Guernsey has a security of electricity supply policy that is efficient and effective at meeting the needs and requirements of Guernsey;

6. Evaluate the progress of the Energy Resource Plan's Objective 1: "to maintain the safety and security of affordable and sustainable energy supplies";

7. Any other or ancillary issues that may arise during the course of the review that the Committee may identify as being worthy of further consideration.

The Panel

Alderney Representative E. P. Arditti
Deputy L. C. Queripel
Deputy S. J. Ogier
Deputy B. J. E. Paint

Conclusions

This was a major piece of work undertaken by the Committee and, in addition to the analysis of a large number of written submissions; it involved two public hearings with: Guernsey Electricity Limited, stakeholders, and departmental officials together with their Ministers. At the core of the issue was the 'trilemma' of reaching an appropriate balance between the security of electricity supply, the price paid by consumers, and environmental considerations.

The Committee concluded that significant investment is required to ensure the security of electricity supply in the future. The view of the Committee was that this investment can be supported; however additional clarity was required on the projected costs of electricity to the consumer and the rationale of the proposed approach. The Committee believed that it is essential that the investment proposals are supported by a robust business case demonstrating the logic of the recommended options.

The Committee concluded that clear energy policies must show how environmental, financial and security of supply considerations interact and are prioritised. The Committee also believed that the States should clarify and agree its environmental aspirations and targets.

Review - The Security of Strategic Air Links

The Committee carried out a review investigating the security of the Bailiwick's strategic air links to examine whether the current policy framework intended to deliver vital air links to and from the Islands of Guernsey and Alderney is fit for purpose.

Scope

1. How the States of Guernsey seeks to ensure the security of its air links, and the effectiveness of current policy.
2. Whether clearly defined functions, roles and accountabilities in relation to the security of air links are allocated to the various states departments involved in aviation matters and how a joined-up approach is ensured by the current policy framework.
3. How the States of Guernsey ensures that air link policy continues to meet the needs of Guernsey and Alderney and to clarify how the effectiveness of this policy is measured moving forward.
4. Any other or ancillary issues relating to this policy area that may arise during the course of the review that the Committee may identify as being worthy of further consideration

The Panel

Deputy P. R. Le Pelley
Deputy P. A. Sherbourne
Deputy B. J. E. Paint
Deputy L. C. Queripel
Deputy A. M. Wilkie

Conclusions

The Committee published its report on 23rd November 2015. The Committee is pleased that the review has subsequently led to establishing the long-term strategic objectives for Aurigny Air Services Limited including, but not limited to, the establishment of criteria for maintaining and selecting routes, capacity and frequency.

It also included the adoption by the States and the Airline of a revised approach which acknowledges that its success should be measured not just on its balance sheet but also on its social and economic contribution.

Review - The Implementation of the Children Law

The Committee launched a review of the implementation of the Children Law and appointed an independent expert as its lead. Kathleen Marshall commenced her review in January 2015 and issued a Call for Evidence shortly after. She delivered the final report in November 2015 and attended a public hearing on 2nd December 2015 when the Committee questioned her on her findings and recommendations. A further public hearing will be held with the relevant government departments in early 2016.

Scope

Accountability and Governance

- Are there appropriate arrangements in place for governance and quality assurance?
- Is there appropriate independent oversight of arrangements for child protection?
- Are there performance measures in place to assess the impact of changes introduced as a result of the Children Law?

Coordination

- Are States employees working together effectively to prevent children becoming children at risk?

Practice

- Are services delivered in a timely and efficient manner?
- Are existing services appropriate to meet the requirements of children and families?
- How has the experience of service users changed since the implementation of the Children Law?
- Have outcomes for children and families improved as a result of the implementation of the Children Law?

Conclusion

This review was undertaken by Kathleen Marshall who was commissioned to produce an independent report on behalf of the Committee examining the implementation of the Children Law. The Committee hope it will lead to significant progress being made in this area.

Appendix 2 SCRUTINY COMMITTEE

Constituted with effect from 1st May, 2004 by Resolution of the States of 31st October 2003.

Constitution

A Chairman, who shall be a sitting member of the States.

Eight members, who shall be sitting members of the States.

Mandate

(a) Through a process of political scrutiny, to subject Departments and Committees to regular reviews with particular emphasis on:

- (i) Determining the effectiveness of the policies of, and services provided by, Departments and Committees;
- (ii) (ii) Assessing the performance of Departments and Committees in implementing policies and services;
- (iii) Identifying areas of policy or service delivery that might be inadequately or inappropriately addressed;
- (iv) Identifying new areas of policy or service delivery that may require implementation;
- (v) Determining how well a new policy or service or project has been implemented including the development processes and whether the desired outcomes were achieved;
- (vi) Promoting changes in policies and services where evidence persuades the Committee that these require amendment;
- (vii) Holding reviews into such issues and matters of public importance that the Committee may determine from time to time.

(b) To liaise with the Public Accounts Committee to ensure there is appropriate co-ordination of the entire scrutiny process.

(c) To develop, present to the States for approval as appropriate, and implement policies on the above matters which contribute to the achievement of strategic and corporate objectives.

(d) To exercise the powers and duties conferred on it by extant legislation and States resolutions.

(e) To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Committee.

The States are asked to decide:-

VII.- Whether, after consideration of the Policy Letter dated 8th January, 2016, of the Scrutiny Committee they are of the opinion to note the Legacy Report for the term of office May 2012 to April 2016.

PUBLIC ACCOUNTS COMMITTEE

LEGACY REPORT FOR THE TERM OF OFFICE MAY 2012 TO APRIL 2016

The Presiding Officer
The States of Guernsey
Royal Court House
St. Peter Port

8th January 2016

Dear Sir

Executive Summary

1. The Legacy Report of the Public Accounts Committee is appended to this Policy Letter.

2. This Policy Letter outlines the work undertaken by the Public Accounts Committee during this term[1].

Resources

3. There are no financial or staff resource implications associated with this Policy Letter.

Recommendation

4. The Public Accounts Committee recommends the States:

(i) To note the Legacy Report of the Public Accounts Committee.

Yours faithfully

Deputy H. J. R. Soulsby
Chair

Public Accounts Committee:

Deputy P.A. Harwood (Vice-Chair)
Deputy R.A. Jones
Mr J.F. Dyke
Mr P.D.H. Hodgson
Deputy R. Domaille
Deputy P.A. Sherbourne
Mr P.A.S. Firth
Mrs G. Morris

[1] Due to their size the reports produced by the Public Accounts Committee have been summarised in Appendix IV with links to the full texts. Copies of all reports have been provided in the States Members Room at Sir Charles Frossard House

PUBLIC ACCOUNTS COMMITTEE
THE STATES OF GUERNSEY

LEGACY REPORT
FOR THE TERM OF OFFICE
MAY 2012 TO APRIL 2016

JANUARY 2016

Content

1. Executive Summary

1.1. This report outlines the work undertaken by the Public Accounts Committee (The Committee) during this term. It highlights the issues faced, the progress made and achievements of the Committee over the last four years. This report also identifies areas that may be of interest to its successor, the Scrutiny Management Committee.

1.2. The Committee has had very limited resources during this term and has therefore had to use them wisely in order to be effective. This has resulted in a broader and more progressive approach to fulfilling its mandated financial scrutiny responsibilities through pressure on departments, the use of amendments to improve accountability and transparency, as well as public statements in the States Assembly. All these methods, in addition to the traditional value for money reviews have resulted in more visible and productive financial scrutiny.

1.3. Throughout this term, the Committee has constantly monitored the various ongoing financial processes including Post Implementation Reviews (PIRs) of capital projects, the annual external audit and accounts production process, analysis of the annual budget and the work of the Internal Audit Unit (IAU).

1.4. During this period, the Committee for the first time, managed, despite its limited resources, to undertake reviews using internal staff as well as commissioning expert reviewers for technically complex areas. At the time of writing, it was also preparing to undertake the first public hearing by a Public Accounts Committee in Guernsey.

1.5. The Committee is pleased that government has taken a positive approach in relation to the findings in its reports. As part of its work, it has monitored progress in terms of the action taken on its recommendations and it is evident that significant progress has been made in strengthening financial scrutiny, particularly in the area of risk management.

1.6. There are, as always, areas for improvement, most notably in the transparency of financial reporting and ensuring that lessons learnt on capital projects are disseminated throughout the States and not just within individual departments or committees. The Committee believes however, that financial scrutiny is in a better place than it was four years ago and that, as a result of the strengthening of the powers and resources of the Scrutiny Management Committee, which the Committee has contributed to establishing, there is a real opportunity to improve the effectiveness of financial scrutiny in the next term.

2. Background

2.1. The lack of resources and powers severely limited what the Committee could accomplish from the outset.

2.2. Over the first few months following their election, the Chair of the Public Accounts Committee and the then Chair of Scrutiny worked together in anticipation of adopting the recommendations of the Belinda Crowe report into future scrutiny which recommended the creation of a single scrutiny function in the next term.

2.3. As a consequence, it was agreed to have a single Principal Officer with shared responsibilities across both scrutiny committees. This, together with at least one Committee Chair having been a member of its sister committee during this term, should assist in a smooth transition to the single Scrutiny Management Committee.

2.4. The ability to undertake financial scrutiny was further limited by a twenty per cent reduction in the Committee's budget in 2013. During a period of fiscal restraint, at a time when departments were being asked to find major savings under the Financial Transformation Programme, it was considered that it would be inappropriate to seek significant extra funding. Instead, a decision was taken to focus on ensuring that the scrutiny function under the new machinery of government would have the powers and resources to enable it to properly fulfil its mandate.

2.5. The limited level of officer support that has been available during this term has meant that considerable work has been undertaken by the Members of the Committee. They should all be thanked for their commitment and support and for having worked as a team. This has meant that the Committee has been both visible and influential throughout the last four years.

3. Reviews

3.1. The Committee is tasked with ensuring that proper scrutiny is given to States' assets, expenditure and revenues and to ensure that States' bodies operate to the highest standards in the management of their financial affairs.

3.2. It has used a variety of methods to fulfil its mandate, but probably the most traditional, has been its undertaking of reviews in key areas of concern. Whilst the most visible aspect of a review is the published report, work does not stop there. It continues with ongoing monitoring of progress against recommendations and further follow-up reviews on specific aspects arising from findings, where this has been deemed necessary.

3.3. The majority of reviews this term have, by the very nature of the subject matter involved, been very technical. As such, the Committee has tried wherever possible and especially where work has been outsourced to technical experts, to ensure its final reports are accessible to the lay reader, to assist financial transparency.

3.4. A summary of the reports is provided in Appendix IV, whilst a background to the reviews and additional work undertaken, is given below.

Fraud and Risk Management

3.5. One month into the new term, it was announced that the States of Guernsey had been the victim of a £2.6m fraud. As a consequence, the Committee had to abandon any planned work and decide the approach it would take in investigating what was a very serious event.

3.6. Whilst the Committee wished to investigate the specific instance of fraud, it was advised that this was not possible whilst there was an on-going criminal investigation. As such, it focused on the level of financial controls and approach to risk management.

3.7. It became clear that government had not taken on board the findings of earlier reports commissioned by the previous Public Accounts Committee. Financial controls were still weak and there was an immaturity in relation to risk management, as there had been a persistent failure to appropriately prioritise and develop a States-wide approach to risk.

3.8. Since that report, the Committee has worked extensively in the States Assembly and in private hearings with the Treasury & Resources Minister, the States Treasurer, Chief Executive and Head of Assurance, to ensure that action is taken to rectify that position.

3.9. In 2014, the Committee commissioned Ernst & Young to review the financial controls following the implementation of SAP and the development of the Shared Transaction Service Centre (STSC). It was clear that significant progress had been made, although there was still scope for improvement, primarily in departments working together and the training of staff. The Committee is pleased that government has since responded to its original recommendations.

3.10. The States of Guernsey now has a much greater understanding of risk management and the importance of financial controls, due in part to the hard work of the Committee.

3.11. However, the Scrutiny Management Committee must continue to actively monitor this critical area, which impacts directly on States' expenditure.

3.12. Due to the ongoing legal process, it has not been possible, despite attempts to do so, to review the specific incident of fraud in 2012. This has been a frustration to the Committee, which firmly believes that this should be completed by the Scrutiny Management Committee.

HSSD Financial Management

3.13. Following the announcement of the resignation of the Board of Health & Social Services (HSSD) in 2012, the Committee undertook a review of the financial management within the department.

3.14. This was the first review undertaken wholly by Committee staff and it became apparent that the financial management within HSSD had been significantly under-resourced. Most importantly, it was considered that until there was a broad based review of the finances of the department, it would not be possible to know whether the public was getting value for money from the services provided.

3.15. Subsequent to that report, the Committee publicly recommended that a full review of HSSD funding should be undertaken which ultimately led to a Costing, Benchmarking and Prioritisation exercise commissioned by the Treasury and Resources Department (T&R) jointly with HSSD. As a result, the HSSD 2016 budget was calculated based in part on these findings and a transformation programme was begun within HSSD.

3.16. Progress will need to be monitored by the Scrutiny Management Committee as the programme will involve significant levels of risk, in what is the highest spending States Department.

Financial Transformation Programme

3.17. The Committee spent a considerable amount of time this term, reviewing the progress of the Financial Transformation Programme (FTP), one of the most significant programmes of work ever undertaken by the States of Guernsey.

3.18. The Committee called in the Treasury and Resources Minister and members of the Programme Office at an early stage and questioned them over the process and the progress made. In addition, as a result of a successful amendment laid by the Chair on behalf of the Committee, quarterly progress reports were provided to the Committee. It was then evident that the actual reporting to the Policy Council was inadequate and Committee staff assisted the Programme Office with the development of improved reports.

3.19. As a consequence of receiving the quarterly update information, the Committee was able to review certain savings and question their validity. One particular saving, which comprised a transfer of £650,000 from revenue budget to the Guernsey Health Service Fund, was the subject of concern. The Committee formally requested that it be reversed as there was no saving to the taxpayer, despite the consultant receiving a significant payment. With no progress having been made, the matter was then raised by the Committee's Chair in the States Assembly. As a result of further discussions, whist it was agreed by the Policy Council that the transfer could remain, the consultants repaid the commission on the 'saving'.

3.20. Towards the end of 2014, the Committee commissioned KPMG to undertake a cost/benefit review of the FTP. Whilst the review acknowledged that savings had been made and found evidence of some excellent initiatives, concern was expressed over some of the calculations and most importantly, whether certain savings would indeed be sustainable.

3.21. At the time of writing, the Committee expects to undertake a public hearing focussing on lessons learnt from the FTP and to ensure that these key findings were understood, prior to the next major exercise in public sector reform and transformation.

3.22. It will be essential for the Scrutiny Management Committee to continue to monitor the legacy of the FTP and ensure that the recommendations of the Committee are progressed.

Beau Sejour Leisure Centre Project

3.23. This review, which was undertaken by Committee staff, considered the approach by which the Culture & Leisure Department (C&L) undertook the tendering of Beau Sejour Leisure Centre (BSLC). The review evaluated the business case and the tendering procedure, with a clear focus on establishing whether these processes resulted in the best value for money option.

3.24. The review also considered the project's business case, to analyse the financial costs and benefits identified, as well as the tendering procedure and evaluation criteria, to ensure that the decision making followed due process.

3.25. The review concluded that the correct decision had been taken in terms of the ongoing management of the Beau Sejour Leisure Centre and cast doubt on the ability to produce significant savings by commercialising the facility. However, it was the belief of the Committee that the project should have been terminated earlier.

4. Reviews in progress

4.1. At the time of writing, there are two areas which are actively under review by the Committee and due to be completed by the end of this term.

Review of the Investments of the States of Guernsey

4.2. When thinking about financial scrutiny thoughts generally turn to expenditure, whether revenue or capital. It is often forgotten that the States of Guernsey holds approximately £2bn of investments on behalf of the taxpayer. Therefore, how these investments are managed has an important part to play in the financial health of the States.

4.3. The previous Committee conducted a review of this area in 2009 which was undertaken by PricewaterhouseCoopers, to seek assurances that the funds held by the States were secure and safe, whilst maximising returns for the appropriate levels of risk.

4.4. In its own covering report in 2010, the previous Committee confirmed that it would "continue to monitor the progress made by the Departments against these recommendations in investing States' funds safely and securely as part of its monitoring programme, following up from its past reviews."

4.5. The Committee's current review will provide assurance on the current position, whilst also reviewing how effectively States' funds have been invested and managed since 2009.

4.6. The review is examining the political governance and the performance of the funds invested and the following areas are being considered:

- the methodology for appointing and monitoring investment managers, including performance benchmarking;
- investment management fees paid, in particular the role of the custodian;
- the suitability of the reporting mechanism of the fund's performance and whether results are challenged;
- whether the investments are being made in accordance with the individual funds legislation, directives, guidelines and rules and the adequacy of the monitoring of this the total funds invested by the States; and
- the governance around the management of the funds including what the political oversight is of the actual asset allocation and how well briefed politicians are to be able to make a decision.

4.7. The outcome will be an independent report evaluating whether the States is investing the funds safely and securely, whilst maximising returns for appropriate levels of risk.

Review of the Financial Transformation Programme (Phase 2)

4.8. The cost/benefit review of the FTP as highlighted in Section 3, was the first phase of what was intended to be a wider review of the Programme.

4.9. The second review will examine the roles played by those who had the senior political and governmental accountability for the implementation of the Programme. It is envisaged that this review will build upon the information contained within the KPMG report and the FTP Closure Report, whilst focussing on transformation and change management.

4.10. It will also examine the sustainability of ongoing savings, the value for money of the FTP implementation and its ongoing legacy. It will also consider whether lessons have been learnt for future transformational and cultural change programmes.

4.11. At the time of writing, the Terms of Reference of this review was under consideration by the Committee.

5. Monitoring and Influencing

5.1. A considerable part of the Committee's role involves:

- reviewing Post-implementation Reports of capital projects;
- reviewing the reports of the IAU;
- reviewing progress made following previous Committee's investigations and reports;
- ensuring that recommendations from the Committee's Reports are implemented; and
- monitoring the external audit process.

5.2. A portion of this work is undertaken by the Committee's Audit Panel who then report back to the full Committee with their findings and recommendations.

Audit Panel

5.3. The current Public Accounts Committee continued the previous practice of creating an Audit Panel to monitor specific elements of financial scrutiny.

5.4. The Audit Panel received regular progress updates from the IAU and the External Auditors of the States and reviewed audit reports and management letters on the annual States' Accounts, whilst also taking a lead role in the monitoring and assessment of the work of the External Auditors.

5.5. The Panel is currently conducting a review of the presentation of the States' Accounts on behalf of the Committee.

5.6. The Committee recommends that the Scrutiny Management Committee establish a similar standing panel in the next term.

Internal Audit

5.7. As part of its ongoing monitoring function, the Committee continued to receive updates and reports from the IAU and followed up any areas of concern.

5.8. In addition, the IAU has been vital to the implementation throughout the States of Guernsey, of the Committee's recommendations in regard to risk management and prevention of fraud.

5.9. The Committee believes that its important relationship with the IAU has been influential in making positive change and would suggest that this be maintained by the Scrutiny Management Committee in the next term.

External Audit

5.10. Although the External Auditors work closely with T&R, it is important that they report on their programme of work and findings, to an independent authority. In the absence of an Audit Committee, the Audit Panel has undertaken this role on behalf of the Committee.

5.11. The Audit Panel met regularly with the External Auditors, in order to be apprised of any issues arising during the annual audit of accounts for the States.

5.12. By liaising with all those who are audited, the Committee has annually assessed the performance of the External Auditors. It has then provided feedback to both the auditors and T&R in order to assist with the Audit Plan for the upcoming year.

5.13. There has been a more robust challenge to both the auditors and T&R during the annual process this term, due in large part to the financial experience of the Audit Panel members.

5.14. This challenge has helped to streamline the audit process both internally and externally and has also provided better value for money for the States of Guernsey from the external audit.

Post-implementation Reviews

5.15. The Committee's function in relation to capital projects is to review PIRs to ensure efficiency and value for money has been achieved throughout the evolution of a particular project.

5.16. A PIR is an independent formal review of a programme or project, which is used to determine whether a particular capital project has achieved the aims and objectives originally set out and to ensure that lessons learned from that project are transferred effectively to other projects across the States.

5.17. In the States of Guernsey all capital projects over £1 million which commenced since 2009 and completed within the States approved Capital Programme, including all routine capital maintenance and refurbishments, must be subjected to an independent PIR.

5.18. The fundamental part of any project review is to make sure that lessons learnt on one project are transferred effectively to other projects, not just within the same Department, but to other projects across the States.

5.19. The Committee agrees the scope of the PIR prior to the department tendering for an external consultant to undertake the review. It will then consider the final report once received and determine what follow up action to take if applicable.

5.20. Listed below are the reports received by the Committee this term:

- Electronic Health and Social Care Record - Patient Administration System / Theatres and A&E (EHSCR Phase2)
- GILE Project (phase 1)
- St Peter Port School (Part One)
- Guernsey Water - Belle Greve Wastewater (Part One)
- Guernsey Airport Pavements (Part One)
- Guernsey Airport Terminal

5.21. The departments dealing with the forthcoming PIRs detailed below, have formally submitted 'Scope, Brief and Tendering' documentation to the Committee for its consideration and subsequent agreement and authorisation:

- The New Slaughterhouse
- The Harbour Berths 4,5 & 6
- SAP / Shared Transaction Service Centre
- Princess Elizabeth Hospital Phase 6b

5.22. It has also questioned Ministers and senior officials from the relevant Departments on any matters of concern or best practice raised and provided feedback to the respective Departments who coordinated the particular review.

5.23. The Committee was hopeful that many of the lessons learnt from the past, had been implemented throughout the States' and that the cases of the same issues re-occurring would have diminished. Whilst a few projects reviewed showed some areas of good practice, significant issues have still been encountered.

5.24. Problems have included projects where there was not a suitably qualified Project Board in place from the start of the project, planning consents not having been granted prior to commencement of build and work commencing with contractors and consultants under letters of intent without the formal protection of a contract being in place. All the above have resulted in avoidable costs.

5.25. The Committee has also observed that the level of contingency in the majority of projects appeared, on the basis of the commercial experience of members, to be set at a relatively high figure. At the same time, these allocations had been fully spent on a number of projects reported as being completed within budget. The Committee believes that contingencies should be aligned to a fully costed risk management process and as risks are analysed and on some occasions mitigated, the overall level of contingency should be reduced.

5.26. The Committee believes that PIRs provide invaluable insight into the successful operation of future projects. Therefore, it is important to ensure that the dissemination of lessons learnt works effectively. This Committee and its predecessors have, on numerous occasions, expressed their concern both to the Departments involved and the States Property Services, that PIRs for States Capital Projects are not routinely circulated throughout all States Departments.

5.27. It seems fundamental to the Committee that any Department looking to undertake a substantial capital project should be able to look back at the findings from relevant previous projects. This would ensure that any lessons to be learnt would be able to be taken on board prior to a new project commencing.

5.28. The Committee also believes that in the interest of openness and transparency, PIRs should be placed in the public domain.

Financial Transparency

5.29. The Committee has placed considerable focus this term on improving financial transparency in the States of Guernsey. Current reporting of financial matters is not acceptable.

5.30. The States' Accounts do not conform to generally accepted accounting standards and are difficult to understand, even for those with a financial and accounting background.

5.31. Amendments to policy letters including the annual Budget have been used to improve financial transparency. These include instructing T&R to commence the move to internationally recognised accounting standards from 2016 and the setting aside of a specific States' meeting to debate the accounts. The Committee also managed to have the accounts of trading bodies, Guernsey Electricity and Guernsey Post debated each year in the States.

5.32. The Committee has also made recommendations to T&R on what improvements could be made in terms of disclosures in the accounts, such as for employee pay and numbers.

5.33. In addition, the Committee's Audit Panel is currently undertaking a more detailed review of the presentation of the States' Accounts on behalf of the Committee.

5.34. The States of Guernsey has a long way to go in providing greater financial transparency and the Committee recommends that the Scrutiny Management Committee monitor developments closely.

6. Principles of Good Governance

6.1. The Committee was responsible for introducing the Six Core Principles of Good Governance to the States of Deliberation in March 2011. The ethos of those principles is encompassed in all aspects of the Committee's work.

7. Conclusions

7.1. The Committee believes that over the last four years it has played a major role in improving how States' bodies manage their financial affairs. It has done so, not just through traditional reviews but also and perhaps more importantly, through monitoring and influencing.

7.2. It has made considerable impact throughout this term and particular examples are given below:

- Its first review of Financial Controls and subsequent active scrutiny to ensure recommendations were actioned, has resulted in a significant cultural shift in the States of Guernsey's understanding of risk management and fraud;
- The HSSD Financial Management Review recommendation which facilitated the BDO Costing, Benchmarking and Prioritisation Review. This targeted net savings of £5m with savings of potentially £24m identified;
- Its ongoing analysis of the FTP led to the Committee challenging a £650k transfer which had been allocated as a saving. This encouraged the return from Capita of their contracted remuneration of c£42k;
- Its annual robust challenge of the external audit process has resulted in a more robust annual audit and accounts production process, providing greater value for money for the taxpayer; and
- The implementation of its advice and recommendations has considerably improved the States of Guernsey's financial and resource management policies and procedures.

7.3. By placing successful amendments, making statements in the Assembly, asking Rule 5 and Rule 6 questions, as well as making direct enquiries of departments and calling in senior officers and politicians on a range of issues, the Committee has continued to promote value for money and cost effectiveness.

7.4. Financial scrutiny is in a better place than at the start of this term, but the lack of powers and resources has been a major constraint for the Committee. It is hoped that, as a result of the decision of the States of Deliberation to address this fundamental issue, the new Scrutiny Management Committee can build on what has been achieved and take financial scrutiny to the next level.

Appendices

Appendix I – The Mandate of the Public Accounts Committee

The Mandate of
THE PUBLIC ACCOUNTS COMMITTEE

Constituted with effect from 1st May 2004 by Resolution of the States of 31st October 2003

CONSTITUTION

- A Chairman, who shall be a sitting member of the States
- Four members, who shall be sitting members of the States
- Four members who shall not be sitting members of the States

MANDATE

a) i) To ensure that proper scrutiny is given to the States' assets, expenditure and revenues to ensure that States' bodies operate to the highest standards in the management of their financial affairs.

ii) To examine whether public funds have been applied for the purposes intended by the States and that extravagance and waste are eradicated.

iii) To recommend to the States the appointment of the States External Auditors and their remuneration.

b) To liaise with the Scrutiny Committee to ensure that there is appropriate coordination of the entire scrutiny process.

c) To develop, present to the States for approval as appropriate, and implement policies on the above matters which contribute to the achievement of strategic and corporate objectives.

d) To exercise the powers and duties conferred on it by extant legislation and States resolutions.

To be accountable to the States for the management and safeguarding of public funds and other resources entrusted to the Committee.

Appendix II – Public Accounts Committee Membership from May 2012 – December 2015

Full Committee elected as at May 2012

Deputy H. J. R. Soulsby	Chair
Deputy M. K. Le Clerc	Vice-Chair
Alderney Representative E. P. Arditti	
Deputy S. A. James MBE	
Deputy P. A. Sherbourne	
Mr J. F. Dyke	
Mr P. A. S. Firth	
Mr P. D. H. Hodgson	
Mrs G.Y. Morris	

Changes to the membership through the term were:

The late Alderney Representative E. P. Arditti was replaced with Deputy P. A. Harwood.

Deputy M. K. Le Clerc and Deputy S. A. James MBE were later replaced with Deputy R. A. Jones and Deputy R. Domaille, with Deputy P. A. Harwood becoming Vice-Chair.

Full Committee as at December 2015

Deputy H. J. R. Soulsby	Chair
Deputy P. A. Harwood	Vice-Chair
Deputy R. Domaille	
Deputy R. A. Jones	
Deputy P. A. Sherbourne	
Mr J. F. Dyke	
Mr P. A. S. Firth	
Mr P. D. H. Hodgson	
Mrs G.Y. Morris	

Appendix III – Committee Member and Staff Professional Development received during the period May 2012 to December 2015

Since the current Public Accounts Committee was formed, a number of Personal Development activities have been undertaken by both elected members and staff. These are detailed below.

Professional Development for Committee Members & Officers
The following training & development opportunities have been provided to the members of the Committee throughout the term of Office:

Of particular significance during this political term, delegates from the Public Accounts and Scrutiny Committees visited Westminster to evaluate its parliamentary scrutiny arrangements. The purpose of the visit was to assess the applicability of those processes within the States of Guernsey model. The visit was also intended to allow members to compare their existing practice in terms of political and financial scrutiny with Westminster custom and practice.

The visit helped the Committees to identify a number of potential improvements that could be implemented within the context of political and financial scrutiny in Guernsey. Key learning points of the visit are identified in the sections below.

The Head of Media and Communication Services (Select Committees), House of Commons, spoke to the members about the potential for using twitter as an additional communication channel. This was then discussed and the Committee agreed to use this technology channel in Guernsey. It has generally been seen to be a positive development.

The Chair of the Public Administration Select Committee spoke to the members at length about his work on modernising the work of the Civil Service in the UK, much of which is relevant in Guernsey. He also spoke on the potential applicability of Committee pre-appointment hearings for ministerial appointments to public office.

A National Audit Office Director spoke to the delegation about the organisation's approach to speeding up the production of reports and the techniques they employ.

The Chair of the Justice Select Committee (and the Liaison Committee) discussed the UK's relationship with the Crown Dependencies in the context of effective scrutiny of the law officers and the judiciary within a Guernsey context. He touched on the issues associated with compelling witnesses to attend hearings and the answers they provide to the Committees. This dialogue informed the two Committees submissions to the States Review Committee (SRC) on the future powers that are appropriate to support future political and financial scrutiny.

A Member of the Westminster Public Accounts Committee discussed the way that it can respond rapidly to events because they have access to MPs, facilities and staff in short-notice situations.

Attending a number of Select Committee hearings, the members observed a number of different styles of questioning and different approaches to managing the Committee interaction with witnesses. Specifically, this experience informed members in the questioning of future witnesses within the public hearing context.

Attending the meeting of the Communities and Local Government Select Committee on the Jay Report into Child Sexual Abuse in Rotherham, the members were able to observe the way Select Committees handle evidence from independently-appointed commissioners on a given topic.

The Chair of the Standards and Privileges Committee spoke to the members about the importance of them "leaving their politics at the door" when they work on the Standards and Privileges Committee and how disputes of this nature are dealt with in Committee. This was particularly important for the Committees in terms of formulating future operating procedures in the context of the revised arrangements that will result from the Committees submission to the SRC on the future powers that are appropriate to support future political and financial scrutiny.

Members spoke to numerous House of Commons staff & MPs, many of whom praised the quality of the research and statistical support available to MPs at Westminster which allowed them to act effectively in scrutinising government.

Training Courses

PRINCE2 (an acronym for PRojects IN Controlled Environments) is a de facto process-based method for effective project management. Used extensively by the UK Government, PRINCE2 is also widely recognised and used in the private sector, both in the UK and internationally. All Officers are now accredited to at least the foundation level.

Managing Successful Programmes (MSP®) was developed as a best practice guide on Programme Management. MSP represents proven programme management best practice in the successful delivery of transformational change through the application of programme management. The Principal Officer and a Committee Officer have gained Practitioner level accreditation.

Covey Seven Habits of an Effective Manager is provided within the States of Guernsey as a standard package of management training. Officers have engaged with this in-house training programme.

Appendix IV – Summaries of Reviews undertaken during the period May 2012 to December 2015

Review of the States of Guernsey anti-fraud governance framework

When it was announced in July 2012 that the States of Guernsey had been defrauded of £2.6 million of taxpayers' money, there was understandable shock and anger throughout the community. That such a fraud did occur only highlights the fact that we must have the necessary frameworks in place to defend against this type of threat.

Whilst the public clearly had an interest in the details of the specific incident of fraud, it was as important to find out whether there was an underlying problem that led to the States of Guernsey being exposed to this unacceptable risk of fraudulent activity. Ernst & Young were commissioned by the Public Accounts Committee to undertake that piece of work.

The report from Ernst & Young confirmed that prior to May 2012, the States of Guernsey had an inadequate risk management framework in place.

The Committee acknowledged that the States of Guernsey had taken steps to improve the framework in the period between May and December 2012 (the period which the Ernst & Young report covered) and that a number of workstreams remained in progress which should, if successfully implemented, improve the framework further.

However, it is clear that at that point in time the risk management framework of the States of Guernsey, which includes anti-fraud governance, remained inappropriate and further work was required.

The Ernst & Young report showed that the States of Guernsey had historically *"repeatedly failed to implement and embed a consistent, formal, comprehensive approach to general risk management".* The Committee firmly believed that the implementation of such should be of the highest priority for the States of Guernsey during the current political term.

Subsequent to the review by Ernst & Young, the establishment of the STSC and the implementation of the new SAP system have been completed.

As the implementation of both the STSC and SAP had significant implications for financial management in the States of Guernsey, the Committee then commenced Stage 2 of its Review of Financial Controls, focussing on the financial controls which were in place.

Both the E&Y report and the Committee's covering report were released in May 2013 and can be accessed at:

- E&Y Link: http://www.gov.gg/CHttpHandler.ashx?id=82947&p=0
- PAC Cover Report Link: http://www.gov.gg/CHttpHandler.ashx?id=82948&p=0

Review of the HSSD Financial Management

The purpose of the Committee's Review was to consider the standard to which the HSSD managed its financial affairs in 2012. Specifically, the circumstances which led to the Minister's statement in the November 2012 States Assembly with regard to HSSD's envisaged £2.5million revenue overspend.

The focus of the review was:

- HSSD's management of its financial affairs in 2012 against the allocated revenue budget;
- The financial management information produced;
- The financial oversight provided by T&R; and
- Identification of the reasons leading to the Minister's statement.

It should be noted that a full review of the HSSD financial function was not undertaken.

It was the intention of the Committee that the review should provide an independent, evidence-based account of circumstances leading to the Minister's statement, which took a considered view of the issues that had been identified.

The Committee acknowledged that its report was not produced in isolation, but in addition to the Finnamore, IAU and Health Systems Workshop reports into related areas. The Committee also acknowledged that HSSD had produced its own Financial Management Improvement Plan.

The complexity of the health and social care model in which HSSD operates and the direct impact this has on effective financial management, was taken into account during the Review. The Committee accepted that accurate financial forecasting in this area is complex and challenging. It also acknowledged that the nature of providing health and social care services means that very expensive services must, on occasions, be purchased at short notice.

The Committee also noted that HSSD did contain the increase in their expenditure, during the years 2009-2011.

However, a number of observations were made:

- The examination of the management of the allocated revenue budget did not give the Committee confidence that a satisfactory level of financial control, appropriate quantification of financial risk, and accurate forecasting, was present;
- The financial management and activity information produced at HSSD, did not meet the standards in terms of clarity, detail and accuracy, that the Committee would expect when managing a budget of this size and complexity; and

- The oversight provided by T&R did not fully mitigate the problems previously identified in HSSD financial management and that communication could be enhanced between the Departments.

In addition, the key report which advised the HSSD Board on the actions to be taken in December 2012 was limited and lacked rigour. Accordingly, the advice provided to the HSSD Board was not based on sufficiently robust evidence and analysis to enable appropriate decision making.

The Committee made a series of recommendations which can be summarised as follows:

- That any major decisions to significantly reduce the level of services must be undertaken after considering a detailed Business Case incorporating, as a minimum, strategic, financial and risk analysis, together with a detailed implementation plan;
- That the recommendations within the Finnamore and IAU Private Patient Income Reports are implemented along with the continued progress of HSSD's Financial Management Improvement Plan. Financial Board Reports should contain not only core data but appropriate insight and analysis;
- That the implementation of robust FTP projects is undertaken, in conjunction with the States Treasurer's Team;
- That T&R continue to provide an oversight role with a clear focus on continuing to enhance inter-departmental communication; and
- That during the transition of Board membership there is a need for focus on the process of knowledge transfer; specifically with regard to financial matters.

Furthermore, broader conclusions were drawn and the following additional recommendations made:

- That a review of the recruitment & retention of clinical staff within HSSD is considered, to establish a long-term sustainable model ensuring that the reliance on agency staff is reduced; and
- That the overall health and social care model merits a separate review to support HSSD in delivering a long-term sustainable financial model.

The report was released January 2014 and can be accessed at:
http://www.gov.gg/CHttpHandler.ashx?id=85866&p=0

Review of the Cost / Benefit Review into the Financial Transformation Programme

The purpose of the Committee's Review was to consider a Cost/Benefit exercise on the major claimed savings within the FTP, incorporating an analysis of the resultant remuneration to the Consultant. KPMG were engaged to perform a financial review of a selection of FTP projects, including an analysis of each project's financial data, verification that the approved savings had been calculated in line with the financial rules and that the Consultant had been remunerated in line with the contracted terms.

The work of KPMG confirmed that the financial rules were not clearly documented at the beginning of the FTP. KPMG stated that a consequence of the lack of financial rules, '… *has led to uncertainty and debate as to whether certain savings and related Consultant reward fees can be approved*' and provided illustrations within their report of such uncertainties. As such, the Committee believed that it may be potentially advantageous for future Programmes of this complexity to consider specialist input when the contract and/or related documents are being drafted and that it would be worthwhile reviewing the approach to drafting such documentation of this type in the future.

KPMG identified that a total of £5.14m was paid to the Consultant throughout the duration of the contract. With regard to the reward fee element, the Committee acknowledged KPMG's finding that there was no significant difference based on the contract provisions.

The Committee acknowledged the examples of good practice identified within the report and noted the significant contribution to the General Revenue of many of these Projects. However, there were a number of issues highlighted within the report that raised concerns with the Committee, specifically whether:

- an advantageous clause in the contract should have been evoked by the Policy Council;
- future savings should have been approved;
- costs charged through non-General Revenue accounts or States owned entities should have been considered to be internal transfers ; and
- budget reductions should have been considered as a 'real' cash saving.

Furthermore, the Committee was concerned by KPMG's summation that ongoing monitoring of the benefits would be vital to ensure the sustainability of the benefits.

Inevitably for any programme of this scale, there were a number of lessons that must be learnt. The KPMG report established that there were examples of good practice, together with areas of concern which justified the need to maximise the learning process through this and other reviews into the FTP.

The report was released May 2015 and can be accessed at:

- KPMG Link: http://www.gov.gg/CHttpHandler.ashx?id=95692&p=0
- PAC Report Link: http://www.gov.gg/CHttpHandler.ashx?id=95691&p=0

Review of the Financial Controls within the implemented SAP System

In September 2012, the Committee published its Terms of Reference for a broad review of the effectiveness of financial controls in place across the States of Guernsey to minimise the risk of fraud against the organisation and safeguard States' assets.

It was agreed that the review would take a staged approach and, in November 2012, Ernst & Young was announced as the independent expert reviewer for the initial stage. This was to focus on the appropriateness of the States of Guernsey's anti-fraud governance framework before and after the specific incident of fraud committed against the States, which had been reported in July 2012.

In May 2013, both Ernst & Young's report and the Committee's covering report for this initial stage were released.

The Committee also announced at that time its intention that Stage Two of its 'Review of Financial Controls' would focus on the controls in place following the establishment of the STSC and the completed implementation of the new SAP system.

The Committee also announced at that time its intention that Stage Two of its 'Review of Financial Controls' would focus on the controls in place following the establishment of the STSC and the completed implementation of the new SAP system.

"As the implementation of both the STSC and SAP has had significant implications for financial management in the States of Guernsey, the Committee intends to commence Stage 2 of its Review of Financial Controls as soon as possible, focussing on the financial controls which are now in place."

The review was intended to evaluate the level of financial control being exercised within the States of Guernsey, the quality of the financial management control systems provided by the SAP system and the procedures undertaken by the STSC, in relation to reducing the risk of fraud.

Ernst & Young was engaged in late 2013 to undertake the review on behalf of the Committee.

Following Stage One of the review in May 2013, the Committee stated that at the time of the occurrence of major fraud in July 2012, financial controls were weak and the concept of risk management was poorly understood. It also noted that the incident of fraud had been a catalyst for change and it was acknowledged that a significant amount of work had been undertaken following the incident to implement improvements. However, the Committee made it clear that momentum needed to be maintained.

The implementation of the SAP system and the creation of the STSC formed part of the FTP and was designed to centralise and streamline the back office functions. The Committee therefore felt that it was necessary to determine whether these changes resulted, not only in financial control arrangements which were fit for purpose, but also whether continuous improvement could be demonstrated.

Ernst & Young was engaged on behalf of the Committee, to undertake the review of financial controls in place within this environment. The review was to look specifically at the quality of the financial management control systems in place in relation to reducing the risk of fraud.

In summary, the report provides a reasonable degree of assurance that a good standard of financial control is now in place within the STSC and those processes have indeed reduced the risk of fraud across the States.

However, it did highlight two matters of serious concern.

Firstly, the lack of a current, documented and comprehensive set of financial rules and directives. This should have been in place customarily, but more importantly, should have been a specific requirement prior to The Hub going live.

Secondly, it seemed unclear who had overall responsibility for the financial management activities undertaken within the STSC.

In the Committee's opinion, the review also highlighted issues in terms of training within States departments, which may have resulted in the full benefits of the system not being realised at implementation. This should be considered as part of any future review into the SAP/STSC implementation.

The report was released July 2015 and can be accessed at:
http://www.gov.gg/CHttpHandler.ashx?id=96892&p=0

Beau Sejour Leisure Centre Review

The purpose of the Committee's review was to evaluate whether the processes followed in the BSLC Project were appropriate and resulted in the best value for money option being pursued for its future management. The Review gave the Committee an important insight into the experience of implementing the FTP and has helped inform its broader work relating to it.

It was clear that throughout the review process a series of wide-ranging reports were undertaken. With the advantage of hindsight, it is now clear that the conclusions within the Alternative Management Operations Report, the initial major report, were robust.

It is perhaps understandable that the Policy Council wanted to ensure that the potential for outsourcing had been thoroughly pursued and determined '*once and for all*'.

It was also evident that significant tension developed within the Project Team during the latter stages of the project, which resulted in a fundamental disagreement as to the viability of the options for how BSLC should be managed. Undoubtedly, passions raised by this process were a reflection of both the genuine appetite for savings to be identified and a deep commitment to public service. This provides an example of how two groups of professional staff within, or supporting, one project team can fundamentally disagree on the same issue. However, perhaps more importantly, how sometimes they are unable to work together to reach a consensus of opinion.

The intervention of the Senior Responsible Officer, to invite a third party for an independent opinion, can now be judged as the salient action in this project and should be considered in the future if a similar situation arises.

From the information that was examined within this review, the Committee concluded that the process provided a robust challenge to the existing model of managing BSLC, albeit that the existing Strategic Partnership could be enhanced. It was also the view of the Committee that all groups associated with this project acted in good faith throughout. However, the Committee believed that the project should have been terminated earlier. This is not only due to the fact that TUPE was a major issue but also because of the significant but unquantifiable amount of staff time spent on the process.

The Committee acknowledged that C&L has since continued to consider potential efficiencies that could be accomplished within the existing management arrangements. The Committee noted the further efficiencies by C&L through '*Plan B'*, with the most recent subsidy continuing to fall.

The report was released November 2015 and be accessed at:
http://theoldsite.gov.gg/CHttpHandler.ashx?id=98975&p=0

The States are asked to decide:-

VIII.- Whether, after consideration of the Policy Letter dated 8th January, 2016, of the Public Accounts Committee they are of the opinion to note the Legacy Report for the term of office May 2012 to April 2016.

SOCIAL WELFARE BENEFITS INVESTIGATION COMMITTEE

COMPREHENSIVE SOCIAL WELFARE BENEFITS MODEL

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port

30th November 2015

Dear Sir

EXECUTIVE SUMMARY

1. The Social Welfare Benefits Investigation Committee was constituted as a Special Committee of the States on 6th December 2013. The Committee's given mandate, in summary, was to examine in detail the workings of the supplementary benefit system administered by the Social Security Department and the rent rebate system administered by the Housing Department and to bring forward proposals to the States of Deliberation for a unified, adequate and sustainable system of social welfare benefits.

2. The work of the Committee has not been examining entirely new ground, as in recent years the States have received from the Social Security Department two previous reports with the same general aims. One of those reports was considered by the States at the March 2012 States' meeting and the other at the November 2013 meeting, debate on the latter having given rise to the creation of the Committee.

3. The Committee noted that advances had already been made from the two previous reports, particularly in work incentivisation and work obligations as conditions of continued receipt of benefit, together with increased opportunities and assistance for jobseekers. This has allowed the Committee to focus its attention on understanding the extent of welfare assistance that currently exists within the parallel systems of the Social Security Department and the Housing Department, and formulating a set of benefit rates which the Committee considers adequate to avoid poverty in Guernsey. In this regard the Committee's definition of poverty refers to the income of an individual below which Guernsey as a society (represented by the States) considers it to be intolerable for that individual to be expected to live.

4. The Committee has also examined and made recommendations concerning the treatment of savings and capital and the expected contribution from non-dependants who live in the same household as the principal claimant.

5. In common with the two reports that have preceded its own, and in accordance with its mandate, the Committee is convinced that the States do need to merge supplementary benefit and rent rebate into a single system.

6. As was the case in the two previous reports, and as should be expected, some people will gain by the proposed new rule and others will lose. The Committee recognises the need for a transition period so that people who will be worse off than at present have that reduction phased in. The Committee proposes a three year transition.

7. Overall, the Committee's proposals are estimated to add £3.4m per year to general revenue expenditure in 2015 terms in the first year of the transition, reducing to £2.9m from year 3 onwards when the transition is complete.

8. Throughout the development of its proposals, the Committee has been mindful of the current economic realities, the need to be fiscally responsible and, in particular, the obligation to ensure that its proposals comply with the fiscal framework. The Committee considers that it has exercised this responsibility to the extent that could reasonably be expected of it, given the specific mandate for which the Committee was constituted.

9. From its discussions with the Treasury and Resources Department, the Committee understands the necessity of prioritisation of service developments that are competing for resources. The Committee is quite clear, however, that it is not for the Committee to suggest the order of priority. The Committee expects that matter to be one of the major challenges facing the new Assembly.

10. The Committee recommends that, subject to funding being available, its proposals should take effect from January 2017 or as soon as possible thereafter.

11. The Committee recommends that its membership should not be re-constituted following the April 2016 General Election of Deputies and that any further work that would have been required of the Committee should be progressed by the Committee *for* Employment and Social Security.

INTRODUCTION

SWBIC membership and mandate

12. The Social Welfare Benefits Investigation Committee is a Special Committee of the States, constituted in accordance with Rule 18 of the Rules relating to the Constitution and Operation of States Departments and Committees.

13. Resolutions of the States on 14th November 2013 and 6th December 2013 (Resolution XI, Billet d'État XX and Resolution I, Billet d'État XXVI of 2013) set the membership and mandate of the Committee.

14. The membership of the Committee is:

Deputy Andrew Le Lièvre, Chairman, appointed by States
Deputy Peter Gillson, appointed by States
Deputy John Gollop, Social Security Department representative
Deputy Michelle Le Clerc, Social Security Department representative
Deputy Mike Hadley, Housing Department representative
Deputy Paul Le Pelley, Housing Department representative
Deputy Roger Perrot, Treasury and Resources Department representative

15. The mandate of the Committee is:

- To examine all aspects of The Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of The States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, in order to assess the appropriateness or otherwise of the legislation and associated policies in view of the economic and social changes since its inception;
- To develop a single, comprehensive social welfare benefits model to replace The Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of The States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004, which single comprehensive model shall be capable of fulfilling and balancing the social and fiscal objectives of the States;
- To ensure that during the formulation of a single, comprehensive social welfare benefits model, and in order to develop an objective rationale for the determination of assistance that is both socially just and financially sustainable, detailed consideration is afforded to the circumstances of, inter alia, the aged, the sick, the disabled, families on low incomes, families with three or more dependent children and persons with no further reasonable expectation of employment due to age or ill health;
- To ensure that during the formulation of a single, comprehensive social welfare benefits model consideration is afforded to the Policy Letters of the Social Security Department laid before the States in Billet d'État V of 2012 and Billet d'État XX of 2013 and the letters of comment attached to those Policy Letters by other committees of the States.

16. There are further obligations on the Committee (paras. 31 to 33 of Resolution XI, Billet d'État XX of 2013):

- That during the course of its deliberations, the Social Welfare Benefits Investigation Committee shall consult with the full membership of the Housing Department, Social Security Department and Treasury and Resources Department;

- That the Social Welfare Benefits Investigation Committee shall have regard to the findings and emerging recommendations of the Personal Tax, Pension and Benefit Review;

- That by March, 2015 the Social Welfare Benefits Investigation Committee shall lay before the States a Policy Letter proposing the introduction as expeditiously as possible of a single, comprehensive social welfare benefits model to replace The Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of The States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004 together with, after full consultation with the Treasury and Resources Department, recommendations which identify possible sources of funding for any additional expenditure likely to be incurred by the new, single comprehensive social welfare benefits model.

17. With regard to the reporting deadline referred to in the immediately preceding sub-paragraph, the Chairman of the Committee made a statement at the February 2015 States meeting, informing the Assembly that, unfortunately, the March deadline could not be met. The Chairman explained that the reasons for the delay included an initial lack of staff resources, a situation which had subsequently been addressed to some extent. The Chairman also explained that the Committee, in undertaking its work, was returning to the fundamentals and examining areas that had not been reviewed for many years.

18. On 8th April 2015, following debate on the report from the Treasury and Resources Department and the Social Security Department titled 'Planning a Sustainable Future – The personal Tax, Pensions and Benefits Review' (Billet d'État IV of 2015), the States resolved, among other things:

'...6. To amend the Fiscal Framework to place an upper limit on aggregate government income, incorporating General Revenue, Social Security contributions and fees and charges, such that government income should not exceed 28% of Gross Domestic Product.

…

25. To direct that the Social Welfare Benefit Investigation Committee ensures that the outputs of its review of social welfare benefits complies with the Fiscal Framework and any extension of these limitations agreed by the States of Deliberation's approval of Proposition 6.'

19. The Committee considers that it has been fiscally responsible in the development of its proposals, which it considers should not cause a significant threat to the requirements of the Fiscal Framework.

20. The Committee is satisfied that its work is sufficiently complete to present to the States a set of proposals that will allow a comprehensive social welfare model to be achieved over a three year transition period between January 2017 and

December 2019. The proposals, among other things, will unify the existing supplementary benefit and rent rebate schemes.

21. The Committee acknowledges that its work is not fully complete. Some aspects of the comprehensive welfare model will still need research and development; others will inevitably need refinement in the light of further thinking before the transition starts, or in the light of experience when the transition is underway.

22. The Committee recommends that it should not be reconstituted following the April 2016 General Election of Deputies and that any further work that would have been required of the Committee should be progressed by the Committee *for* Employment and Social Security.

Recent history of welfare reform proposals

23. The proposals in this report represent the third approach to the States in a period of 4 years concerning welfare benefit reform. All three approaches have been with the same principal aims:

- To rationalise the supplementary benefit scheme administered by the Social Security Department, and the rent rebate scheme administered by the Housing Department, into a unified scheme with the same set of rules;
- To take the opportunity, through the unification, to modernise the welfare system, in particular in its application as an 'in-work benefit' as well as its historic and customary application as an 'out of work benefit';
- To ensure the general adequacy of benefit rates.

The 2012 Report

24. The first approach was in March 2012, when the Social Security Department presented a report entitled 'Modernisation of the Supplementary Benefit Scheme - Phase 1' (Billet d'État V of 2012) ("the 2012 report"). That was a far-reaching report, proposing fundamental changes to the supplementary benefit legislation in order to make the benefit more suitable as an 'in-work' benefit in addition to its historic function as an 'out-of-work' benefit. Those changes were necessary, among other reasons, for the intended integration of the Housing Department's rent rebate scheme, under which many working families, as well as non-working families, are receiving assistance with their housing costs by way of a rebated (reduced) rent.

25. The 2012 Report recommended new rates of supplementary benefit, informed by a Minimum Income Standards study conducted in Guernsey in 2011 by the Centre for Research in Social Policy at Loughborough University.

26. The estimated additional cost to General Revenue of the proposals in the 2012 report was given in the range £8.34m to £19.89m per year, being the best and

worst cases based on a number of assumptions. The Department reported that it was very difficult to predict the costs that would arise from the modernisation of supplementary benefit, as much would depend on the behaviour of people who would become entitled to claim benefit, and those who began to face more substantial work-related requirements.

27. Largely because of the uncertainty surrounding additional costs, the States rejected the propositions in the 2012 Report concerning increased benefit rates. The States did, however, approve the propositions concerning work incentivisation and obligations for people claiming supplementary benefit. Those legislative changes have been made and much progress has been made over the last 3 years in ensuring that people of working age who are claiming supplementary benefit are aware of their obligations to maximise their work capacity and are provided with practical assistance so to do. These obligations cover all adults in a family unit, including the spouse or partner of the principal claimant.

The 2013 Report

28. The second approach to the States was in October 2013, when the Social Security Department included revised proposals for the Modernisation of the Supplementary Benefit Scheme with the Department's annual report on contributions and benefit rates for the following year (Billet d'État XX of 2013) ("the 2013 report").

29. The 2013 proposals included benefit rates referenced to 60% of median income. This produced recommended benefit rates which were lower than those of the 2012 report linked to Minimum Income Standards. Consequently, the estimated additional cost of the 2013 proposals was much reduced, being a total of £4.25m per year. This included estimated additional benefit costs of £3.75m, plus approximately £0.5m in additional staffing and administration costs. It was noted that staffing costs would reduce in the second and third years following implementation.

30. The 2013 proposals were not approved by the States, being set aside by an amendment proposed by Deputy A R Le Lievre and seconded by Deputy R W Sillars. The amendment deleted the Social Security Department's propositions relating to the modernisation of the supplementary benefit scheme and substituted them with propositions relating to the development of a single, comprehensive social welfare benefits model. The new propositions included the establishment of a Special States' Committee, to be named the Social Welfare Benefits Investigation Committee. The proposition also included the mandate of the Committee, as reproduced at paragraph 15 above.

31. In this report, numerous references are made to 'the 2012 report' or the '2013 report'. The Committee acknowledges the extensive research and policy consideration behind those two reports, by current and previous members of the Social Security Department, the Housing Department and others. The

Committee's proposals, contained in this report, in many cases repeat, or develop, the proposals put forward in the two previous reports. In some areas, such as the expectation that people of working age will maximise their work and earnings potential, there has been no need for the Committee to disturb the measures that have already been put in place by the Social Security Department and which are continuing to deliver such good results.

STRATEGIC CONTEXT

32. The Committee has had regard to the strategic context within which its mandate is undertaken. The context includes aiming to meet objectives contained in the Social Policy Plan while recognising the need to maintain the spending constraints being applied to restore the States' budget to fiscal balance.

33. The General Objectives of the Social Policy Plan appear within the States Strategic Plan (Billet d'État VI of 2013) and are:

- A social environment and culture where there is active and engaged citizenship
- Equality of opportunity, social inclusion and social justice
- Individuals taking personal responsibility and adopting healthy lifestyles.

34. The themes around these general objectives are:

- Ensuring sustainability of provision in relation to funding, workforce and the social environment
- Working with the third sector
- Focussing on prevention rather than reactive crisis management.

35. The Disability and Inclusion Strategy (Billet d'État XXII of 2013) requires States' Departments, among other things 'to take account of the Strategy when *developing strategies, policies, plans, procedures and when making changes to services or capital works.'*

36. The Committee considers that the proposals contained in this report strike an appropriate balance between adequacy of benefit rates for social inclusion and social justice and sustainability of the welfare programmes within the necessary overall sustainability of Guernsey's economy.

37. The Committee' proposals, if accepted, will over a 3 year transitional period bring to a close the rent rebate scheme and move approximately 930 social housing tenants into the ambit of the supplementary benefit system, adding to the 868 social housing tenants already covered by the system. The work requirement provisions of the amended legislation, which is now an established feature of the

supplementary benefit scheme, and of which the Social Security Department has increasing experience in implementation, will apply, where appropriate, to those 930 social housing tenants and their spouses or partners if they are of working age. The Committee is confident, from the evidence of the Social Security Department's recent success rate in this area, that the initial assistance in helping people to take personal responsibility will make an effective contribution towards the social policy objectives of the States.

Alderney

38. The Committee notes that all of Guernsey's social security legislation applies to Alderney, with the same rates of tax, contributions and benefits. Any changes to supplementary benefit legislation that result from the Committee's recommendations will, therefore, apply to Alderney as well as Guernsey.

39. The Committee is aware of representations that have been made from Alderney concerning the higher prices for some services in that Island compared with Guernsey. The Committee has not examined that issue.

40. The Housing Department does not provide social housing in Alderney, although there is some provision by the States of Alderney. There is no rent rebate scheme in the Alderney system, with all claims for financial assistance being made solely through the supplementary benefit system. The parts of this report that concern the merger of the rent rebate scheme with the supplementary benefit scheme, therefore, have no direct relevance to Alderney.

THE SWBIC REPORT AND PROPOSALS

41. The Committee's proposals contained in this report have an estimated cost of £2.9m above the current expenditure on the supplementary benefit and rent rebate schemes. These are the ongoing costs after a transition period during which costs are initially higher, being £3.4m in year 1 and £3.2m in year 2. The Committee is acutely aware, given the current budget deficit in the general revenue budget of the States, that additional costs will not be welcomed from a fiscal perspective. However, the Committee believes that the costs are necessary from the social welfare perspective and are lower than might have been envisaged in the establishment of the Committee and in its early work. The reasons why the additional costs are reasonably constrained, and indeed lower than those of the two predecessor reports, include the following:

- rates of benefit for all categories have been examined. While some significant internal adjustments are proposed (broadly a reduction in current short-term rates and an increase in long-term rates), at aggregate level the proposed new rates have moderated the increase in overall expenditure;

- the Committee is recommending continuation of the benefit limitation of £600 per week (2015 rate) which currently applies to the supplementary benefit scheme. This limits the number of people, beyond those being currently assisted through supplementary benefit or rent rebate, who might newly become eligible for benefit. Such new beneficiaries will be those who become eligible for assistance through an increase in the benefit requirement rates in their own case, and have the headroom to receive that benefit within the unchanged benefit limitation. Apart from these limited cases, the new system will only encompass a broader scope of lower income families if and when the benefit limitation is increased by the States at some time in the future. An explanation of how the benefit limitation works is found at paragraphs 48 to 72.

42. The Committee's proposals, therefore, by and large, distribute the estimated additional cost of £2.9m among low income individuals and families already currently within the scope of supplementary benefit or rent rebate assistance. But in addition to the proposed new money going in, there will also be significant redistribution of the £35m already in payment to these individuals and families. Some people's benefits will increase, others will decrease. This is inevitable in order to achieve the objective of a unified welfare system in which a single set of rules applies. In cases where benefits are to decrease substantially, a transition will be necessary and it is proposed that this should be over a 3 year period.

43. The distribution of net additional social welfare benefit expenditure within housing sector and categories of recipient are shown in Table 1 overleaf.

Table 1. Distribution of additional annual benefit expenditure

	Year 1	Year 2	Year 3
Social Housing tenants not currently receiving supplementary benefits			
Working tenants	£611,000	£489,000	£367,000
Working pensioners	£60,000	£44,000	£28,000
Pensioners	£126,000	£61,000	(£4,000)
Introduction of £75 pw non-dependants' allowance or assumed payment**	£2,000	(£77,000)	(£156,000)
Medical expenses	£511,000	£511,000	£511,000
Winter fuel allowance	£565,000	£565,000	£565,000
Legal Aid Claims	£50,000	£50,000	£50,000
Sub-total	£1,925,000	£1,643,000	£1,361,000
Supplementary beneficiaries in private sector and social housing	£1,254,000	£1,135,000	£1,070,000
Other Impacts			
New claims in community	£55,000	£166,000	£221,000
Extra Needs Allowances*	£27,000	£82,000	£109,000
Introduction of £75 pw non-dependants' allowance or assumed payment**	£105,000	£176,000	£176,000
Total Claimant Costs	£3,366,000	£3,202,000	£2,937,000
Staffing costs	£178,000	£199,000	£199,000
Sub-total	£3,544,000	£3,401,000	£3,136,000
Savings	(£47,000)	(£141,000)	(£188,000)
Overall Cost Impact	£3,497,000	£3,260,000	£2,948,000

* Extra Needs Allowance is a proposed new addition to the system and is explained at paragraphs 142 to 152

** The assumed minimum contribution of £75 per week from non-dependant members of the household is explained at paragraphs 128 to 141

44. In undertaking its work, the Committee has been conscious of a widely held view that low income families in social housing are much better off than families with similar levels of income in the private sector. The Committee's detailed investigations and modelling have shown this perception to be correct only as the broadest of statements.

Rationale for unifying rent rebate and supplementary benefit

45. There is general acceptance that the rent rebate scheme, administered by the Housing Department, is in effect a financial social welfare benefit that currently runs in parallel with supplementary benefit, but less visibly. If the standard rate for a particular social housing property is, say, £250 per week, but the tenant is being charged £100, it clearly follows that the value of the rent rebate is a financial benefit of £150 per week. Although the Housing Department, in its correspondence with tenants, draws attention to the full standard rent and the amount of the rent rebate, if one applies, there may be a tendency for a tenant to forget the level of subsidy. In the example above, the tenant may come to think that his rent is £100 and that he is paying it.

46. Of the 1,922 tenants of Social Housing, 125 are being charged the full standard rent, 1,797 are being charged a rebated rent, of which 868 are also being assisted by supplementary benefit.

47. For people receiving both a rent rebate and supplementary benefit, and given that both systems are financed from General Revenue, theoretically the cost should be the same if there were no rebate and their supplementary benefit were increased by the same amount as the rent rebate foregone. But that theory does not hold because of the benefit limitation.

48. The benefit limitation, which is £600 per week (2015 rate), caps the income that an individual or family can receive through the combination of earnings and various benefits. There are some complications to that general statement, as family allowances and some disregard of earned income is allowed to escape the benefit cap. These complications are discussed later (see paras.56 to 58).

49. Given that the calculation of supplementary benefit entitlement is computed from adding personal benefit rates for adults and children, depending on the family composition, then the rent allowance, the lower the rent the better the chance of the family receiving the full supplementary benefit due without the £600 benefit limitation having effect.

50. While there is substantial headroom for a single person's personal benefit allowance of £170.24 per week, plus rent allowance (which in any event would be a maximum of £207.00 per week) within the £600 benefit limitation, there is far less headroom for an adult couple with two children, whose personal benefit allowances would be around £500 per week, depending on the age of the children. For a family with 3 or more children, there may be no headroom whatsoever between their personal benefit allowances and the benefit limitation, even before rent is taken into consideration.

51. The point being made here is to illustrate that low income families in rented social housing, and having a rebated rent, are currently less affected by the benefit limitation than families renting in the private sector, where no rent rebate applies.

This is currently a considerable advantage, particularly for larger families needing the support of supplementary benefit.

52. The Committee, in common with the findings of the 2012 and 2013 reports, considers that, in unifying the rent rebate and supplementary benefit systems, the removal of the rent rebate is essential, albeit through a transition period. It needs to be recognised, however, that this will remove what has been a 'hidden benefit limitation'. The effect of that change needs special consideration.

The hidden benefit limitation

53. It will be clear from the foregoing that, whereas a benefit limitation of £600 (2015 rate) per week has its place in policy and legislation, it is not an absolute cap for people in social housing: first because of the rules concerning family allowances and the disregard of the first £30 per week of earnings (these rules apply to private sector housing as well), and second because of the amount of the rent rebate which is not currently accounted for within the supplementary benefit calculation. If such accounting is undertaken, it is revealed that the effective benefit limitation for people in social housing, depending on the family composition, can be as much as £900 per week. This is the hidden benefit limitation within the current arrangements.

54. To understand the term 'hidden benefit limitation' it is considered helpful to describe, very broadly, how the current supplementary benefit limitation of £600 per week works.

55. The purposes of the benefit limitation, which was known in the past as the 'wage-stop', are two-fold. First, it helps to ensure that a person cannot arrange his circumstances such that he receives in benefit an income that is beyond his earning capacity. Second, the benefit limitation finds a balance between restricting the cost to the taxpayer and ensuring that the value of benefit granted is sufficient to meet the basic needs of most islanders.

56. To ensure that the benefit limitation is sufficiently flexible to recognise the needs of larger families and to encourage claimants to maximise their incomes through employment, two further adjustments are applied. These are as follows:

    a. In cases where the £600 limit is activated by the number of dependants, any family allowance payable in respect of those dependants can be paid over and above the benefit limitation;

    b. Where the claimant or the claimant's partner is employed, any earnings disregarded as part of the normal benefit computation are further disregarded when the family's aggregate needs exceed the benefit limitation.

57. The above rules give rise to a flexible limitation that reacts to the circumstances that exist within a claimant's household. In practice, and when applied in the

circumstances outlined below, the basic benefit limitation is enhanced as below. No one-child families are included in the figures below because their normal aggregate requirements would be most unlikely to reach the overall benefit limitation.

	Benefit Limitation
• Family with 2 children – no parent employed	£631.80 [1]
• Family with 3 children – no parent employed	£647.70 [2]
• Family with 2 children + 1 parent employed	£661.80 [3]
• Family with 3 children + 1 parent employed	£677.70 [4]
• Family with 2 children + 2 parents employed	£691.80 [5]
• Family with 3 children + 2 parents employed	£707.70 [6]

[1] £600 plus 2 x £15.90 family allowances

[2] £600 plus 3 x £15.90 family allowances

[3] £600 plus 2 x £15.90 family allowances plus £30 earnings disregard

[4] £600 plus 3 x £15.90 family allowances plus £30 earnings disregard

[5] £600 plus 2 x £15.90 family allowances plus 2 x £30 earnings disregards

[6] £600 plus 3 x £15.90 family allowances plus 2 x £30 earnings disregards

58. It should be noted that the benefit limitations as set out above do not apply in all cases. In many instances, the aggregate requirements of a family unit do not trigger the benefit limitation. Among other things, this may be due to the age of the dependent children or the existence of other non-dependent persons residing in the claimant's household.

59. While the basic benefit limitation applies to all forms of accommodation, tenants who are in receipt of supplementary benefit and who also reside in social rented accommodation enjoy an enhanced form of benefit limitation because of the existence of the Housing Department's rent rebate scheme.

60. When a person resident in social rented accommodation completes an application for supplementary benefit, he is required by Social Security to make an application for a rent rebate to ensure equity of treatment with other social housing tenants on similar low levels of income.

61. The Housing Department assesses the tenant's contribution towards his rent based on the tenant's basic requirement rate as determined by the Supplementary Law (ignoring any allowance for rent).

62. The process is best explained by a simple example:

Tenant details:

- Husband and wife – joint tenants;
- Both work - the Husband in a low paid form of employment (£350 per week) and his partner in part-time employment (£175 per week);
- The couple have four dependent children age 18, 16, 14 and 12 (all the children are in full time education);
- The Standard Rent of their States' accommodation is £309.05 per week.

Calculation of Supplementary Benefit (all rates used are long-term):

Couple Requirement Rate	£246.06	
Child 18	£132.15	
Child 16	£111.93	
Child 14	£69.25	
Child 12	£69.25	
Total basic Requirements	£628.64	
Rent calculated by Housing Department	£138.84	
Total Requirements	£767.48	
Maximum income from all sources	**£723.60**	(see para.63)
Application of Benefit Limitation calculation	-£43.88	

63. The benefit limitation fixes the income of the family from all sources at £723.60 made up as follows:

£600.00 Standard benefit limitation

£63.60 Family Allowance (4 x £15.90)

£60.00 Two earnings disregards at £30 each

64. However, application of the rent rebate calculation means that this tenant is also in receipt of a rebate worth £184.89 (i.e. £723.60 plus £184.89). This subsidy is ignored for the purposes of the supplementary benefit calculation.

65. The aggregate value of benefits, wages, family allowances and rebate received by this family is therefore £908.49. That figure is some £300 higher than the standard benefit limitation and more than £180 higher than the enhanced benefit limitation which allowed family allowances and earnings disregards on top of the standard rate.

66. The above, enhanced figure can be considered a hidden benefit limitation and represents a more accurate indication of the true value of the benefit system available to tenants of social housing.

67. Given that no rent rebate scheme exists for the private rented or owner-occupied sectors, the hidden benefit limitation represents a significant inequality of treatment, particularly so for two-parent families with children, where both partners are employed.

68. An abrupt removal of this hidden benefit limitation, however, will not be recommended by the Committee. It is the main area where a transition is necessary and it is proposed that a transition period of 3 years should apply.

69. It should be noted that, even with the rent rebate scheme removed, the hidden benefit limitation will remain, albeit much reduced, through the proposed continuation of the provisions that allow for family allowances and earnings disregards to exceed the advertised benefit limitation. As explained above, it means that if a claimant's calculated supplementary benefit need, on top of any income or allowances that he already has, exceeds the benefit limitation, the value of family allowances and any earnings disregards can be paid in addition to the benefit limitation. Notwithstanding the complexity and the apparent conflict with a benefit limitation concept, the Committee considers that continuation of these rules is acceptable and indeed necessary. The Committee did give consideration to recommending a benefit limitation that would be an absolute figure which could not be exceeded. This would have the advantage of being more easily explained and understood. If such an approach were to be preferred, the benefit limitation would need to be a minimum of £725 per week. Expressing this in another way, if there were to be a hard and fast benefit limitation, the Committee considers that low income families should not be wholly outside the scope of means-tested weekly financial assistance until their total income, net of deductions for income tax and social security is more than £37,700 per year (52 x £725).

70. While an income of £37,700 might appear to be well above what is needed to avoid poverty, it should be understood that this upper limit on combined income and benefits payments would only be being paid to families with more than two children and living in rented accommodation. It should be noted that, under the current system, the combined requirement rates (personal benefit rates) for a couple with two teenage children, plus the full un-rebated rent for a three bedroom terraced unit of social housing would amount to £685.96, as shown in Table 2 overleaf:

Table 2. Current (2015) weekly supplementary benefit rates for example family

Current system benefit requirement rates (long-term)	
Couple	£246.06
Child aged 16	£111.93
Child age 13	£69.25
	£427.24
Full (un-rebated rent for 3 bedroom social housing	£248.72
Total requirement rate before deducting earnings, other income etc.	£675.96

71. It will be seen from the example above, which uses an un-rebated rent, that the financial needs of this family, which is not large, is already above the current benefit limitation in place of £600 per week. The family's needs are approaching, but not up to, the £725 per week referred to in paragraph 69 above, which the Committee believes would be the necessary level of a hard and fast benefit limitation. If the example family were to include a third child, their financial needs would exceed £725 per week. As this is by no means an extreme example, it demonstrates why the current benefit limitation of £600 per week does need to continue to allow additions for family allowances and earnings disregards. That is what the Committee recommends in this report.

72. Having explained at some length the features of the explicit benefit limitation of £600 per week and the hidden benefit limitation of around £900 per week that can currently exist in social housing tenancies, it is important to note that the proposals in this report will close that gap. If the Committee's proposals are approved, the hidden benefit limitation will reduce from around £900 per week to around £725 per week.

BENEFIT RATES

SWBIC approach

73. The Committee's approach to recommending benefit rates has been to put aside textbook or think-tank definitions of absolute poverty and relative poverty. The Committee's definition of poverty refers to the income of an individual below which Guernsey as a society (represented by the States) considers it to be intolerable for that individual to be expected to live.

74. To undertake this work, the Committee has returned to the material produced for the 2011 Minimum Income Standards ("MIS") work of the Centre for Research in Social Policy ("CRSP") at Loughborough University. It is noted that both the 2012 and 2013 reports also used variations of the MIS work in formulating proposals which ultimately were not approved by the States.

75. In using the Minimum Income Standards work for the current report, the Committee examined in detail the constituent parts of each standard - for example, food, clothing, household goods and services, transport etc. and, again by consensus, included or excluded various items and the attached current financial values. The Committee has taken a pragmatic approach in this area, while maintaining sight of its key importance. The Committee's approach has in some places required judgement to resolve what would otherwise be conflicting results from the computations.

76. The adjusted MIS tables, giving the detailed breakdown of the constituent parts of the recommended rates appear at Appendix 1. The Committee is aware that some of the values of the constituent parts may appear counter-intuitive, but it should be remembered that the origins of the table are in surveys and focus groups which take into account behavioural differences in needs and spending profiles of different age groups and family compositions.

Averaging the rates for Pensioners and People of Working Age

77. In the current supplementary benefit system, the only relevance of age in regard to benefit rates is in respect of children, where different requirement rates apply to different age-groups. For adults, the same rates of benefit apply whether the adult is a 20 year-old or an eighty year-old.

78. The MIS work did make the distinction between the needs of pensioners and adults of working age. The Committee undertook the same exercise with the MIS data sets for pensioners as it did for other categories and, with reference to the constituent parts of the 'basket of goods', reduced the MIS rates to levels which the Committee considers the reasonable minimum level for low income pensioners.

79. As can be seen in Appendix 1, that exercise resulted in rates which in some cases would have seen higher rates for pensioners and in other cases seen lower rates. For short-term rates, the rates for single pensioners and pensioner couples would have been higher than for people of working age. For long-term rates, the rate for single pensioners was so close to the rate for single people of working age as to be treated the same. For couples, the long-term rate for pensioners was lower than for couples of working age. That particular result caused the Committee to reflect on the merits of having different rates for adults of working age and pension age. The Committee decided that the recommended benefit rates for adults should be the same rate, irrespective of age.

Short-term rates and long-term rates

80. The Committee recommends a continuation of two sets of benefit rates, one for short-term claims and the other for long-term claims. This is the arrangement in the current supplementary benefit scheme, with the change-over occurring at 26 weeks. The Committee recommends, however, that people of pension age and people with a disability such as there to be no work requirements placed on that person as a condition of benefit, should be assessed for benefit at the long-term

rates from the start of their claims. It is considered right to do so on the grounds that claims from pensioners and people with severe disabilities are likely to be of long-term duration. Furthermore, such claims are unlikely to come to an end on grounds of increased income, other than by receipt of a capital sum (for example by way of an inheritance). This proposal will be wholly to the advantage of pensioners and people with disabilities.

81. The recommendations in the previous paragraph mean that benefit claims assessed and paid at the short-term rates will apply only to people of working age for whom there will be work requirements, either immediately (in the case of job seekers and single parents) or in the longer term (for single parents with children under 7 year of age).

82. The rationale for having two sets of rates is that, for short-term claims, people's financial needs will be lower than those of longer-term claimants. In short-term claims, there should be less need to replace clothing and household goods. It is also reasonable to expect less expenditure on social participation.

83. Both the 2012 and 2013 reports proposed increasing the term of a short-term claim from 26 weeks to 52 weeks. In both reports, the case for the proposed extension was that there needs to be adequate time for new claimants on short-term benefit rates, who have the capacity to work, to have made every effort to resume employment or improve their circumstances. In many cases this required effort will be with the assistance of the increasing range of services that are provided by the Social Security Department's Job Centre, which are being applied to great effect.

84. The concern over the 26 week changeover to higher, long-term benefit rates is that that could encourage avoidance of return to work initiatives in the early life of a claim, with a view to receipt of higher benefits if the claim continues. The Committee shares such concern.

85. The Committee's proposals contained in this report are for short-term rates which are lower than the current short-term supplementary benefit rates and long-term rates that are higher than current long-term supplementary benefit rates. The proposals, therefore, substantially increase the gap between the short and long-term rates. That will increase the risk of the avoidance behaviours described above. On the other hand, the Committee is mindful of the magnitude of the proposed reduction in short-term rates and, on balance, would not at present wish this minimum level of financial support to apply to people in need for longer than six months.

86. The Committee notes that, if the proposals in this report are approved, much will change during the transition period of the next two or three years. As the new arrangements settle in, together with the customary annual consideration and adjustment of benefit rates, it will be advisable to reconsider the extension of short-term rates to 52 weeks for those claimants with a work requirement, to address the concern outlined in paragraph 84.

87. The Committees' proposed benefit rates, in 2015 terms, are shown in Table 3 below.

Table 3 SWBIC proposed rates compared with Supplementary Benefit (SPB) rates

Short term (up to 26 weeks) weekly rates in 2015 terms			
	SWBIC proposed	SPB Current	SWBIC increase (decrease)
Couple householders	£171.66	£199.43	(£27.77)
Single householders	£98.09	£138.50	(£40.41)
Single non-householder:			
18 and over	£75.11	£105.44	(£30.33)
Non householder rent allowance	£75.00 (max)		
Member of household			
18 and over		£105.44	
16 and 17		£89.53	
12 to 15		£55.46	
11 and over	£70.11		
5 to 11		£40.28	
5 to 10	£52.58		
Under 5	£35.06	£29.33	£5.73

Long-term (over 26 weeks) weekly rates in 2015 terms			
	SWBIC proposed	SPB Current	SWBIC increase (decrease)
Couple householders	£282.79	£246.06	£36.73
Single householders	£170.69	£170.24	£0.45
Single non-householder:			
18 and over	£105.16	£132.15	(£26.99)
Non householder rent allowance	£75.00 (max)		
Member of household			
18 and over		£132.15	
16 and 17		£111.93	
12 to 15		£69.25	
11 and over	£100.16		
5 to 11		£50.20	
5 to 10	£75.12		
Under 5	£50.08	£37.00	£13.08

Transport Allowances

88. The 2011 MIS work drew attention to differences between the findings of Guernsey and United Kingdom focus groups in respect of transport costs. Whereas in the United Kingdom, the expectation was that low income groups would use public transport, the Guernsey focus groups concluded that it was essential to own a car, albeit a second-hand car of low value. That conclusion resulted in the transport part of the Minimum Income Standards being in the range of £39 per week for a pensioner couple to £64 per week for a working family with two children.

89. The Committee does not support transport allowances of anything approaching these amounts. In its exercise of re-examining the MIS baskets of goods, the Committee removed all of the transport allowances. In their place, the Committee has added into the basic requirement rates a £5 per week allowance for all adults. This is based on 5 bus journeys at the standard fare of £1 per journey.

90. The Committee has also added £5 to the current earnings disregard of £30 per week (see paras. 118 to 121) in recognition of additional transport costs. This means that for working people there is a £10 per week transport allowance, allowing 5 return journeys per week.

91. The Committee is mindful that the allowances could be criticised on a number of grounds, perhaps with reference to the MIS findings and perhaps with reference to bus routes or frequency. However, while the allowances have been priced on bus fares, the Committee notes that low-income people will continue to move around the island in a number of ways of their choice or necessity. While some will run a car, others may be near enough to their work to walk or cycle. Others still may use the bus or share a lift.

92. It should be noted that the proposed earnings disregard of £35 per week applies to each earner, so a couple would have £70 of their aggregate weekly earnings disregarded, giving some choice of spending on transport costs among other necessary items.

93. The Committee also notes that the Health and Social Services Department's voluntary car service, supported where necessary by taxi journeys paid under the supplementary benefit system, will ensure that people are able to attend necessary medical and para-medical appointments.

PROVISIONS FOR IN-WORK BENEFIT

Changing balance of out-of-work and in-work benefit

94. For the majority of its 40 year existence, the supplementary benefit Scheme has provided financial assistance, principally to people who have not been in work. This has included pensioners, people who are incapable of work through sickness or disability, single parents and others.

95. From 2005, the scope of supplementary benefit was extended to include unemployed people who until that date had been assisted through Public Assistance, administered by the Parish Procureurs and overseers of the Poor. In addition to people who were wholly unemployed, the extended claimant group included people who were partly unemployed, having only limited work, and also a smaller group of people who were fully employed, but whose low earnings rendered them eligible for a top-up from supplementary benefit. The Committee understands that, while wishing to assist low earners in the latter category on an individual basis, the Social Security Department is on guard against the benefit system being wrongly used to subsidise employers who pay low wages. The Committee understands that this is not considered a significant issue at present, but ongoing caution is required as the benefit continues its progression into in-work assistance.

96. Those parts of the 2012 report which were approved by the States included a fundamental change to the previously discrete eligibility criteria for supplementary benefit. The legislative change, which came into effect at the start of 2015, makes the benefit potentially accessible to all applicants, subject to their means, but requires the immediate assessment as to the work capacity of the applicant. The amended legislation is structured on the basis that people receiving supplementary benefit, and the spouses or partners of the principal claimant, are obliged to maximise their work and earnings capacity. The Administrator of Social Security is empowered to issue directions to claimants including that they engage in work or work-focussed activities, attend work-focussed meetings, and attend mandatory work or training placements.

97. There are necessary group and individual exemptions to the general presumption of work as a condition of receipt of supplementary benefit. These include the customary groups of people who need the support of supplementary benefit, namely people over pensionable age, and people who are incapable of work through illness or disability and their carers. Single parents of children under 7 years of age are also excused the obligation to undertake work, but are required to engage in work-focused meetings and training in preparation for work.

An in-work benefit for many social housing tenants

98. Many tenants of social housing are working families with at least one adult in full time employment and also frequently with a second adult in full or part-time employment. Under the rent rebate arrangements, those families have quite rightly been able to enjoy some normal rewards for their work in the form of recreational activities and purchases for the adults and children. The Committee recognises that, to a reasonable degree, the new system must allow that to continue. Working families should be allowed to make savings from their work in order to finance some spending of choice.

Capital Cut-off, Capital Allowances and Assumed Income on Capital

99. The current supplementary benefit scheme has a cut-off limit for capital or savings. A person is ineligible for supplementary benefit if he has savings or capital assets of £20,000. Importantly, this does not take into account the capital value of the property in which the person is living. The policy behind having a capital cut-off is that it provides a simple test for the would-be claimant as to whether or not it is worth pursuing a claim. Among the many complex rules of entitlement conditions, the capital cut-off is easily understood and applied.

100. It should be noted that the capital cut-offs and capital allowances being discussed in this part of the report concern eligibility for weekly benefit payments. They are different limits from the substantially lower limits that may apply to additional benefits associated with supplementary benefit, in particular free medical or dental treatment. Those important areas are considered later in this report (paras. 153 to 166).

101. The current supplementary benefit scheme has a £5,000 allowance for capital or savings, which is ignored in the assessment of weekly benefit entitlement.

102. For capital between £5,000 and £20,000, a 'notional income' is assumed, namely 15 pence per week for each £25 of capital. The notional income equates to 31.2%. Clearly, even in periods where interest rates were very much higher than they are today, the notional income on capital was never intended to reflect actual returns on savings. The application of the notional income formula was intended to force a drawdown on the claimant's savings until the savings reached the allowance of £5,000, at which point the savings would be ignored.

103. For illustration, a claimant with savings of £6,000 has the notional income formula applied to £1,000 of capital (£6,000 - £5,000), which assumes a notional income of £6.00 per week. A claimant with savings of £19,000 has the notional income formula applied to £14,000 of capital (£19,000 - £5,000), which assumes a notional income of £84.00 per week. A claimant with savings of £21,000 is told that he is ineligible to claim benefit because his capital exceeds the capital cut-off of £20,000.

Changing the treatment of capital allowances and assumed income on capital

104. The Committee notes that the treatment of capital was not examined in the 2012 or 2013 reports. Review through this report is therefore timely. Furthermore, there has been a significant development in the last year in the approach that the Housing Department has taken to the savings or windfall capital sums of people living in social housing.

Revised rules on savings for Social Housing Tenants

105. In 2015, the Housing Department revised substantially its rules for the treatment of savings and capital. The Department's Capital Sums Policy allows tenants,

depending on whether they are single persons or couples, and whether they are with or without children, to hold savings of varying amounts, depending on family make-up, without those sums affecting the right to a social housing tenancy, or the amount of rent rebate being received.

106. For example, in the case of a tenant who is a single person, the capital limit is £10,920 (in 2015 rates). The capital limit for a family with two children is £21,580. The maximum capital limit, for a family with three or more children, is £23,400.

107. The capital limits detailed above are calculated on the basis of the inferred amount which it would cost the tenant and his or her dependants to live on for 6 months. The amount is calculated using the supplementary benefit rates and a rent allowance equivalent to the average private market rent for a property large enough to accommodate the household. In other words, the capital limit is the minimum amount required for the household to be self-supporting for 6 months with no assistance from the States.

108. While the 6 month living allowance and rent allowance is the basis on which the capital limits are calculated, there is no obligation for the tenant to retain the money for that purpose or contingency. The capital limit, varying between £10,920 and £23,400 depending on family make-up, is entirely at the disposal of the individual or family who have accumulated it.

109. The Committee sees merit in the Housing Department approach. The Committee notes that for many low-income people, the thought of having £10,000 of capital at their disposal will only remain a distant dream. Indeed, among the current 2,400 supplementary benefit claims, there are only 316 claimants who have capital above £3,000. This illustrates the day-to-day existence of people who are reliant on social welfare benefits. However, a small number of claimants may be able to accumulate some savings through very frugal living, or possibly through gifts, inheritances or lottery wins. The Committee considers it only fair that in such circumstances, claimants should be able to have the enjoyment of their thrift or good fortune, within the sort of limits now being operated by the Housing Department.

110. The Committee recommends that, in the consolidated social welfare scheme, the treatment of capital should be in line with the current Housing Department Rules. The Committee considers that claimants of all types, householders and non-householders, whether in social housing or private sector housing, should be afforded a higher level of savings which would be untouched by any benefit calculation.

Revised rules on capital allowances for unified scheme

111. The Committee considers that a substantial uplift to the current £5,000 supplementary benefit capital allowance is justified, partly because it has remained the same for many years, and also because a higher allowance is needed as the new scheme encompasses more working families.

112. The Committee supports the rational construction of the Housing Department's Capital Sums Policy, being a buffer of up to 6 months living allowances and rent costs in the event of there being no support available from the States. The Committee recommends a variation to the formula which will reference the six month rental costs to the maximum social housing rent, appropriate to the family size. This will replace the need to sample private sector rents for this purpose.

113. The Committee recommends capital allowances under the unified scheme as set out in Table 4 below. It will be noted that the proposed allowances rely heavily on the allowances produced by the Housing Department's formula. The expression 'family' includes single parents.

Table 4. Proposed and Current Capital Allowances

Proposed and Current Capital Allowances			
	Proposed Allowance	Current Supplementary Benefit	Current Housing and Rent Rebate
Single person	£9,810	£5,000	£10,920
Couple	£11,780	£5,000	£13,000
Family with one child	£14,650	£5,000	£16,900
Family with two children	£18,220	£5,000	£21,580
Family with three or more children	£21,870	£5,000	£23,400

Revised rules on Capital Cut-off and discontinuation of Notional Income on capital

114. The proposed substantial increases in capital allowances, for people at present or in the future entitled to supplementary benefit requires examination of both the capital cut-off figure and the notional income applied to capital above the allowance. These factors were explained in paras. 99 to 103 above.

115. Under the proposed new arrangement, the capital allowances are also effectively the capital cut-off. If, say, a single person with capital of £15,000 applied for benefit under the new system, he would be informed that his capital was over the limit for assistance and informed that he could claim when his capital was below that limit, but not before a certain date. The earliest that he could claim would, in the example given, be 17 weeks hence. That waiting period would be calculated by dividing the amount by which his capital exceeded a single person's capital

allowance, divided by the weekly benefit allowance for a single person plus the maximum social housing rent for a one bedroom house. The calculation is shown in Table 5 below:

Table 5. Example of Capital Cut-off for single person

Applicant's capital		£15,000
Capital Allowance		£9,810
Surplus over capital allowance		£5,190
Single person (householder) benefit rate (para.87)	£98.09	
Maximum Rent Social Housing 1 bedroom house	£207.00	
Total weekly requirement rate	£305.09	
Divide surplus over capital allowance by total weekly requirement rate		17
Number of weeks before claim can be made		17

116. A further example is shown in Table 6 below. This example is for where a family with 2 adults and 3 children, aged 12, 9 and 4 have capital of £30,000.

Table 6. Example of Capital Cut-off for couple with 3 children

Family's capital		£30,000
Capital Allowance		£21,870
Surplus over capital allowance		£8,130
Couple (householders) benefit rate (para.87)	£171.66	
Child 11 to 18 rate	£70.11	
Child 5 to 10 rate	£52.58	
Child under 5 rate	£35.06	
	£329.41	
Maximum Rent Social Housing 3 bedroom House	£247.29	
Total weekly requirement rate	£576.70	
Divide surplus over capital allowance by total weekly requirement rate		14
Number of weeks before claim can be made		14

117. Application of the proposed new rules on capital allowances and capital cut-offs, as described in paras 111 to 115 above, will allow repeal of the current provisions in legislation concerning the notional income on capital, which the Committee recommends.

Earnings disregarded to make work pay

118. The current supplementary benefit scheme disregards the first £30 per week of the earnings of a claimant. So if a claimant has actual earnings of £330 per week, the supplementary benefit assessment assumes that earnings are £300 per week. In practice, this simple disregard means that for every £1 earned above the £30 disregard, the supplementary benefit that would otherwise be payable is reduced by £1. There is no obvious incentive in this system for a claimant to increase his earnings.

119. The Committee has looked closely at the earnings disregards, as did the Social Security Department in the formulation of the 2012 and 2013 reports. The Committee has investigated whether there could be some form of shared benefit from extra earnings, for example for every £1 earned, benefit is reduced by 50 pence and the claimant is advantaged by 50 pence. While such an arrangement instinctively sounds reasonable and likely to incentivise work, it falls down in the financial modelling. A 50:50 share of earnings would bring very large numbers of working families into the scope of supplementary benefit, adding greatly to the costs and paying benefits to families who are apparently managing adequately without assistance at present. Such a system would greatly increase what was described in paragraphs 53 to 72 as 'the hidden benefit limitation' and could see families with incomes of around £50,000 per annum receiving a means-tested benefit. A similar situation, albeit reduced in effect, applies to different splits of the share of earnings deducted from benefit or maintained by the claimant. The Committee was unable to find a satisfactory solution in the area of shared gain from additional earnings that it would recommend to the States.

120. In investigating this particular area, the Committee noted the fact that earnings after deductions for social security, tax and pensions are currently used in assessment of entitlement to supplementary benefit. The Committee considers this appropriate in a welfare benefit assessment, because the deductions from gross earnings are not immediately available to the claimant. However, it should be recognised that, for working people eligible for a top-up from supplementary benefit, the social security and tax deductions are in effect met by the benefit system, whereas those deductions would be fully borne in the case of people on a similar level of earnings but not entitled, or not claiming, benefit.

121. The outcome of the Committee's investigations into earning disregards, therefore, are largely a confirmation that the existing supplementary benefit rules should continue. That means the continued netting off from earnings of the deductions made for social security, tax and pension contributions, together with a further £35 per week of net earnings being disregarded. The additional £5 per week above the current earnings disregard of £30 per week is in respect of a transport allowance (see paras. 88 to 93).

MAXIMUM RENT ALLOWANCES

122. In the computation of entitlement to supplementary benefit, an allowance for rent is made on top of the personal allowances for the constituents of the claim, whether it be an individual or a family.

123. With some exceptions, the amount of the rent allowance is usually the rent being charged. Occasionally, the rent allowance is below the rent charged, where the Social Security Administrator considers that a reduced allowance is appropriate, having regard to the circumstances of the claimant and the nature and standard of the accommodation concerned.

124. It should be remembered that once the personal allowances and rent allowance have been totalled, the benefit limitation of £600 per week (2015 rate) pulls back any benefit that would otherwise be paid above that limit.

125. Both the 2012 and 2013 reports proposed a system of maximum rent allowances, based on the maximum social housing rent for a property of similar capacity. The Committee also supports that approach and recommends similarly in this report. The proposed maximum rent allowances appear in Table 7 below.

126. The Committee notes that this system is already largely in place. A maximum rent allowance for single people and couples without children has been given effect by Ordinance since January 2013, as has a maximum rent allowance for people living in shared accommodation. Furthermore, although maximum rent allowances for families with children have not yet been embodied in the benefits legislation, the working practice has been to use the comparable maximum social housing rents for the size of family concerned.

Table 7. Proposed maximum rent allowances

Tenancy Group	Adults	Number of children	Proposed maximum weekly rent allowance (2015 terms)
Group 1*	Single or couple	0	£207.00
Group 2	Single or couple	1	£247.29
Group 3	Single or couple	2	£316.10
Group 4	Single or couple	3 or more	£387.26
Group 5*	Shared accommodation		£167.87

*Maximum rent allowances for Tenancy Groups 1 and 5 have been in place since January 2013.

127. The Committee acknowledges the need, in exceptional cases, for a rent allowance above the normal maximum to be awarded at the discretion of the Administrator. An example might be where a person needs additional space in respect of a disability, including perhaps a room for a live-in carer.

CHANGED RULES FOR NON-DEPENDANTS AND NON-HOUSEHOLDERS

128. The term 'non-dependant' covers an adult who lives in the household of the person claiming supplementary benefit or the social housing tenant receiving a rent rebate. There are approximately 450 adult non-dependants living in social housing accommodation where the tenant is receiving a rent rebate. There are approximately 160 adult non-dependants living in private sector accommodation who are themselves claimants of supplementary benefit. There will be a further number of adult non-dependants who are living in household of supplementary beneficiaries in private sector accommodation but are not, themselves, supported by benefit.

129. In the majority of cases, especially in social housing, the non-dependant will be a relative of the householder. The non-dependant may be self-supporting or may be a beneficiary himself. If the non-dependant is reliant on benefits, he will have his own claim and will not be a part of the claim of the householder. For benefit entitlements, the non-dependant is termed a 'non-householder'.

130. In the context of rent allowances, and therefore in the paragraphs that follow, a non-dependant is different from a joint tenant. In cases where there is a joint tenancy, a rent allowance for a joint tenant will normally be assessed against the total rent divided by the number of tenants.

Current rules for non-dependants in social housing

131. The Housing Department currently treats the presence of a non-dependant in a unit of social housing by adding an amount to the rent payable by the householder. This 'non-dependant charge' ranges from £27.00 to £108.00 depending on a variety of factors, including whether the non-dependant is working or claiming supplementary benefit. The amount is adjusted so that the tenant is never charged in excess of the standard rent. For example, consider a family in social housing comprising a tenant of working age, his partner and two adult offspring, where the standard rent is, say, £300 per week and the two non-dependants each attract a charge of £27. If the tenant is paying the full £300, then no account is taken of the presence of the two non-dependants. But if a rent rebate were being claimed and the reduced rent was, say, £200 per week, then that rent would be increased by £54 per week (£27 x 2) in respect of the non-dependants in the household. The rent payable would therefore be £254 per week.

Current rules for non-dependants in supplementary benefit system

132. The current rules in the supplementary benefit system are fundamentally different. The supplementary benefit system calculates the rent allowance pro-rata the proportion of the household number attached to the benefit claim. Taking the example of the same 4 person household above, but moving to a rented property in the private sector, the supplementary benefit calculation would say that the rent allowance paid to the householder and his partner would be £150 (2/4 x £300) as 50% of the adults in the household are attached to the householder's benefit claim.

133. If there are dependent children in the household, the supplementary benefit system takes each child to be a 50% constituent. So in the example above, if one of the two offspring was a child dependant and the other an adult, the rent allowance would be £214 per week (2.5/3.5 x £300).

134. While the supplementary benefit system has worked without apparent problems for private sector tenancies, the Committee has concerns as to the fit for social housing tenancies and consequently for the unified system.

135. In the context of deciding an appropriate rent allowance, the Committee notes that the 2012 report proposed handling the presence of one or more non-dependants in the household by ignoring both the income and expenditure sides of the non-dependant. The proposal was that a rent allowance would be awarded for the size of the family covered by the claim and would take no account of the need to accommodate the non-dependants. The idea was that if the claimant family continued to rent a property that was larger than needed for the beneficiary family alone, then it would be reasonable to expect the non-dependant to contribute to the additional rent costs, over and above the maximum rent allowance that would be awarded.

136. The 2013 report, while carrying forward the recommendations for maximum rent allowances, was silent on the issue of how the presence of a non-dependant would impact on the rent allowance.

137. The Committee has found this to be a complicated issue and has given considerable attention to finding a suitable and workable solution.

138. The Committee notes that the presence of non-dependants in the household has social and economic advantages. Particularly in the case of relatives, an adult dependant is likely to be providing company, care and assistance to older family members. It is also an efficient use of housing stock.

139. It is important, however, that the benefit system does not, in effect, provide free accommodation to non-dependent members of the household who are not themselves dependant on benefit and who may have good earnings. The Committee takes the view that a non-dependent should be expected to pay £75 per week to the main tenant for being accommodated. This is intended to be a reasonable contribution toward the rent, separate to any additional contribution which may be made for food and other domestic provision and use of services.

Treatment of income from non-dependant member of household in rent assessment

140. The expected contribution of £75 per week towards the rent from a non-dependant will be deducted from the full rate charged before then applying the maximum rent allowance. Examples of this application are shown in Tables 8 and 9 below:

Table 8. Example of calculation of rent allowance for household comprising a couple plus one adult non-dependant

	Per week
Full rent charged	£300
Assumed contribution from 1 non-dependant	(£75)
Assumed net rent	£225
Rent allowance (Maximum rent allowance for couple no children (see para.126)	£207

Table 9. Example of calculation of rent allowance for household comprising a single person plus two adult non-dependants

	Per week
Full rent charged	£300
Assumed contribution from 2 non-dependants	(£150)
Assumed net rent	£150
Rent allowance (lower than maximum rent allowance for couple no children) (see para.126)	£150

141. These arrangements will replace and unify the separate and very different arrangements currently being applied in the supplementary benefit and rent rebate systems.

EXTRA NEEDS ALLOWANCES

142. The Committee has given thought as to whether, in addition to the recommended benefit requirement rates, there should be additional payments for particular groups. The Committee considered pensioners and people with disabilities. In respect of the latter, the Committee received representations from the Guernsey Disability Alliance.

143. The Committee has concluded that additional benefit payments made solely by reason of being in a particular category would be ill-advised, and that it is preferable for any addition to the standard rates to be based on the needs of the individual.

144. The Social Security Department provides a Severe Disability Benefit, at £98.98 per week (2015 rate). As at 31st October 2015, 640 people were receiving Severe Disability Benefit at an annual cost of approximately £3.3m. A further £1.8m is being paid to 437 carers receiving a Carer's Allowance of £80.08 per week.

145. The bar is set high by the qualifying criteria for Severe Disability Benefit, and there are no weekly cash benefits for lower levels of disability. This gap in benefit provision has long been recognised, and periodically reviewed by the Social Security Department. The Committee notes that the Department has not supported the development of lower level disability benefits that would apply without a test of means. The Committee understands that this is because, with the benefits for 640 severely disabled people costing £3.3m per year, the very much higher number of people with lower levels of disability would inevitably mean additional expenditure of many millions of pounds if a new, non-means-tested disability benefit, were to be pursued.

146. While acknowledging and agreeing with the foregoing, the Committee considers that some form of a weekly financial assistance, in addition to the basic requirement rates, should be included in the unified social welfare system.

147. The Committee has sought a simple scheme of extra needs allowances that is easy to understand and access by the individual and easy to administer. At the same time, there needs to be sufficient control and governance to ensure that this additional benefit is not paid unnecessarily. This additional assistance would not be available if a claimant were already receiving Severe Disability Benefit.

148. The Committee has been assisted in this initiative by the medical adviser to the Social Security Department. Having produced a longlist of items where any claimant, but particularly claimants with disabilities, may have extra needs, the Committee has condensed the list into three general categories, namely:

    i. Energy
    ii. Laundry and clothing
    iii. Food and diet

149. The Committee proposes that people claiming benefit shall be able to submit, on-line, on paper or with the assistance of a claims officer, a form which details any conditions that they may have and the consequential need to incur extra expenditure under any of the foregoing three categories.

150. Although the detailed matters concerning claims and assessments are for further design and refinement, the Committee at this stage envisages points being award to the 3 extra needs categories as follows:

Additional costs	**Points**
Energy	2
Laundry and clothing	1
Food and diet	1

151. Having awarded the points, the Committee envisages an extra needs payment being made as follows:

Points	Benefit p.w.
1	£10
2	£15
3+	£20

152. In putting forward this proposal, the Committee sees it as a system to be developed in the light of experience. The Committee is hopeful that the third sector groups who have a special interest in this area will similarly see this as a step in the right direction, but not the end of the journey.

COVERAGE OF MEDICAL COSTS

153. Under the current system, entitlement to a weekly supplementary benefit, however small, in most cases brings with it cover for medical, dental, ophthalmic, physiotherapy and chiropody fees, and also exemption from the need to pay prescription charges. This so-called 'medical and para-medical cover' extends to the beneficiary's partner and children.

154. In addition to people receiving a weekly benefit, medical and para-medical cover is also available to people just outside the limits for weekly assistance. Claimants whose income exceeds their requirements, according to the supplementary benefit calculation, by less than £50 per week are entitled to medical and para-medical cover. Claimants whose income exceeds their requirements, by between £50 and £100 per week may receive the medical and para-medical at the discretion of the Administrator having regard to the particular circumstances of the case.

155. Medical cover can be continued for up to 6 months after a claim to supplementary benefit has ended. This is an important provision for people meeting the work requirements of supplementary benefit and coming off benefit through increased employment and earnings.

156. Cover for medical and para-medical fees is not provided if the claimant has savings above certain limits. The limits are set by the Social Security Department as a policy decision. These limits are different, and substantially lower, than the capital allowances that were described in paragraph 113 concerning general entitlement to weekly supplementary benefits.

157. The current capital limits for eligibility to free medical and para-medical cost are shown in Table 10 overleaf.

Table 10. Capital Limits for Medical and Para-medical Cover

Single person under 65	£3,000
Single pensioner	£5,000
Couple under 65	£5,000
Pensioner couple	£7,000
Families	£5,000

158. The Committee considers that these capital limits concerning eligibility for free medical and para-medical cover are reasonable and will not recommend any changes through this report.

159. Approximately 870 social housing households are currently entitled to free medical services because they are already receiving supplementary benefit.

160. The cost of coverage in respect of supplementary benefit claims in 2014 amounted to £1.8m, made up as follows:

Table 11. Supplementary Benefit Medical and Para-medical Payments in 2014

Medical	£1,252,000
Dental	£255,000
Optician	£78,000
Chiropody	£56,000
Physiotherapy	£44,000
Hearing Aids	£40,000
Other	£111,000
	£1,836,000

161. The proposed unification of the system will potentially bring an additional 930 households comprising 2,275 individuals into the scope of free medical and para-medical cover. Not all will qualify for the cover. Those tenants whose income is sufficient to enable them to pay the full social housing rent without supplementary benefit assistance will not be covered for medical expenses, nor will the relatively small number of tenants with savings above the limits.

162. As those social housing tenants who are not currently claiming supplementary benefit, do become beneficiaries as their rent rebate is withdrawn, they will become entitled to the medical and para-medical benefits that are attached to supplementary benefit. The value of these services will partially, or fully, or more than compensate for the withdrawal of the benefit of rent rebate. This is especially

so when combined with the value of winter fuel allowance (see paras. 167 to 170 below) that is paid to householders receiving supplementary benefit.

163. It should be noted that the weekly benefit rates which the Committee is recommending (para. 87) based on the 'basket of goods' methodology, include no allowance for medical costs. The exclusion of such costs from the weekly benefit rates was on the understanding that medical and para-medical provision would remain available to all people covered by the supplementary benefit legislation.

164. It should also be noted that the cost additional to the current £1.84m medical and para-medical account (para. 160) can be expected to be a lower percentage increase than the percentage increase of additional claimants. This is because nearly all of the new claimants will be people living in social housing who are currently receiving a rent rebate, but who are not currently claiming supplementary benefit. In the main, these will be younger, working age families, whose need for medical services is likely to be less than the people in social housing who are already receiving supplementary benefit. The latter group will include pensioners and other people not working by reason of ill health or disability, whose need for medical services will on average be higher.

165. Once all of the rent rebate tenants have transferred across to the supplementary benefit scheme, it is estimated that an additional 666 households will qualify for free medical and para-medical services. This will add an estimated £511,000 per annum to the medical and para-medical cost met by supplementary benefit.

166. The Committee notes that the provision of free medical and para-medical services may change in future, depending on the response by the Committee *for* Employment and Social Security, and subsequently the States, to the successful amendments to the Social Security Department's benefit uprating proposals at the October 2015 States meeting (Billet d'État XVIII). The first of two amendments, placed by Deputy Mark Dorey, requires the Committee *for* Employment and Social Security to report to the States by October 2017 with the opinion of that Committee as to whether the universal payment of family allowances should be redirected to allow a range of children's services including medical and para-medical services provided by States-employed clinicians or contracted private practitioners. The second amendment requires the Committee *for* Employment and Social Security to report to the States by October 2017 with an opinion as to the feasibility of medical and para-medical services being provided for adult supplementary benefit claimants either by States-employed clinicians or contracted private practitioners.

WINTER FUEL ALLOWANCE

167. By annual Resolution of the States, a winter fuel allowance is paid to householders receiving supplementary benefit. The allowance is paid for 26 weeks between the end of October and end of April. The allowance for the winter of 2015/ 2016 is £27.66 per week. The value of the benefit to the household over the 26 week term is therefore £720.

168. The cost of winter fuel allowance is 2015/2016 is expected to be paid to approximately 1,360 households, at a total cost of approximately £980,000.

169. Once all of the rent rebate tenants have transferred across to the supplementary benefit scheme, it is estimated that an additional 784 households will qualify for a winter fuel allowance. This will add an estimated £565,000 per annum to the cost of winter fuel allowances.

170. The Committee has been informed that the Social Security Department, while being in no doubt as to the necessity of additional help with heating costs in the winter months in the majority of cases where it is paid, does have concerns over the allowance being paid in respect of the most modern and fuel efficient units of accommodation. The Committee notes that the Department or its successor Committee will consider whether it would be feasible, and cost effective, to refine the current universal payment to supplementary benefit households. The Committee is of the view that this is an important piece of work that would benefit from having the endorsement of the States and a reporting timetable. The Committee recommends, therefore, that the Committee *for* Employment and Social Security should report back to the States on this matter no later than October 2017.

ACCESS TO LEGAL AID

171. Entitlement to supplementary benefit is used by the Legal Aid Service as a 'passport' to legal aid financed from General Revenue. However, supplementary benefit households currently account for only 30% of legal aid expenditure. The other 70% of the expenditure relates to people on low income who are not covered by supplementary benefit. These people qualify for legal aid if they meet the criteria of a means-test administered by the Legal Aid Service.

172. The question arises as to whether the transfer of approximately 900 recipients of rent rebate to supplementary benefit will impact materially on the expenditure of the Legal Aid Service.

173. It is reasonable to assume that a proportion of people living in social housing and receiving a rent rebate will already be covered for legal aid. Their expenditure will be recorded in the 70% outside current supplementary benefit cover.

174. The Committee believes that the additional cost to the Legal Aid Service will be relatively small. The Committee has estimated this to be £50,000 per year.

FINANCIAL MODELLING

Methodology

175. In order to undertake the financial modelling for the 2012 report, the Social Security Department, with the assistance of the Policy and Research Unit, constructed a model on a combination of 2009 income data provided by the Income Tax Office, and benefits' data which the Department already held.

Combining the data into a model of family income data, which was anonymised, required assumptions to be made as to what were and were not family units. Notwithstanding some room for error in those assumptions, the Department considered that its model was fit for purpose and a substantial improvement on any modelling tools that had previously been used for benefit reform.

176. Perhaps ironically, the Department's improved financial modelling was also in part the undoing of the 2012 proposals because it indicated that there were large numbers of individuals and families who were not at that time claiming benefit, but who could, on the face of it, claim under the proposed new scheme. The range of uncertainty as to the number and aggregate cost of potential new claims proved unacceptable to the States, who rejected the benefits' parts of the 2012 proposals.

177. The financial modelling for the 2013 report was based on the same model and source data as the 2012 report. However, with the availability of more time the model underwent further development. The model continued to rely on 2009 income tax data, but was uprated for the movement in the Retail Price Index excluding mortgage interest payments ("RPIX").

178. For the current report, the Committee has decided that the 2009 source data, albeit uprated by RPIX, has become too distant to use the financial model, with confidence, for a third time.

179. For the financial modelling for this report, the Committee has used a test version of the current supplementary benefit system, so using real claims, with real family profiles, real rents, incomes and other benefits. Adding to this, the Committee has created a spreadsheet model of the 929 tenants of social housing who are receiving a rent rebate but not currently being supported by supplementary benefit (and therefore not already counted in the supplementary benefit model). The spreadsheet model has built in all relevant supplementary benefit rules and enables reliable calculation of the financial impacts of replacing the rent rebate scheme with a revised supplementary benefit scheme.

180. As with the 2012 and 2013 reports, the Committee therefore, can make estimates of the financial impacts of new, unified, scheme rules on those people currently receiving supplementary benefit, and the people currently receiving a rent rebate. The remaining cost estimate is that of people who are currently neither on supplementary benefit, nor receiving a rent rebate, but who might qualify for benefit under the revised rules.

Few entirely new claims expected

181. As was explained in paragraphs 41 to 52, the Committee is recommending no immediate increase to the benefit limitation of £600 per week (2015 rate). With the benefit limitation unchanged, the potential for significant numbers of entirely new claims must be very limited. Such new claims as may come forward in the unified scheme could come from individuals or families who are currently eligible for supplementary benefit but are either unaware of the help that is available or

are choosing not to claim. New claims could also come from people whose resources exceed the current long-term requirement rates, but are below the increased rates recommended in this report. Such claims would still need to fit within the unchanged benefit limitation. Such claims, falling within those boundaries, would be for small amounts of benefit, topping up the claimants' resources.

Rent rebate claims become supplementary benefit claims

182. The preceding paragraph explained why very few entirely new claims are to be expected in the unified system. But there will be a substantial increase in the number of supplementary benefit claims as most of the 929 social housing tenancies currently not claiming supplementary benefit, but receiving a rent rebate, do claim supplementary benefit in future as rent rebate is withdrawn.

FINANCIAL IMPACT ON INDIVIDUALS

183. There are approximately 3,300 individuals or families either receiving supplementary benefit, or receiving a rent allowance, or both. In addition to that number of main claimants, there are also adult and child dependants associated with the claims.

184. The Committee's proposals, when fully implemented, will impact on all of these people, in many cases to their advantage but also in many cases to their disadvantage.

185. Approximately 1,200 individuals or families are expected to be advantaged by the new proposals. The majority are in social housing. Approximately 750 individuals are expected to be worse off from the new proposals in terms of cash received. Again, the majority are in social housing. However, in some cases the availability of medical cover and winter fuel allowance will be of more value to the individual than the reduction in cash benefit.

186. New claimants to benefit under the unified scheme, who are of working age, will be worse off than they would be if they were claiming now because of the proposed reduction in short term rates.

187. Table 12 overleaf shows the expected distribution of individuals affected by the proposals and the extent to which they would be advantaged or disadvantaged according to the financial modelling.

Table 12. Better off or worse off under proposed unified scheme

	Supplementary benefit in private sector	Social housing tenants	Total
Better off:			
£101+ pw	2	93	95
£51 to £100 pw	18	243	261
£21 to £50 pw	94	357	451
£1 to £20 pw	142	292	434
	256	985	1,241
Worse off:			
£101+ pw	0	17	17
£51 to £100 pw	0	93	93
£21 to £50 pw	211	189	400
£1 to £20 pw	57	172	229
	268	471	739
No change	610	568	1,178

ESTIMATE OF ADDITIONAL COSTS

Additional benefit costs

188. The estimated 2015 cost of supplementary benefit, is £20.97m. The estimated 2015 cost of the rent rebate scheme, by way or rental income foregone, in 2015 is £13.60m. The combined cost is therefore £34.57m. This sum excludes the administrative costs of the two systems.

189. If there was no need for a transition period, and there could be an instant changeover from the existing arrangements to the proposed, unified system, the Committee estimates that the additional costs to General Revenue would be £2.90m per year in 2015 terms, bringing the total to £37.47m.

Additional staffing costs and savings

190. In addition to the increased cost of formula-led supplementary benefit, there will be additional staffing implications relating to the implementation of these proposals. The expenditure on additional staff resources takes into account new rôles, an increase of existing rôles, temporary contract and transitional staff which would be needed to resource the supplementary benefit section adequately in the short and medium term.

191. Some of the additional staffing posts required will be permanent in order to manage the nearly 900 new claims expected from social housing tenants, as the rent rebate scheme is withdrawn, and the ongoing maintenance and churn of the larger claim base.

192. Moving those 900 claims from a relatively light touch oversight, as provided for in the rent rebate scheme, to the more closely controlled administration of supplementary benefit will have an administrative overhead. It is estimated that a net additional 4.5 whole-time-equivalent members of staff will be required. This is after netting off 3 whole-time equivalent members of the Housing Department who will be freed-up once the rent rebate scheme is fully discontinued.

193. The cost of the net additional 4.5 staff will cost an estimated £200,000 per year, including salaries and on-costs.

194. It is expected that the closer scrutiny of claims inherent in the supplementary benefit scheme, and the recently introduced work obligations of the partners of the main claimant to benefit will result in benefit savings. A conservative savings figure of £190,000 per annum by the end of the transition period has been assumed.

Need for a 3-year transition period

195. While the new rules of the unified system can be immediately applied to new cases, the Committee considers that a transition period of 3 years is necessary in order to treat reasonably those people who are already in the system and those of whom are most negatively affected by the changes. There will be no negative effects for existing beneficiaries living in the private sector, as their benefit will either increase or remain unchanged. The negative effects will be felt by some, but by no means all, of the people living in social housing. Table 13, which appears at paragraph 183 above, provides the breakdown of the numbers of people who will receive less, or more, assistance under the unified system. It will be noted that some current tenants of social housing will have their financial assistance reduced by more than £100 per week.

196. The Committee notes that the 2012 report proposed a 3 year transition. The 2013 report proposed a 5 year transition. Although the proposed term has varied, all reports have recognised the need for a period of transition, recognising also that this causes additional costs during that period. Table 13 overleaf summarises the cost of the Committee's proposals during the transition period, to reach the required position in Year 3.

Table 13 – Cost Schedule for implementation of SWBIC recommendations

Category	Year 1			Year 2			Year 3		
	Gainers £'000	Losers £'000	Net £'000	Gainers £'000	Losers £'000	Net £'000	Gainers £'000	Losers £'000	Net £'000
Social Housing - Cash Benefit									
Working Tenants	733	(122)	611	733	(244)	489	733	(365)	367
Working Pensioners	76	(16)	60	76	(32)	44	76	(48)	28
Pensioners	192	(65)	126	192	(131)	61	192	(196)	(4)
Intro of £75 non-dep	81	(79)	2	81	(158)	(77)	81	(237)	(156)
Total Tenants	1,082	(282)	799	1,082	(564)	517	1,082	(847)	235
Social Housing - Fringe Benefits									
Medical Cover	511		511	511		511	511		511
Winter Fuel	565		565	565		565	565		565
Legal Aid	50		50	50		50	50		50
Total Social Housing Impact	2,207	(282)	1,925	2,207	(564)	1,643	2,207	(847)	1,361
Existing Supplementary Benefit Claimants									
Current claimants	1,480	(226)	1,254	1,480	(345)	1,135	1,480	(410)	1,070
Other Impacts									
New Community claims	55		55	166		166	221		221
Extra Needs Allow	27		27	82		82	109		109
Intro of £75 non-dep	105		105	176		176	176		176
	188		188	423		423	506	0	506
Total Claimant Costs	3,876	(509)	3,366	4,111	(910)	3,202	4,193	(1,257)	2,937
Staffing Costs			178			199			199
Total Cost Impact			3,544			3,401			3,136
Return on Staff Investment									
Social Housing Tenant reductions									
Cash Benefit			(45)			(135)			(180)
Medical Cover			(1)			(3)			(4)
Winter Fuel			(1)			(3)			(4)
			(47)			(141)	0	0	(188)
Overall Cost Impact			3,497			3,260			2,948

CONSULTATION

197. The Committee has undertaken limited consultation in the development of its proposals. In part, this reflects the background from which the Committee was established as a Special Committee of the States, and the constitution of the Committee. The Committee's formation followed the rejection by the States of the 2012 and 2013 reports presented by the Social Security Department. The constitution of the Committee ensured that the two Members from the Social Security Department, the two Members from the Housing Department and the

single Member from the Treasury and Resources Department were representatives of those Departments. This duty was well recognised by the Members as being different to being a Member of the Committee who happened also to be a Member of those other Departments.

198. The Committee considers that its constitution served its purpose well. It ensured continuous consultation with the main Boards of the Social Security Department, the Housing Department and the Treasury and Resources Department.

199. The Committee did not undertake any open external consultation in the development of its proposals. The Committee engaged, albeit on a limited basis, with representatives of the Guernsey Community Foundation and the Guernsey Disability Alliance, both of whom were very willing to offer assistance.

200. The Law Officers of the Crown have been consulted in connection with this Policy Letter and have raised no legal issues in relation to the proposals. They have however noted that several of the proposals will require implementation by way of legislation including amendments to The Supplementary Benefit (Implementation) Ordinance, 1971 and amendment and revocation of regulations made under The States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004. It is likely that perhaps 2 or 3 weeks of drafting time will be required in total to prepare all necessary legislation over the course of the suggested implementation period for the recommendations made by the Committee.

CONCLUSIONS

201. In common with the two reports that have preceded its own, the Committee is convinced that the States needs to merge into one the two parallel social welfare benefit systems that currently exist in the form of supplementary benefit administered by the Social Security Department and rent rebate administered by the Housing Department.

202. Bringing the two systems together will further, and substantially, shift the balance of the supplementary benefit scheme from an 'out-of-work' benefit to an 'in-work' benefit. This will occur as many working families who live in social housing and currently claim a rent rebate, but not supplementary benefit, will need to do so (i.e. claim supplementary benefit) in future as the rent rebate is withdrawn. This puts particular focus on the need both for benefit rates that are adequate to avoid poverty and for effective incentives and controls to ensure that the wage-earning opportunities are maximised by claimants and their partners.

203. The Committee, through detailed work involving a return to the 'basket of goods' methodology used by the Centre for Research in Social Policy at Loughborough University in connection with the 2012 report (although substantially adapted to a Guernsey model), has arrived at a set of short-term and long-term benefit rates which it recommends to the States. The Committee has also examined and made recommendations concerning the treatment of savings and capital and the

expected contribution from non-dependants who live in the same household as the principal claimant.

204. As was the case in the two previous reports, and as should be expected, some people will gain by the proposed new rules and others will lose. The Committee recognises the need for a transition period so that people who will be worse off than at present have that reduction phased in. The Committee proposes a three year transition.

205. Overall, the Committee's proposals are estimated to add £3.4m per year to general revenue expenditure in 2015 terms in the first year of the transition, reducing to £2.9m from year 3 onwards when the transition is complete.

206. The Committee appreciates the great difficulty which faces the States, and particularly the Members of the Treasury and Resources Department, as a number of major social policy initiatives are in the process of being presented for funding, at a time when funds are simply not available. Such initiatives, some of which are due to be considered at the February 2016 States meeting, include the Children and Young People's Plan and the Supported Living and Ageing Well Strategy. The Committee has been grateful for the advice and support received from the Treasury and Resources Department as the cost implications of its proposals have emerged, and have been considered and refined.

207. Throughout the development of its proposals, the Committee has been mindful of the current economic realities, the need to be fiscally responsible and, in particular, the obligation to ensure that its proposals comply with the fiscal framework. The Committee considers that it has exercised this responsibility to the extent that could reasonably be expected of it, given the specific mandate for which the Committee was constituted.

208. From its discussions with the Treasury and Resources Department, the Committee understands the necessity of prioritisation of service developments that are competing for resources. The Committee is quite clear, however, that it is not for the Committee to suggest the order of priority. The Committee expects that matter to be one of the major challenges facing the new Assembly.

RECOMMENDATIONS

209. The Committee recommends:

i. That, subject to funding being available, from January 2017 or as soon as possible thereafter, and subject to indexation as will in due course be proposed by the Committee *for* Employment & Social Security:

a. the rent rebate scheme be closed over a transitional period of 3 years;

b. the short-term rates and long-term requirement rates for supplementary benefit be as set out in paragraph 87;

c. the capital cut off limits for eligibility for supplementary benefit shall be as set out in paragraph 113 of this report;

d. the provisions in the supplementary benefit legislation concerning assumed income on capital shall be repealed;

e. the system of maximum rent allowances within the supplementary benefit system be extended to include maximum rent allowances for families with 1, 2, and 3 or more children at the rates set out in paragraph 126;

f. the assumed contribution from a non-dependent adult living in the household of a person receiving supplementary benefit shall be £75 per week;

g. a non-householder rent allowance of a maximum £75 per week shall be introduced for non-dependent adults receiving supplementary benefit who are living in the household of another person;

h. an extra needs allowance be introduced to the assessment of supplementary benefit, as set out in paragraphs 142 to 152 of this report;

ii. That the Committee *for* Employment & Social Security shall report to the States of Deliberation, no later than October 2017, with recommendations for reform of the arrangements for winter fuel allowances to householders receiving supplementary benefit;

iii. That such legislation as may be necessary to give effect to the foregoing shall be prepared;

iv. That, following dissolution of the Social Welfare Benefits Investigation Committee with effect from 1st May 2016, the Committee *for* Employment & Social Security shall have responsibility for implementation, or arranging for implementation, of such of the above recommendations as are approved by the States.

Yours faithfully

A R Le Lievre, Chairman
P L Gillson
J A B Gollop
M K Le Clerc
M P J Hadley
P R Le Pelley
R A Perrot

Appendix 1

SWBIC adjusted Minimum Income Standards baskets of goods
Short-term Rates

	Food and Non Alcoholic Beverages	Alcohol and Tobacco	Clothing and Footwear	Housing Costs	Household Goods and Services	Personal Goods and Services including Health	Transport	Social and Cultural Participation	Total	RPI uplift from June 2011 - Sept 2015
Single Male no Children	40.77	0	4	23.89	5.44	4.42	0	7.8	86.32	**93.48**
Single Female no Children	31.98	0	4	23.89	5.44	12.49	0	7.8	85.6	**92.70**
Couple no Children	69.21	0	8	30.16	7.81	16.84	0	15.6	147.62	**159.87**
Single Male Pensioner	44.81	0	4	25.29	5.9	11.69	0	6.75	98.44	**106.61**
Single Female Pensioner	41.83	0	4	25.29	5.94	16.42	0	6.75	100.23	**108.55**
Couple Pensioner	73.41	0	8	28.9	7.44	26.42	0	6.75	150.92	**163.45**
Couple plus 1 child	97.23	0	12	33.79	7.42	28.33	0	10.14	188.91	**204.59**
Couple plus 2 child	124.14	0	16	38.52	7.33	32.04	0	28.71	246.74	**267.22**
Couple plus 3 child	142.38	0	20	38.83	10.08	39.06	0	49.17	299.52	**324.38**
Couple plus 4 child	165.47	0	24	39.96	11.06	48.14	0	63.03	351.66	**380.85**
Lone Parent plus 1 child	57.93	0	8	32.32	5.47	21.87	0	37.65	163.24	**176.79**
Lone Parent plus 2 child	84.09	0	12	36.46	5.23	26.46	0	34.82	199.06	**215.58**
Lone Parent plus 3 child	109.11	0	16	37.64	8.04	32.24	0	57.89	260.92	**282.58**

Long-term Rates

	Food and Non Alcoholic Beverages	Alcohol and Tobacco	Clothing and Footwear	Housing Costs	Household Goods and Services	Personal Goods and Services including Health	Transport	Social and Cultural Participation	Total	RPI X uplift from June 2011 - Sept 2015
Single Male no Children	56.96	7.84	6.64	26.26	17.48	4.69	0	27.89	147.76	**160.02**
Single Female no Children	55.00	8.43	7.67	26.26	15.33	13.29	0	30.6	156.58	**169.58**
Couple no Children	112.64	18.23	14.06	34.19	20.66	17.46	0	46.8	264.04	**285.96**
Single Male Pensioner	56.53	4.52	4.55	27.5	11.72	11.86	0	33.42	150.1	**162.56**
Single Female Pensioner	51.77	4.35	4.8	27.5	17.43	16.6	0	33.42	155.87	**168.81**
Couple Pensioner	89.06	10.46	9.35	34.12	20.71	27.45	0	48.57	239.72	**259.62**
Couple plus 1 child	105.89	8.48	21.3	35.75	26.94	31.04	0	61.95	291.35	**315.53**
Couple plus 2 child	139.44	8.48	31.23	47.54	30.51	33.77	0	74.44	365.41	**395.74**
Couple plus 3 child	157.98	8.48	51.24	47.86	38.48	41.4	0	100.41	445.85	**482.86**
Couple plus 4 child	183.23	8.48	61.07	48.99	41.16	52.39	0	113.38	508.7	**550.92**
Lone Parent plus 1 child	68.38	4.72	17.34	34.13	22.40	24.58	0	41.77	213.32	**231.03**
Lone Parent plus 2 child	99.43	4.72	29.68	38.41	27.17	28.00	0	60.37	287.78	**311.67**
Lone Parent plus 3 child	129.20	4.72	48.23	45.51	34.44	34.12	0	77.84	374.06	**405.11**

(N.B. The Treasury and Resources Department supports the unification of the social welfare benefits systems and notes the analysis which has informed the proposals being set out by the Social Welfare Benefits Investigation Committee. The Department also recognises that the calculation of the revised Guernsey Minimum Income Standard seeks to avoid any member of the community suffering absolute poverty and as such, acknowledges that, in the absence of a no-cost option, £2.95million is proposed to be the minimum ongoing cost associated with implementing the much needed reform and harmonisation of benefits being proposed. The Department notes that there are also anticipated to be transitional costs of a total of £850k in the first two years of implementation of the new model.

The Department understands that the total additional cost of £2.95million can be broken down into:

- **Net additional costs of £600k relating to the closure of the rent rebate scheme (i.e. if all claims were assessed on current supplementary benefit rates) comprising a saving in benefit expenditure of £500k offset by a £1.1million increase in medical and fuel benefits;**

- **Net additional costs of £1.8million due to the proposed changes in Supplementary Benefit rates (comprising £1.1million for current Supplementary Benefit claimants and £700k in new claims from social housing tenants);**

- **£550k in net other costs including a provision of £200k for new community claims.**

The Policy Letter does not direct the Treasury and Resources Department to make the necessary funding available to implement the proposals, but the recommendations could give the expectation that they will be implemented in the near future. However, the Department must point out that funding £2.95million of additional spending on an ongoing basis is simply not immediately deliverable within the current fiscal policies of the States. The Department considers that there are three possible approaches to funding the £2.95million sought:

1. **The first would be through a commensurate reduction in other cash limits on a largely arbitrary basis which, in reality, will be challenging for some Departments to deliver and may be politically unacceptable. The Department does not consider that it would be prudent, given the well understood financial challenges faced by the Health and Social Services Department and the recent approval by the States of a substantial increase to its cash limit (with an accompanying exception to the States' fiscal objective), to effect any reductions in the cash limit of the Health and Social Services Department. In addition, any reductions in the cash limits for formula led expenditure would need to be accompanied by changes in the formulas in order to**

actually reduce any formula led expenditure. Therefore, excluding the Health and Social Services Department and formula led expenditure, a reduction in the cash limits of all Departments and Committees of 1.5% would be required; or

2. The second option would be that reform dividends, when delivered, through public service reform are used to fund the proposed model, should it be prioritised by the States. However, the programme of public service reform has only recently been initiated and work is required to develop and test the overall reform dividend to be targeted over the 10 year programme. The Treasury and Resources Department considers that in the future new services, service developments and cost pressures will have to be prioritised by the States and then funded from cash releasing reform dividends through public service reform. Therefore, it is considered that it would be both premature and imprudent to assume that this option is viable to fund the implementation of the new social welfare benefits model in the near future; or

3. Through the prioritisation of current spending - the pressures on public finances generated by the current policy agenda and through strategies and plans such as the one contained in this Policy Letter, the Children and Young People's Plan and the Supported Living and Ageing Well Strategy simply cannot be afforded within the existing fiscal objective of "a real terms' freeze on aggregate States' expenditure". The States are balancing the 2016 budget through a one off reduction in the General Revenue appropriation to the Capital Reserve and achieving a sustainable balanced budget must remain a priority. Until such time as this is achieved and dividends begin to accrue through the reform agenda, the only option for funding service developments and cost pressures is through cuts to the spending in other service areas. The Treasury and Resources Department is of the firm view that, if such an exercise is to be considered, then the States must be able to consider all priority areas together through disciplined prioritisation and should not make decisions on an ad hoc, first come first served basis.

The Treasury and Resources Department notes that a substantial proportion of the supplementary benefit expenditure relates to the universal provision to claimants of the benefits referred to in the Policy Letter as "fringe benefits" (Medical Cover, Winter Fuel Allowance and Legal Aid); and that nearly half of the additional ongoing costs of the proposed new system are due to social housing tenants becoming eligible for "fringe benefits". There is the potential for supplementary benefit claimants to receive a substantial value of benefits taking into account not only the main benefit rate payments (including rent allowance) but also the "fringe benefits" and the fact that all benefits are paid free of deductions (i.e. not subject to income tax or social security contributions).

Therefore, the Treasury and Resources Department is very supportive of the intention to review the arrangements for winter fuel allowances payable to supplementary benefit households and would strongly support the completion of this review as soon as possible and its extension to encompass medical cover and the other "fringe benefits" referred to in Paragraph 160 of the Policy Letter. Furthermore, it may be considered to be an opportune time to consider the criteria for entitlement to legal aid (not just in respect of supplementary benefit claimants). The financial benefits of any subsequent revisions could be used to contribute towards funding the implementation of the new social welfare benefits model.)

(N.B. The Policy Council congratulates the Social Welfare Benefits Investigation Committee for bringing forward well-argued proposals to reconcile the two parallel systems of welfare benefit provision.

In particular, it notes that, while the proposed benefit rates are considered to be sufficient to avoid any claimant being in poverty, the estimated overall costs of implementing these proposals are substantially lower than those quoted in previous reports to address this thorny matter. Nonetheless, their implementation will result in significant additional expenditure that will need to be assessed alongside other priorities by the new Assembly.

This additional expenditure may be offset, to some degree, by the requirement – not present in the rent rebate scheme - for all adults in households receiving welfare benefits to maximise their work and earnings capacity. This assimilation of working age rent rebate claimants into the unified scheme will also reinforce that supplementary benefit/income support will increasingly be an 'in-work' benefit.)

The States are asked to decide:-

IX.- Whether, after consideration of the Policy Letter dated 30th November, 2015, of the Social Welfare Benefits Investigation Committee, they are of the opinion:

1. To agree, subject to funding being available, from January 2017 or as soon as possible thereafter, and subject to indexation as will in due course be proposed by the Committee *for* Employment & Social Security:

   a. the rent rebate scheme be closed over a transitional period of 3 years;

   b. the short-term rates and long-term requirement rates for supplementary benefit be as set out in paragraph 87 of that Policy Letter;

   c. the capital cut off limits for eligibility for supplementary benefit shall be as set out in paragraph 113 of that Policy Letter;

d. the provisions in the supplementary benefit legislation concerning assumed income on capital shall be repealed;

e. the system of maximum rent allowances within the supplementary benefit system be extended to include maximum rent allowances for families with 1, 2, and 3 or more children at the rates set out in paragraph 126 of that Policy Letter;

f. the assumed contribution from a non-dependent adult living in the household of a person receiving supplementary benefit shall be £75 per week;

g. a non-householder rent allowance of a maximum £75 per week shall be introduced for non-dependent adults receiving supplementary benefit who are living in the household of another person;

h. an extra needs allowance be introduced to the assessment of supplementary benefit, as set out in paragraphs 142 to 152 of tat Policy Letter.

2. To direct the Committee *for* Employment & Social Security to report to the States of Deliberation, no later than October 2017, with recommendations for reform of the arrangements for winter fuel allowances to householders receiving supplementary benefit.

3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

4. To transfer responsibility for implementation, or arranging for implementation, of such of the above propositions to the Committee *for* Employment & Social Security following dissolution of the Social Welfare Benefits Investigation Committee with effect from 1st May 2016.

APPENDIX

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

RECORD OF MEMBERS' ATTENDANCE AT MEETINGS OF
THE STATES OF DELIBERATION,
THE POLICY COUNCIL, DEPARTMENTS AND COMMITTEES

The Presiding Officer,
The States of Guernsey,
Royal Court House,
St Peter Port

19th January 2016

Dear Sir,

On the 29th October, 2010 the States resolved, inter alia:

1. ...
2. *That departments and committees shall maintain a record of their States Members' attendance at, and absence from meetings and that the reason for absence shall also be recorded.*
3. *That the records referred to in 2 above, together with a record of States Members' attendance at meetings of the States of Deliberation, shall be published from time to time as an appendix to a Billet d'État.*

In laying this report before the States, the Committee would draw attention to the fact that the tables in it record only the attendance by Members of the States at States, Departmental and Committee meetings. They do not show attendance at Departmental or Committee sub-committee meetings or presentations. Nor do they show the amount of work or time spent, for example, on dealing with issues raised by parishioners, correspondence and preparing for meetings.

I should be grateful if you would arrange for this report, in respect of statistics provided by Her Majesty's Greffier, Departments and Committees for the six months ending 31st October 2015, to be published as an appendix to a Billet d'État.

Yours faithfully,

Deputy M. J. Fallaize

Chairman
States' Assembly & Constitution Committee

PART I - REPORT BY DEPARTMENT/COMMITTEE

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
POLICY COUNCIL							
J. P. Le Tocq	12	12					
A. H. Langlois	12	9				3	
G. A. St. Pier	12	10	1			1	
K. A. Stewart	12	5	3	1	1	2	
M. G. O'Hara	12	7		1	3	1	
R. W. Sillars	12	9				3	
D. B. Jones	12	6		5		1	
P. A. Luxon	12	11	1				
Y. Burford	12	10		1		1	
P. L. Gillson	12	11				1	
S. J. Ogier	12	10	2				
S. A. James, MBE	1						
M. K. Le Clerc	1						
M. P. J. Hadley	6						
B. J. E. Paint	1						
D. de G. de Lisle	1						
A. H. Brouard	3						
D. A. Inglis	2	1					
B. J. Brehaut	1						
F. Quin	1						
R. Conder	1						
C. J. Green	1						
P. A. Harwood	1						
J. Kuttelwascher	1						
COMMERCE AND EMPLOYMENT DEPARTMENT							
K. A. Stewart	14	10	1	1		2	
A. H. Brouard	14	14					
D. de G. De Lisle	14	14					
G. M. Collins	14	14					
L. S. Trott	14	10				4	
CULTURE AND LEISURE DEPARTMENT							
M. G. O'Hara	9	9					
D. A. Inglis	9	9					
D. J. Duquemin	9	9					
P. R. Le Pelley	9	9					
F. W. Quin	9	9					
EDUCATION DEPARTMENT							
R. W. Sillars	19	17	2				
R. Conder	19	16	2			1	
C. J. Green	19	18				1	
P. A. Sherbourne	19	17				2	
M. P. J. Hadley	19	17	2				

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
ENVIRONMENT DEPARTMENT							
Y. Burford	12	11	1				
B. L. Brehaut	12	9	2			1	
P. A. Harwood	12	10				2	
E. G. Bebb	12	7	3	1		1	
J. A. B. Gollop	12	11	1				
HEALTH AND SOCIAL SERVICES DEPARTMENT							
P. A. Luxon	14	14					
H. J. R. Soulsby	14	13					
M. P. J. Hadley	14	7	7				
S. A. James, MBE	14	11	2			1	
M. K. Le Clerc	14	11				3	
HOME DEPARTMENT							
P. L. Gillson	13	11		1		1	
F. W. Quin	13	13					
A. M. Wilkie	13	11		1		1	
M. M. Lowe	13	11				2	
M. J. Fallaize	13	12		1			
HOUSING DEPARTMENT							
D. B. Jones	10	7		2		1	
M. P. J. Hadley	10	10					
P. R. Le Pelley	10	9				1	
B. J. E. Paint	10	10					
P. A. Sherbourne	10	9				1	
PUBLIC SERVICES DEPARTMENT							
S. J. Ogier	11	10				1	
D. J. Duquemin	11	10			1		
R. A. Jones	11	10				1	
P. A. Harwood	11	8	1	1		1	
M. H. Dorey	11	10	1				
SOCIAL SECURITY DEPARTMENT							
A. H. Langlois	12	10				2	
S. A. James, MBE	12	11	1				
J. A. B. Gollop	12	11	1				
M. K. Le Clerc	12	11				1	
D. A. Inglis	12	11	1				
TREASURY AND RESOURCES DEPARTMENT							
G. A. St. Pier	32	30			1	1	
J. Kuttelwascher	32	28				4	
A. Spruce	32	28		1		3	
R. A. Perrot	32	30	1			1	
A. H. Adam	32	28	1		1	2	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
LEGISLATION SELECT COMMITTEE							
R. A. Jones	7	7					
J. A. B. Gollop	7	6				1	
E. G. Bebb	7	2	1	1	2	1	
L. B. Queripel	7	5	1		1		
D. de G. De Lisle	7	6				1	
PUBLIC ACCOUNTS COMMITTEE							
H. J. R. Soulsby	5	5					
P. A. Sherbourne	5	4	1				
P. A. Harwood	5	4		1			
R. A. Jones	5	5					
R. Domaille	5	4				1	
SCRUTINY COMMITTEE							
R. A. Jones	5	5					
P. R. Le Pelley	5	5					
P. A. Sherbourne	5	4	1				
Lester C. Queripel	5	5					
Laurie B. Queripel	5	5					
B. J. E. Paint	5	4	1				
A. M. Wilkie	5	4	1				
C. J. Green	5	5					
G. M. Collins	5	5					
STATES' ASSEMBLY & CONSTITUTION COMMITTEE							
M. J. Fallaize	8	8					
R. Conder	8	8					
E. G. Bebb	8	5				3	
A. H. Adam	8	5	1			2	
P. A. Harwood	8	6				2	
PAROCHIAL ECCLESIASTICAL RATES REVIEW COMMITTEE							
J. A. B. Gollop	0						
M. M. Lowe	0						
R. Conder	0						
C. J. Green	0						
D. de G. De Lisle	0						
STATES' REVIEW COMMITTEE							
J. P. Le Tocq	10	6	2		1	**1**	
M. J. Fallaize	10	10					
G. A. St Pier	10	3	3		3	1	
R. Conder	10	8			2		
M. H. Dorey	10	9			1		

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
CONSTITUTIONAL INVESTIGATION COMMITTEE							
J. P. Le Tocq	1	1					
R. A. Perrot	1	1					
L. S. Trott	1	1					
H. J. R. Soulsby	1	1					
R. A. Jones	1	1					
P. A. Harwood	1	1					
SOCIAL WELFARE BENEFITS INVESTIGATION COMMITTEE							
A. R. Le Lièvre	8	7				1	
P. L. Gillson	8	8					
M. K. Le Clerc	8	6				2	
M. P. J. Hadley	8	7				1	
P. R. Le Pelley	8	7				1	
R. A. Perrot	8	8					
J. A. B. Gollop	8	8					

PART II - REPORT BY MEMBER / ELECTORAL DISTRICT

Summary of Attendances at Meetings of the Policy Council, Departments and Committees

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
ST PETER PORT SOUTH							
P. A. Harwood	38	30	1	2		5	
J. Kuttelwascher	33	29				4	
B. L. Brehaut	13	10	2			1	
R. Domaille	5	4				1	
A. H. Langlois	24	19				5	
R. A. Jones	29	28				1	
ST PETER PORT NORTH							
M. K. Le Clerc	36	30				6	
J. A. B. Gollop	39	36	2			1	
P. A. Sherbourne	39	34	2			3	
R. Conder	38	33	2		2	1	
E. G. Bebb	27	14	4	2	2	5	
Lester C. Queripel	5	5					
ST. SAMPSON							
G. A. St. Pier	54	43	4		4	3	
K. A. Stewart	26	15	4	2	1	4	
P. L. Gillson	33	30		1		2	
P. R. Le Pelley	32	30				2	
S. J. Ogier	23	20	2			1	
L. S. Trott	15	15					
VALE							
M. J. Fallaize	31	30		1			
D. B. Jones	22	13		7		2	
Laurie B. Queripel	12	10	1		1		
M. M. Lowe	13	11				2	
A. R. Le Lièvre	8	7				1	
A. Spruce	32	28		1		3	
G. M. Collins	19	19					
CASTEL							
D. J. Duquemin	20	19			1		
C. J. Green	25	24				1	
M. H. Dorey	21	19	1		1		
B. J. E. Paint	16	15	1				
J. P. Le Tocq	23	19	2		1	1	
S. A. James, MBE	27	23	3			1	
A. H. Adam	40	33	2		1	4	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States' business	Personal business/ holiday	Other
WEST							
R. A. Perrot	41	39	1			1	
A. H. Brouard	17	17					
A. M. Wilkie	18	15	1	1		1	
D. de G. De Lisle	22	21				1	
Y. Burford	24	21	1	1		1	
D. A. Inglis	23	21	2				
SOUTH-EAST							
H. J. R. Soulsby	20	19				1	
R. W. Sillars	31	26	2			3	
P. A. Luxon	26	25	1				
M. G. O'Hara	21	16		1	3	1	
F. W. Quin	23	23					
M. P. J. Hadley	57	47	9			1	
ALDERNEY REPRESENTATIVES							
L. E. Jean	0	0					
S. D. G. McKinley, OBE	0	0					
TOTAL							
Number of meetings	1141	985	50	19	17	70	
		86.3%	*4.4%*	*1.7%*	*1.5%*	*6.1%*	
AVERAGE PER MEMBER							
	24.8	21.4	1.1	> 1	> 1	1.5	

PART III – REPORT OF ATTENDANCE AND VOTING IN THE STATES OF DELIBERATION

NAME OF MEMBER	TOTAL NUMBER OF DAYS (or part)	DAYS ATTENDED (or part)	TOTAL NUMBER OF RECORDED VOTES	RECORDED VOTES ATTENDED
ST PETER PORT SOUTH				
P. A. Harwood	19	17	61	55
J. Kuttelwascher	19	19	61	61
B. L. Brehaut	19	19	61	61
R. Domaille	19	19	61	61
A. H. Langlois	19	18	61	55
R. A. Jones	19	19	61	61
ST PETER PORT NORTH				
M. K. Le Clerc	19	19	61	61
J. A. B. Gollop	19	19	61	61
P. A. Sherbourne	19	19	61	61
R. Conder	19	18	61	59
E. G. Bebb	19	18	61	56
L. C. Queripel	19	19	61	60
ST SAMPSON				
G. A. St. Pier	19	19	61	61
K. A. Stewart	19	16	61	48
P. L. Gillson	19	16	61	52
P. R. Le Pelley	19	19	61	61
S. J. Ogier	19	19	61	60
L. S. Trott	19	18	61	53
VALE				
M. J. Fallaize	19	19	61	61
D. B. Jones	19	12	61	36
L. B. Queripel	19	19	61	60
M. M. Lowe	19	19	61	56
A. R. Le Lièvre	19	17	61	55
A. Spruce	19	16	61	53
G. M. Collins	19	18	61	56
CASTEL				
D. J. Duquemin	19	18	61	55
C. J. Green	19	19	61	60
M. H. Dorey	19	19	61	61
B. J. E. Paint	19	19	61	61
J. P. Le Tocq	19	17	61	49
S. A. James, MBE	19	17	61	54
A. H. Adam	19	19	61	59

NAME OF MEMBER	TOTAL NUMBER OF DAYS (or part)	DAYS ATTENDED (or part)	TOTAL NUMBER OF RECORDED VOTES	RECORDED VOTES ATTENDED
WEST				
R. A. Perrot	19	19	61	59
A. H. Brouard	19	19	61	60
A. M. Wilkie	19	18	61	52
D. de G. De Lisle	19	19	61	61
Y. Burford	19	18	61	56
D. A. Inglis	19	15	61	51
SOUTH-EAST				
H. J. R. Soulsby	19	19	61	61
R. W. Sillars	19	19	61	60
P. A. Luxon	19	19	61	60
M. G. O'Hara	19	16	61	46
F. W. Quin	19	19	61	58
M. P. J. Hadley	19	19	61	59
ALDERNEY REPRESENTATIVES				
L. E. Jean	19	19	61	60
S. D. G. McKinley, OBE	19	19	61	59

Note:

The only inference which can be drawn from the attendance statistics in this part of the report is that a Member was present for the roll call or was subsequently *relevé(e)*.

Some Members recorded as absent will have been absent for reasons such as illness.

The details of all recorded votes can be found on the States' website *http://www.gov.gg/* on the page for the relevant States' Meeting.