BILLET D'ÉTAT

XI
2017

WEDNESDAY, 7th JUNE, 2017

ELECTIONS AND APPOINTMENTS

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Legislation Laid Before the States

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1. Committee *for* Health & Social Care – Responsible Officer Report 2016

BILLET D'ÉTAT

TO
THE MEMBERS OF THE STATES
OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE,** on **WEDNESDAY,** the **7th June, 2017** at **9.30 a.m.,** to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

19th May, 2017

ELECTION OF MEMBER OF THE
LADIES' COLLEGE BOARD OF GOVERNORS

The States are asked:

To elect a member of the Ladies' College Board of Governors, who need not be a member of the States, to replace Advocate B. P. G. Morgan whose term of office will expire on 31st May 2017, in accordance with Rule 16 of The Rules of Procedure of the States of Deliberation.

N.B. Nominations may be made from the floor of the Assembly.

The Ladies' College
Guernsey

Les Gravées, St Peter Port
Guernsey, GY1 RW
Tel: (01481) 721602
Fax: (01481) 724209

The Bailiff
Bailiff's Chambers
The Royal Court House
St Peter Port
GY1 2NZ

4th May 2017

Dear Sir

I am writing at the request of the Board of Governors of The Ladies' College which would be grateful if you would request the States to appoint a member of the Board to replace Advocate Ben Morgan whose term of office expires on 31st May 2017 and who does not wish to stand for re-election. Advocate Morgan is currently one of two Governors appointed by the States. The Board wishes to express its sincere thanks to Advocate Morgan for his service as a Governor over the past 6 years. It now would like to recommend Advocate Caroline Chan to the States as a suitable candidate for appointment.

As you will be aware, the Board of Governors has recently conducted a skills analysis of the Governors to ensure that the Board has a suitable range of skills and experience amongst its members. In so doing, the Board were mindful of the guidance of the Association of Governing Bodies in Independent Schools (AGBIS), of which the College is a member, about the range of backgrounds and skills that a Governing Body should ideally encompass.

It is recommended that a Board should have a Governor with a legal background and Advocate Morgan filled this role. The Board would therefore ask that the States appoint Advocate Chan to the Board of Governors in order that the Board may benefit from continuing legal expertise. Advocate Chan is a Guernsey Advocate and is currently a partner with Mourant Ozannes. A more detailed CV is attached.

Advocate Chan (whose married name is Hodgson) has confirmed her willingness to act in this capacity and would be honoured if the States would act upon the recommendation of the Board and appoint her to the Board. Deputy Heidi Soulsby has agreed to be her proposer in the States.

Yours faithfully

EA Bridge

Elizabeth Bridge
Clerk to the Governors

CV for Advocate Caroline Chan

Advocate Caroline Chan is a Guernsey Advocate and a partner in the corporate law team at Mourant Ozannes.

After studying law at Oxford, Advocate Chan trained and qualified as an English solicitor with Allen & Overy and spent nine years with them in their Corporate Finance department, including a three year secondment to their Hong Kong office. Whilst on secondment, Advocate Chan was admitted as a Hong Kong solicitor (now non-practising). On returning to Guernsey in 1998, Advocate Chan spent nine years at Ozannes, qualifying as an Advocate in 2003. After spending eight years with Ogier, where she became a partner in 2008, Advocate Chan re-joined Mourant Ozannes in 2015 and continues to practise across the corporate, funds, financing and regulatory sectors.

Advocate Chan is an Old Girl and a former Head Girl of The Ladies' College.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

The States of Deliberation have the power to annul the Statutory Instruments detailed below.

No. 20 of 2017

THE LIQUOR LICENCE (FEES) REGULATIONS, 2017

In pursuance of Section 99(3) of the Liquor Licensing Ordinance, 2006, the Liquor Licence (Fees) Regulations, 2017, made by the Committee for Home Affairs on 12th April 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedule 4 of the Liquor Licensing Ordinance, 2006 which sets the relevant fees for the liquor licences and Constable reports etc.

These regulations are to come into force on 1st June 2017.

No. 21 of 2017

THE WEIGHTS AND MEASURES (FEES) REGULATIONS, 2017

In pursuance of Section 8(5), 61 and 62 of the Weights and Measures (Guernsey and Alderney) Law 1991, the Weights and Measures (Fees) Regulations 2017, made by the Committee for Home Affairs on 12th April 2017, is laid before the States.

EXPLANATORY NOTE

These Regulations make provision, for the purpose of the Weights and Measures (Guernsey and Alderney) Law, 1991, for fees to be paid in respect of testing of weighing and measuring equipment as fit for use for trade; for the testing of goods and equipment upon request of any person; and fees to be charged for the hire of equipment.

These Regulations come into force on the 1st day of June, 2017.

The full text of the statutory instruments and other legislation included in this document can be found at: http://www.guernseylegalresources.gg/article/158414/2017

P.2017/44

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REGULAR STATEMENTS BY COMMITTEE PRESIDENTS

The States are asked to decide whether, after consideration of the attached policy letter, they are of opinion:-

1. To amend the Rules of Procedure of the States of Deliberation and their Committees with immediate effect as follows:

insert at the end of Rule 1(1) the following sentence:

"With effect from the 1st September, 2018 the policy letter referred to above shall also include proposals setting out the Committee or Committees whose President or Presidents will be obliged to make statements under the provisions of Rules 10(4) and (5) at each ordinary Meeting during the said period."

and insert before the "."at the end of Rule 10(1) the following text:

";

Provided that the Member has supplied the Presiding Officer with the text of the statement in advance"

and delete the proviso at the end of Rule 10 and replace it with the following new Rules:

"10(4) In addition to the right to make a statement set out in paragraph (3) above, the President of the Policy & Resources Committee and the President of each Principal Committee shall be obliged twice every twelve months and the President of the following other Committees of the States, namely the Development & Planning Authority, Overseas Aid & Development Commission, Scrutiny Management Committee, States' Assembly & Constitution Committee, States' Trading Supervisory Board, and Transport Licensing Authority, shall be obliged once every twelve months (or in every case in his or her absence the Vice-President) to make a statement setting out his or her Committee's recent activities, forthcoming work and the like at an ordinary Meeting. Such a statement shall not cover any topic which is part of another item of business at the Meeting in question.

10(5) Any statement made under the provisions of paragraph (4) shall not exceed 10 minutes in duration. In respect of statements made under the provisions of paragraph (4) only, after the statement has been made, the Presiding Officer shall allow a period not exceeding 20 minutes (which period may be extended at the discretion of the Presiding Officer) for questions to be asked on any matter within the mandate of the Committee, except any topic which is part of another item of business at the Meeting in question;

Provided that:
the Member to whom questions are addressed may decline to answer a question if, in his or her opinion, any answer given might be inaccurate or misleading. Each individual question shall not exceed one minute in duration and the answer thereto shall not exceed one and a half minutes in duration.

Provided also that:
in respect of questions asked on statements made under the provisions of paragraphs (3) and (4) no question may be asked by a member of the Committee on behalf of which the statement is being made until all other Members who wish to ask a question on the statement have had the opportunity to do so."

and insert after Rule 11(4)(d) the following new paragraph:

"(e) no supplementary question may be asked by a member of the Committee whose President was asked the principal question until all other Members who wish to ask a supplementary question on the principal question have had the opportunity to do so;"

and insert after Rule 12(5)(d) the following new paragraph:

"(e) no supplementary question may be asked by a member of the Committee whose President was asked the principal question until all other Members who wish to ask a supplementary question on the principal question have had the opportunity to do so;"

and insert after Schedule 1 to the Rules an additional Schedule as follows:

"Schedule 1a

Rota of statements by Presidents of Committees of the States

2017

States Meeting	**Committee/s to make Statement**
6 September	Policy & Resources Committee
27 September	Committee *for* Economic Development and Development & Planning Authority
18 October	Committee *for* Education, Sport & Culture
7 November (Budget)	n/a
8 November	Committee *for* Home Affairs and Overseas Aid & Development Commission
29 November	Committee *for the* Environment & Infrastructure
13 December	Committee *for* Health & Social Care

2018

States Meeting	**Committee/s to make Statement**
17 January	Committee *for* Employment & Social Security
7 February	Scrutiny Management Committee and States' Assembly & Constitution Committee
28 February	Policy & Resources Committee
21 March	Committee *for* Economic Development
18 April	Committee *for* Education, Sport & Culture and States' Trading Supervisory Board
16 May	Committee *for the* Environment & Infrastructure
5 June (P&R Plan Phase 2)	n/a
6 June	Committee *for* Employment & Social Security and Transport Licensing Authority
26 June (Accounts)	n/a
27 June	Committee *for* Health & Social Care
18 July	Committee *for* Home Affairs

"

And

To agree in respect of the twelve-month period beginning on the 1st September, 2017 that such statements shall be made by the Presidents according to the rota set out in Schedule 1a to the Rules. In respect of any States' Meeting after the 1st September, 2018 the States' Assembly & Constitution Committee shall propose the rota in accordance with the provisions of Rule 1(1).

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

REGULAR STATEMENTS BY COMMITTEE PRESIDENTS

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

27th April, 2017

Dear Sir,

1 Executive Summary

1.1 The States' Assembly & Constitution Committee believes that a minor addition should be made to the Rules of Procedure of the States of Deliberation and their Committees with immediate effect. The change would oblige the Presidents of all States' Committees to provide updates to the Assembly on their Committee's recent activities, work ahead, etc. at periodic intervals. The succeeding paragraphs of this policy letter set out the Committee's case in support of the Rule changes proposed in the Propositions to which the policy letter is attached.

2 Reasons for the changes proposed

2.1 Recently, there have been occasions when a President of a Principal Committee has made a statement to the States not on any specific item but generally to update the Assembly on his or her Committee's recent activities, work ahead, etc. As is routine with statements made in the States, they were followed by a period of questions. Some States' Members approached the States' Assembly & Constitution Committee to suggest that it bring a change to the Rules of Procedure of the States of Deliberation and their Committees to require such statements to be made regularly by rotation. The Committee has consulted with the Presidents of the Policy & Resources and Principal Committees to establish their views on whether they should be obliged at intervals to make statements in States' Meetings on the work of their Committees. Most of them were decisively in favour of introducing this practice; none said they would oppose it if it was proposed to the States.

2.2 The statements which would be made under the proposals in this policy letter would be in addition to any statements which a President chose or was otherwise obliged to make to a States' Meeting. It is intended that they would be for the purpose of providing updates to the States and the wider public on the activities and intentions of Committees at periodic intervals.

2.3 The Committee believes that such statements could help to strengthen openness and accountability. They would support Committee Presidents in their efforts always to be well-briefed by officers on all areas of their Committee's mandate. As with statements which are made under the present Rules, the Committee proposes that this new style of statement would be followed by a period of questions. Generally Members are keen to take advantage of the opportunity to ask questions and they can contribute positively to the States' scrutiny of their Committees and may be particularly useful because proceedings of the States are held in public. Committee Presidents will be able to benefit from making such Statements too because of the opportunity they will give them publicly to explain the work of their Committee.

2.4 The Committee believes that it should be a requirement in the Rules for Presidents to have to make such statements (rather than having them simply by practice) to ensure that they happen and to ensure that they are made regularly. In that way they can be scheduled into the agenda of each ordinary States' Meeting and become part of the way that each Meeting runs. Statements should be made by Committee Presidents by rotation.

2.5 The recommended rota for the initial period of 12 months from the 1st September, 2017 is set out in the Propositions as a proposed new Schedule 1a to the Rules. Committees are listed in no particular order other than to ensure that a Committee statement is not scheduled for a States' Meeting at which it is already known that a Committee will have a major item of business. For example, the Committee *for* Employment & Social Security brings its annual uprating of benefits report to the States' Meeting immediately after the Budget Meeting. The Committee proposes that Rule 1 should be amended so that after that initial period there is a requirement for the rota for statements to be included in the policy letter to the States each September which proposes the dates of future States' Meetings. The Committee believes that the business of special States' Meetings, such as for the Accounts and the Budget, should continue to be only the item for which the Meeting has been established and should not include this new type of statement.

2.6 The Committee proposes that the Presidents of all States' Committees should be obliged to make these new-style statements. In order to reflect the different responsibilities and breadths of mandates, it is proposed that the Presidents of the Policy & Resources Committee and the six Principal Committees should be obliged to make such statements twice every 12 months and the Presidents of the other six Committees once every 12 months.

2.7 The Committee believes that it is reasonable to impose a limit of 10 minutes' duration on each statement. The Committee also believes that Presidents should

not be permitted to cover any topic which is part of another item of business at the Meeting in question, which would replicate the arrangements for question time.

2.8 The Committee also believes that Presidents should, as much as possible, cover only policy issues in their statements and not operational issues. The Committee accepts that there will be occasions when it might be appropriate to include operational issues: for example, if there had been a problem with an operational area within a Committee's mandate and the President wished to provide the States with information about the matter and how it had been resolved. Nevertheless the Committee would hope that these would be rare.

2.9 The Committee also proposes that questions should be permitted on any area of the Committee's mandate, even if not specifically mentioned in the statement. This would allow the States' Assembly, as well as the President of the Committee, to influence the subjects under discussion. However, in order to prevent the period of questions following a statement being merely an introduction to a debate later in the Meeting they will not be permitted on a topic which is part of another item of business later in the Meeting.

2.10 In respect of the period of questions, the Committee believes that it should be a little longer for this new type of statement than for other statements and should be up to 20 minutes per statement. This reflects the likely breadth of the statements and the fact that Members will be allowed to ask questions on areas which have not been mentioned in the statement. This longer period will also lessen the need for the Presiding Officer to have to exercise his discretion if there are numerous Members who want to ask questions on a statement which may be politically charged and where the Presiding Officer's curtailment of the period may be construed as unfortunate.

2.11 Also in respect of the period of questions, the Committee believes that there should be some control on who can ask questions in order to ensure that the questions properly scrutinise the contents of the statement. If the members of the Committee whose President is making the statement are given free rein to ask questions then the opportunity for scrutiny and challenge may be diminished. The Committee therefore proposes that no question could be asked by a member of the Committee on behalf of which the statement is being made until all other Members who wish to ask any question on the statement have had the opportunity to do so.

3 Questions asked under other Rules

3.1 The Committee believes that the new provisions proposed in the preceding paragraph should also be extended to the questions which can be asked after other Committee statements, under Rule 10(3) and those asked in relation to Questions in the States under Rules 11 and 12. That is, no question could be asked by a member of the Committee on behalf of which the statement is being made or whose President has been asked a question until after other Members who wish to ask a question on the statement or the question have had the opportunity to do so.

4 Statements of a personal nature

4.1 The Committee believes that, while making a number of adjustments to the Rules, it is appropriate to amend the Rule concerning statements of a personal nature. It proposes that any Member who wishes to make a statement of a personal nature should be obliged to provide the Presiding Officer with a copy of the proposed text in advance of making the statement.

5 Recommendation

5.1 For the reasons set out above, the Committee believes that the requirement for Committee Presidents to have to make periodic statements about the activities of their Committees should be included in the Rules and that they should follow an agreed rota. It therefore recommends the States to approve the Proposition to which this policy letter is attached, namely that those minor additions and changes to the Rules should be made with immediate effect.

6. Compliance with Rule 4

6.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

6.2 In accordance with Rule 4(2), the Committee requests that the matter be considered at the States' Meeting to be held on the 7th June, 2017.

6.3 In accordance with Rule 4(3), the Committee confirms that there are no financial implications to the States of approving the Propositions.

6.4 In accordance with Rule 4(4), it is confirmed that the proposition to which this policy letter is attached has the support of all members of the Committee**.**

6.5 In accordance with the provisions of Rule 4(5), the Committee informs the States that its duties and powers include advising the States on "the practical functioning of the States of Deliberation". The Committee has consulted the Presiding Officer and the President of the Policy & Resources Committee and the Presidents of the Principal Committees in respect of these proposals.

Yours faithfully,

Deputy M. J. Fallaize
President

Deputy P. J. Roffey
Vice-President

Deputy M. H. Dorey
Deputy M. K. Le Clerc
Deputy H. L. de Sausmarez

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

DOUZAINE REPRESENTATIVES IN THE STATES OF ELECTION

The States are asked to decide whether, after consideration of the attached policy letter, they are of opinion that the allocation of Douzaine Representatives in the States of Election shall be changed with immediate effect so that St Peter Port has ten Douzaine Representatives and St Saviour has one Douzaine Representative.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

DOUZAINE REPRESENTATIVES IN THE STATES OF ELECTION

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

27th April, 2017

Dear Sir,

1 Executive Summary

1.1 Article 15(1) of The Reform (Guernsey) Law, 1948, as amended, provides that there shall be 34 Douzaine Representatives, elected by their respective Douzaines, as members of the States of Election. The seats are allocated in accordance with the numbers of the respective populations of the parishes. Since the allocation was last determined, there have been shifts in the relative sizes of the populations of several of the parishes. The States' Assembly & Constitution Committee therefore believes that a small adjustment should be made to the number who represent each parish to reflect those population movements. The paragraphs below set out the Committee's case in support of the Proposition to which this policy letter is attached.

2 Allocation of Douzaine Representatives among the parishes

2.1 The table below shows the population figures for the 29th April, 2001 and the 31st March, 2016 and the actual and proposed number of Douzaines Representatives for each parish as well as the change set out below.

Parish	2001 population	Present represent-atives	2016 population	Proposed represent-atives	Change
St Peter Port	16,585	9	18,894	10	+ 1
St Sampson	8,592	5	8,948	5	
Vale	9,573	5	9,524	5	
Castel	8,975	5	8,739	5	
St Saviour	2,696	2	2,749	1	- 1
St Pierre du Bois	2,188	1	2,099	1	
Torteval	973	1	1,013	1	
Forest	1,549	1	1,578	1	
St Martin	6,267	4	6,581	4	
St Andrew	2,409	1	2,348	1	
Totals	*59,807*	*34*	*62,473*	*34*	

N.B. The figure for the population of St Peter Port includes the inhabitants of Herm and Jethou as they form part of the parish for these purposes.

2.2 The present allocation was decided in October 2002 and took effect on the 1st May, 2004. Although the total number of Douzaine Representatives is set out in the Reform Law, the split between the different parishes may be amended by the States by Resolution. The States' Assembly & Constitution Committee has considered whether or not the allocation of the Douzaine Representatives in the States of Election should be altered and, having taken into account the relative changes in population since the 2001 Census shown in the table above, recommends that the allocation should in future be as shown in the "proposed representatives" column in the table.

2.3 Those figures were calculated as follows. Every parish must have at least one Representative regardless of the size of its population. In calculating the distribution, the Committee therefore allocated a Representative to each of Torteval and the Forest parishes before calculating the distribution of the remaining 32 seats. The calculation is therefore 59,882 people (the total population less that of the two aforementioned parishes) divided by 32. That means that, on average, there should be one Representative for every 1,871 people. Each of the parish population figures was divided by that number. In no case did that produce a whole number so the result was rounded to the nearest whole number. That means that the representation for St Saviour falls to one because 2,749 divided by 1,871 is 1.47 which is closer to one than to two. For St Peter Port the result was 10.1.

3 Recommendation

3.1 The States' Assembly & Constitution Committee therefore recommends that the allocation of the Douzaine Representatives should be changed with immediate effect so that the parish of St Peter Port has ten Douzaine Representatives and the parish of St Saviour has one Douzaine Representative.

4. Compliance with Rule 4

4.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

4.2 In accordance with Rule 4(2), the Committee requests that the matter be considered at the States' Meeting to be held on the 7th June, 2017 in advance of the expected Meetings of the States of Election.

4.3 In accordance with Rule 4(3), the Committee confirms that there are no financial implications to the States of approving the Propositions.

4.4 In accordance with Rule 4(4), it is confirmed that the proposition to which this policy letter is attached has the support of all members of the Committee**.**

4.5 In accordance with the provisions of Rule 4(5), the Committee informs the States that its duties and powers include advising the States on "the constitutions of the States of Deliberation and the States of Election". The Committee has consulted the Presiding Officer and the douzaines in respect of these proposals.

Yours faithfully,

Deputy M. J. Fallaize
President

Deputy P. J. Roffey
Vice-President

Deputy M. H. Dorey
Deputy M. K. Le Clerc
Deputy H. L. de Sausmarez

P.2017/38

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

IMPLEMENTATION OF INTERNATIONAL SANCTIONS MEASURES

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 28 March 2017 of the Policy & Resources Committee, they are of the opinion:-

(i) to agree to the introduction of a Bailiwick-wide Law for the implementation of sanctions;

(ii) to the introduction of regulation-making powers for the Policy & Resources Committee to enable the implementation of EU and UN sanctions measures across the Bailiwick as a whole;

(iii) to agree to the introduction of measures to permit the future direct implementation of UK sanctions measures in Bailiwick law;

(iv) to approve the enactment of related measures including powers to obtain and share information; permitting reliance on a certificate from a UK Secretary of State in respect of sensitive or closed source material in the interests of national security; and any necessary consequential amendments; and

(v) to direct the preparation of such legislation as may be necessary to give effect to the foregoing.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

IMPLEMENTATION OF INTERNATIONAL SANCTIONS MEASURES

Presiding Officer
Royal Court
St Peter Port
Guernsey

28 March 2017

Dear Sir

1. Executive Summary

1.1 The Bailiwick has long been committed to the effective implementation of sanctions that bodies such as the United Nations ("UN") and the European Union ("EU") impose to achieve international policy objectives. Sanctions may take the form of restrictions that are applicable to particular countries, such as prohibitions on investment or the supply of arms, commodities and related technical or financial services, or targeted financial restrictions such as asset freezes that are applicable to named individuals or entities. Speed of implementation is essential for all forms of sanctions, and this is particularly so in the case of targeted financial restrictions given the ease with which financial assets can be moved and the attendant risk of asset flight. The immediate implementation of certain UN sanctions relating to the financing of terrorism and weapons proliferation is also a requirement of the Financial Action Task Force's Recommendations in relation to money laundering, terrorist financing and the financing of weapons proliferation ("FATF standards"). Therefore, it is clearly of the utmost importance to the Bailiwick's reputation as a major international financial centre that every effort is made to give effect to sanctions as quickly as possible.

1.2 The Policy & Resources Committee, which (as the successor to the Policy Council for these purposes) is the competent authority for most sanctions measures across the Bailiwick, has reviewed the current legislative process for the implementation of both UN and EU sanctions within the Bailiwick and concluded that in general it works well but there are some respects in which it could be improved; primarily that EU sanctions are currently implemented independently for Guernsey, Alderney and Sark rather than on a Bailiwick- wide basis, and that enhancements could be made to the process for giving effect to UN measures. Change in these areas would also address a specific recommendation about implementation of sanctions in the report published by MoneyVal in January 2016 on its assessment of the Bailiwick's framework for anti-money laundering and combatting the financing of terrorism.

1.3 It is therefore recommended that primary legislation should be introduced to enable the Policy & Resources Committee to give effect to EU and UN sanctions by regulations on a Bailiwick- wide basis, subject to any modifications that may be required either to

facilitate effective implementation domestically or to ensure compliance with international obligations such as the FATF standards. It is further recommended that the legislation should provide for a possible future amendment to give direct effect on a Bailiwick–wide basis to UK measures implementing UN sanctions, in the event that the States of Deliberation consider it expedient to do this following related legislative developments in the UK.

2. Background

2.1 The Bailiwick is obliged as a matter of international law to give effect to UN sanctions measures under the UN Charter, which was extended to the Bailiwick upon the United Kingdom's ratification in 1945. Until the 1990s, sanctions were implemented in the Bailiwick (as in the other Crown Dependencies and the Overseas Territories) by Orders in Council applicable to the Bailiwick as a whole under Section 1 of the United Nations Act 1946; and the swift introduction of an Order in Council, either to implement a new sanctions regime or to amend an existing one, was difficult to achieve in practice. Therefore, a new approach developed in the late 1990s, by when the EU had begun to give effect to UN sanctions within the EU and in addition to impose its own autonomous sanctions. This involved the Bailiwick implementing all EU sanctions measures by Ordinances under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ("EU Implementation Law") that gave direct effect to the relevant measures within Guernsey, Alderney and Sark respectively. This process enabled the swift implementation of UN sanctions as well as of autonomous EU sanctions.

2.2 This is now the way in which all sanctions measures are implemented in the Bailiwick, apart from a small number of longstanding Orders in Council under the United Nations Act which remain in force and one other more recent exception in relation to certain UN sanctions concerning terrorism which are implemented by the Terrorist Asset-Freezing (Bailiwick of Guernsey) Law, 2011 ("Terrorist Asset Freezing Law"). This is primary Bailiwick–wide legislation which imposes targeted financial sanctions on persons designated by the Policy and Resources Committee, by the EU or by HM Treasury under the UK's Terrorist Asset Freezing etc. Act 2010.

2.3 International developments in recent years such as events in the wake of the so–called "Arab Spring", weapons proliferation in Iran and North Korea and the rise of terrorist organisations such as ISIL have led to sanctions being enacted at an unprecedented level, with a corresponding need to enact much more sanctions legislation within the Bailiwick than was previously the case. It is this unprecedented level of work that has highlighted the benefits of modifying the current process in the respects set out below.

3 Proposals for change

3.1 Bailiwick-wide legislation

3.1.1 Historically, sanctions measures were implemented on a Bailiwick-wide basis because, as indicated above, Orders in Council under the United Nations Act were applied across the Bailiwick as a whole, in the same way as other measures with an international aspect such as those enacted to comply with conventions or to extend UK immigration legislation. A Bailiwick-wide approach was also taken more recently in the Terrorist Asset Freezing Law. The current system of enacting separate measures for Guernsey, Alderney and Sark for other sanctions is not the result of any policy decision that the three islands should implement sanctions independently of one another. Rather, it is a consequence of the fact that the EU Implementation Law provides the only legal basis for Bailiwick secondary rather than primary legislation to implement sanctions and it requires separate Ordinances for each of Guernsey, Alderney and Sark for all measures made under it (nevertheless the Policy and Resources Committee is the designated competent authority under the Ordinances for all three islands).

3.1.2 Although the authorities in the islands work closely together to minimise any delays in introducing the necessary legislation, the overall process is cumbersome, and it would clearly be desirable to return to the approach of enacting sanctions measures on a Bailiwick-wide basis, but without being obliged to have recourse to the legislative process in the UK. Although this could be achieved by amending the EU Implementation Law, it would be preferable to introduce new primary legislation specifically relating to sanctions, as such legislation would enable the further matters referred to below to be addressed at the same time. It would also be preferable for the legislation to provide for EU sanctions to be implemented by regulations made by the Policy & Resources Committee, rather than by Ordinances made by the States. The process for the former is much quicker, and the use of regulations would be in line with the current approach in the UK, where HM Treasury may make regulations to give effect to those aspects of EU sanctions measures that are not automatically effective domestically, as well as with the position in Jersey, where legislation was introduced in 2014 to enable sanctions to be implemented by Ministerial Order.

3.2 Implementation of UN Sanctions

3.2.1 It is a requirement of UN sanctions measures that countries implement them without delay. This obligation is binding on the Bailiwick under the UN Charter and is also a requirement of the FATF standards in relation to UN sanctions concerning terrorist financing and the financing of weapons proliferation. Reliance on the EU Implementation Law to implement UN sanctions means that there could be a gap in the sanctions framework in the period before the EU enacts legislation to give effect to a new sanctions regime introduced by the UN or to amendments made by the UN to an existing regime. The potential for this to happen has been increased following a decision of the European Court of Justice, which has led to enhanced processes the EU must follow before mirroring sanctions imposed by the UN. Although the time taken by the EU to implement UN measures is still usually of fairly short duration, a delay of any length may increase the risk of asset flight and could in some circumstances also constitute a technical breach of the UN measures and the FATF standards. This point

was made in the recent Moneyval report on the Bailiwick's compliance with the FATF standards.

3.2.2 All jurisdictions that meet their UN and FATF obligations by implementing EU measures face this issue. As a consequence, many of these jurisdictions are looking at addressing it or have introduced domestic legislation to do so. This includes the UK, which before the recent referendum vote to leave the EU was in the process of introducing legislation enabling UN measures to be given domestic effect by regulations on an interim basis, pending the enactment of corresponding EU measures. Although it is not yet clear how the UK will now proceed in the light of the referendum result, the advantages of implementing UN measures solely on an interim basis in this way are unchanged. There would not be two parallel and overlapping regimes in place, which would otherwise be the case given that there would still be a need to implement EU measures in order to give effect to autonomous EU sanctions, and in addition, relying on EU rather than UN measures on an indefinite basis may be more compatible with human rights and similar obligations because, unlike the UN, the EU has a legal process in place for challenging a listing that is available to affected parties.

3.2.3 For Bailiwick purposes, it is recommended that new sanctions legislation should include a power for the Policy & Resources Committee to make interim or final regulations to implement UN measures; and empower the States of Deliberation to amend the legislation by Ordinance so as to give direct effect in the Bailiwick to interim listings under UK legislation in a similar way to the approach taken under the Terrorist Asset Freezing Law, in the event that this is judged to be a better way forward for the Bailiwick when the final UK position is known. The amending power should also be wide enough to permit amendments reflecting any future changes that may be made to the UK sanctions framework as a result of the decision to leave the EU.

3.2.4 These provisions, together with a permissive extent clause in the UK legislation in the event that it proceeds enabling the extension of interim designations made under it to the Bailiwick by Order in Council, would mean that all options remain open to the Bailiwick authorities pending the finalising of the UK position, without the need for further primary legislation.

3.3 Other measures

3.3.1 To facilitate effective implementation of the sanctions framework, the legislation should make provision for related measures such as powers to obtain and share information. In addition, it should permit the introduction of a mechanism to address potential situations where sensitive or closed source, i.e. secret, material is relevant to a decision in respect of sanctions. Such a mechanism, which is likely to be required in exceptional circumstances only, would allow a competent authority within the Bailiwick to rely on a certificate from a UK Secretary of State in respect of sensitive or closed source material in the interests of national security without the need to view that underlying material. Provision should also be made for any necessary

consequential amendments to existing legislation (which may include its repeal and replacement), to ensure consistency across the framework as a whole.

4. Consultation

4.1 The Law Officers have been consulted and raise no legal objection to the proposals in this policy letter.

5 Alderney

5.1 The Policy & Resources Committee has consulted with the Policy and Finance Committee of the States of Alderney. The committee supports the proposals in this policy letter.

6 Sark

6.1 The Policy & Resources Committee has consulted with the Policy and Performance Committee of the Chief Pleas of Sark. The committee supports the proposals in this policy letter.

7 Resources

7.1 The Policy & Resources Committee does not consider there to be any significant resource implications associated with the implementation of these proposals. HM Procureur advises that she does not expect the introduction of this legislation will place any significant additional burden on the resources of St James Chamber or the Royal Court and, in the longer term, it is likely to reduce the burden on drafting and other resources involved in enacting secondary legislation as it will remove the need for separate enactments for Guernsey, Alderney and Sark.

8 Recommendations

8.1 The States are asked to decide whether they are of the opinion:-

(i) to agree to the introduction of a Bailiwick-wide Law for the implementation of sanctions:

(ii) to the introduction of regulation-making powers for the Policy & Resources Committee to enable the implementation of EU and UN sanctions measures across the Bailiwick as a whole;

(iii) to agree to the introduction of measures to permit the future direct implementation of UK sanctions measures in Bailiwick law;

(iv) to approve the enactment of related measures including powers to obtain and share information; permitting reliance on a certificate from a UK Secretary of State in

respect of sensitive or closed source material in the interests of national security; and any necessary consequential amendments; and

(v) to direct the preparation of such legislation as may be necessary to give effect to the foregoing.

9 Propositions

9.1 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

P.2017/42

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

WIRE TRANSFER LEGISLATION

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 18th April, 2017, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that an Ordinance should be enacted under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to implement Regulation (EU) 2015/847 in Guernsey, subject to appropriate adaptations, exceptions and modifications, and to repeal the Transfer of Funds (Guernsey) Ordinance, 2007; and

2. To direct the Law Officers to prepare such legislation as may be necessary to give effect to the above, including any necessary or expedient supplemental and consequential provision.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

WIRE TRANSFER LEGISLATION

Presiding Officer
Royal Court
St Peter Port
Guernsey

18th April 2017

Dear Sir

1. Executive Summary

1.1 The States of Guernsey enacted the Transfer of Funds (Guernsey) Ordinance, 2007 in order to ensure that no changes need be made to mechanisms for the electronic transfer of funds between the Guernsey and the UK following the introduction of an EU Regulation on transfers of funds (known colloquially as wire transfers). This Regulation implemented a Special Recommendation of the Financial Action Task Force on wire transfers.

1.2 Following revisions to the Financial Action Task Force standards in 2012, the EU has issued a new Regulation, which will come into effect from the summer of 2017. This means that Guernsey too needs to revise its legislative framework so that a derogation issued by the UK Government (see below) can remain in place and enable Guernsey to continue to use reduced information provisions, which are not available without the derogation.

1.3 The BACS payment system, which serves the UK and the Crown Dependencies and which accounts for a very significant proportion of transfers between the UK and the Dependencies, does not have the capacity to provide the detailed customer information required under the EU Regulation for transfers from third countries to EU Member States. Without the issue of a derogation by the UK Government, which was made on the basis that the Transfer of Funds (Guernsey) Ordinance, 2007, reflected the EU standards in the Regulation, each transfer of funds to the UK would have been, and still would be, treated as an international transfer, requiring more detailed customer information to be included with the transfer.

1.4 Therefore, without the enactment of the Guernsey legislation there would not have been a cost effective way of transferring volume payments between Guernsey and the UK.

2. Background

2.1 The Transfer of Funds (Guernsey) Ordinance, 2007, together with the separate Transfer of Funds Ordinances for each of Alderney and Sark, are part of the Bailiwick's framework for meeting international standards on anti-money laundering and combating terrorist financing. In particular, these Ordinances were enacted in order to meet the then Recommendations of the Financial Action Task Force on Money Laundering and Terrorist Financing and Regulation (EC) No 1781/2006 of 15 November 2006 on information on the payer accompanying transfers of funds (the Old Regulation).

2.2 The Old Regulation treats the EU as a single jurisdiction as it was felt this would guarantee the smooth functioning of the payment infrastructure in the EU. It imposes different requirements for transfers within the EU as opposed to transfers between third countries and the EU.

2.3 The then FATF Recommendations had different rules for domestic transfers (transfers within a single jurisdiction) as opposed to international/cross-border transfers (transfers between two jurisdictions). International/cross border transfers are subject to more onerous requirements in respect of the amount of payer information to be included in the transfers. The EU applied the notion of domestic transfers to all intra-EU transfers (i.e. all the Member States were to be treated as a single jurisdiction) and the notion of international/cross-border transfers to transfers between the EU and third countries. As a consequence of this approach, without a mechanism allowing a different approach to be taken, transfers between Member States and Guernsey would be treated as international transfers and, therefore, would need to be accompanied by more detailed information than the domestic transfer requirements applicable to transfers between Member States.

2.4 This situation would have resulted in financial institutions in Guernsey being subject to more stringent requirements than their counterparts in the European Community. Also, the BACS payment system (which serves only the UK and the Crown Dependencies) does not have the capacity to provide the detailed originator information for international transfers between the Dependencies and the UK required under the EC's proposals for transfers between Member States and third countries. Consequently, there would not have been a cost effective way of transferring volume payments between Guernsey and the UK. This would have had serious repercussions as a substantial proportion of payments between Guernsey and the other Crown Dependencies and the UK are made using BACS.

2.5 Article 17 of the Old Regulation states that the European Commission may authorise any Member State of the European Union to conclude agreements with a territory outside the EU which contain derogations from the Old Regulation, in order to allow for transfers of funds between that territory and the Member State concerned to be treated as transfers of funds within that Member State. Guernsey has received a derogation from the UK Government (as have Alderney and Sark), enabling wire transfers between the Bailiwick and the UK to contain the reduced information

requirements for transfers within the EU compared with transfers between third countries and the EU.

2.6 A derogation can only be issued if certain conditions are met, including a condition for the jurisdiction concerned to require payment service providers to apply the same standards as those in the Old Regulation. Such a derogation was issued by the UK Government to Guernsey. Alternative and much more expensive arrangements for most payments between Guernsey and the UK would have been required if the UK had not been in a position to issue the derogation. The position is the same for Alderney and Sark.

3. Requirement for change

3.1 On 20 May 2015 the EU enacted Regulation (EU) 2015/847 on information accompanying transfers of funds (the New Regulation). In addition to creating a revised framework in the EU for wire transfers the New Regulation will repeal the Old Regulation. Accordingly, the Old Regulation will be replaced in June 2017 and Guernsey (and Alderney and Sark) needs to meet the requirements of the New Regulation if the derogation issued by the UK under the Old Regulation is to be extended or a new derogation issued. The New Regulation will apply from 26 June 2017 and EU Member States must comply with the New Regulation by that date.

3.2 The results of the 2016 UK referendum on the EU do not affect the importance of the timing of the extension of the UK's derogation or the issue of a new derogation by the UK to Guernsey. The derogation needs to be issued on or before 26 June 2017 and continue to be in force until such time as the UK leaves the EU. As part of Guernsey's Brexit discussions with the UK it will be important to ensure that transfers between Guernsey and the UK will continue to be treated as domestic transfers after the UK leaves the EU.

3.3 Like the Old Regulation the New Regulation provides for the possibility for such transfers of funds to be treated as transfers within that Member State (ie as domestic transfers) where:

(a) it shares a monetary union with the Member State concerned or forms part of the currency area of the Member State concerned;
(b) it is a member of the payment and clearing systems of the Member State concerned;
(c) it requires payment service providers under its jurisdiction to apply the same rules as those established under the Regulation.

4. Proposals

4.1 In order to meet all of the above conditions the Guernsey will need to implement legislation which meets the new Regulation. As with the 2007 Ordinance, the most expedient means of achieving this is by way of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 as amended. This Law allows the

States by Ordinance to make such provision, as they may consider necessary or expedient for the purpose of the implementation of any Community provision.

4.2 Following consultation with the private sector, the Policy & Resources Committee provided the UK Government with draft new wire transfers legislation for Guernsey in September 2016 so that it was able to liaise with the European Commission on the derogation. That consultation process has not been completed but, in light of the 26 June deadline referred to above, the Committee is seeking policy approval from the States at this stage for the requisite legislation to be prepared for consideration by the States.

4.3 The 2007 Ordinance applies in relation to transfers of funds in any currency which are sent or received by a payment service provider (PSP) established in Guernsey (the legislation also provides exceptions to this). PSPs must ensure that transfers of funds are accompanied by substantial information on the payer and verify that information. Reduced requirements are in place where the PSPs of both the payer and the payee are situated in the British Islands – i.e. transfers to the UK, Jersey and the Isle of Man are treated as being domestic transfers and the reduced requirements resulting from this. The Ordinance also contains technical provisions on, for example, missing or incomplete information on the payer; record keeping; the provision of information and documents by PSPs to the authorities in Guernsey; offences; and power for the Guernsey Financial Services Commission (GFSC) to make rules, instructions and guidance for the purposes of the Ordinance. The GFSC monitors compliance by PSPs with the Ordinance.

4.4 Key changes to the regime set out in the Old Regulation include:

(a) a requirement that transfers of funds are accompanied by information on the payee, not only the payer.
(b) a requirement that the accuracy of the information on the payee for transfers of funds of more than EUR 1,000 should be verified.
(c) a requirement that the payment service provider (PSP) of the payee and any intermediary PSP establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds that lacks the required payer and payee information.

4.5 The Committee proposes that the 2007 Ordinance should be repealed and a new Ordinance enacted enabling Guernsey to meet the New Regulation in such a way that the existing derogation issued by the UK Government can remain in place.

4.6 Important supplemental and consequential matters will also need to be addressed in the proposed Ordinance, which will supplement the requirements of the New Regulation itself for the purpose of ensuring those requirements are given appropriate and proportionate effect in our domestic law. These matters include (but are not limited to) the provision of information; monitoring and reporting obligations; provisions relating to the confidentiality of disclosed documents and information; enforcement of the provisions, including but not limited to the creation

of criminal offences and the provision of penalties; and power for the GFSC to make rules, instructions and guidance.

4.7 The Policy & Resources Committee is liaising with the authorities in Alderney and Sark with regard to the enactment of legislation in those islands. The implementation of the proposed legislation will ensure that customers within the Bailiwick are not disadvantaged by any changes in the EU Regulation, as the extension or renewal of the existing derogation from the UK Government would enable the BACS system of payment to continue to be used by the UK and the Crown Dependencies.

5. Consultation

5.1 The Policy & Resources Committee has worked closely with the Guernsey Financial Services Commission on the development of the proposed legislation.

5.2 The banking sector and other finance sector PSPs were consulted in 2016 on the draft legislation.

5.3 The Law Officers Chambers have confirmed that they do not have any objection to the proposed changes.

6. Recommendation

6.1 The States are asked to decide whether they are of the opinion:-

1. to agree that an Ordinance should be enacted under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 to implement Regulation (EU) 2015/847 in Guernsey, subject to appropriate adaptations, exceptions and modifications; and to repeal the Transfer of Funds (Guernsey) Ordinance, 2007, and

2. to direct the Law Officers to prepare such legislation as may be necessary to give effect to the above, including any necessary or expedient supplemental and consequential provision.

7. Proposition

7.1 In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

P.2017/43

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

A REGULATORY FRAMEWORK FOR PENSION SCHEMES AND THEIR PROVIDERS

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 25th April 2017, of the Policy & Resources Committee, they are of the opinion:-

1. To agree in principle to the enactment of a Projet de Loi to create the necessary legal foundation for the establishment of a new regulatory framework for pension schemes and their providers; and

2. To direct the Policy & Resource Committee to present to the States a further report outlining the detailed requirements of such legislation within a period of 12 months from the date of the States' decision.

3. To agree to the enactment of Ordinance under the Income Tax Law (Guernsey) Law, 1975 making relevant amendments to that legislation to provide for the approval of further pension schemes and the ability for the Director of Income Tax to require consistent reporting of information concerning those schemes.

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

A REGULATORY FRAMEWORK FOR PENSION SCHEMES AND THEIR PROVIDERS

Presiding Officer
Royal Court
St Peter Port
Guernsey

25th April, 2017

Dear Sir

1. Summary

1.1. This report recommends in principle agreement to the enactment of a Projet de Loi to create the necessary legal foundation for the modernisation of the regulatory framework for pension schemes and their providers to best serve the protection of the members of pension schemes and other consumers, improve the competitive position of the Bailiwick and protect the Bailiwick's reputation. It also recommends that the Policy & Resources Committee should return to the States with a policy letter outlining the requirements of such legislation within 12 months from the date of the States' resolutions on this letter.

1.2. This report further recommends that relevant amendments be made to the Income Tax (Guernsey) Law, 1975 (the Income Tax Law) to provide the option for all pension schemes provided in Guernsey and Alderney to seek approval under the Law. This would enable the Director of Income Tax to require consistent reporting of information concerning all approved schemes and help ensure that the Director forms part of the overall oversight of pension products which are provided in the Islands.

2. Background

2.1. The scope of the Bailiwick's regime for financial services regulation does not presently expressly extend to the regulation of firms providing services to pension schemes or to the schemes themselves. Nevertheless, international and independent evaluations of the Bailiwick's framework for the regulation of financial services businesses demonstrate the comprehensiveness of that framework.

2.2. Under recognised best international practice,[1] the scope of pension supervision now includes supervision of both providers of pension schemes and pension schemes themselves.

[1] The International Organisation of Pension Supervisors (IOPS) Principles for Private Pension Supervision cover occupational and personal pension plans and/or pension funds. Pension supervision includes the monitoring of the activities of pension plans and funds to ensure that they remain within the requirements of the regulatory framework, essentially enforcing

2.3. Following initial engagement between representatives of the pension sector and the Guernsey Financial Services Commission (GFSC) during 2015 and early 2016, the Committee *for* Economic Development requested the GFSC to lead a review with the objective of modernising the regulatory framework for private pension provision in order that Guernsey should meet international standards. It was also agreed that the Policy & Resources Committee would take the lead at committee level within the States. This recognises the wide reputational considerations of regulatory matters in general and pensions regulation in particular.

2.4. The GFSC commenced a review of the potential modernisation of the regulatory framework for private pension provision last autumn with the publication of a discussion paper for consultation.

2.5. There was strong support for the GFSC's approach to modernising the regulatory framework for private pension provision and the GFSC has recommended to the Policy & Resources Committee that modernisation of the regulatory framework is in Guernsey's best economic interest. The Committee agrees with this recommendation.

2.6. The Law Officers' advice is that, to best meet the approach set out above, primary legislation in the form of a Projet de Loi is required.

2.7. In light of the wide interest in pension provision and its regulation, the Policy & Resources Committee considers it appropriate to inform the States of Deliberation of the current position and to seek approval, in principle, by the States to the enactment of primary legislation.

3. Current Framework

3.1. The Director of Income Tax approves occupational pensions schemes under Section 150 of the Income Tax Law and personal pension schemes (namely, retirement annuity schemes and retirement annuity trust schemes) under section 157A of that Law for tax purposes (which are generally those schemes where members/beneficiaries are resident in Guernsey or Alderney), verifying that the requirements of the Income Tax Law for such schemes concerning scheme governance, number of trustees, suitability of investment, etc, and submission of annual accounts, where required, are satisfied. However, other than the submission of individual tax returns, no further reporting is required from approved schemes (unless there is a subsequent change to the trust deed and rules), and the income tax qualification conditions do not, and were never intended to, constitute a supervisory or regulatory regime.

3.2. Pension schemes made available solely to non-resident individuals and international group pension schemes, which comprise a very important part of the pension sector, may be exempt from tax under section 40 of the Income Tax Law. This means that

compliance with rules. The scope of supervision can encompass any supervisory activity that is primarily concerned with ensuring the requirements and limitations imposed on pension funds or plans are adhered to.

they are not currently subject to any reporting requirements to the tax authorities, supervisory rules or oversight.

3.3. Guernsey and Alderney firms, operating by way of business, providing services (typically trustee or corporate services) to pension schemes, which constitute regulated activities for the purposes of the Regulation of Fiduciaries Law, need to be licensed by the GFSC and as such are subject to licensing conditions and general supervisory oversight. However, Retirement Annuity Trust Scheme (RATS) rules aside, no specific supervisory regime is in place to regulate firms specifically for the activity of providing services to pension schemes nor the schemes themselves.

4. Rationale for change

4.1. The UK regulatory landscape in relation to pensions has changed markedly in the last decade, demonstrating the complexity of regulation in this area. The Financial Services Authority has been replaced by the Financial Conduct Authority and The Pensions Regulator has been established as a new and independent regulator of trust based occupational schemes.

4.2. Indeed, internationally, pension law and practice has changed significantly in recent decades. Current expectations emphasise the importance of reforming the current regulatory framework in the Bailiwick in favour of one that enhances both the interests of the consumer and the competitiveness of the Bailiwick.

4.3. The preamble to the primary relevant international standards, the International Organisation of Pension Supervisors (IOPS) Principles of Private Pension Supervision sets out the current expected position as follows:

"The provision of pensions is of fundamental economic and social importance, ensuring the successful delivery of adequate retirement income. The effective supervision of pensions, and of the institutions that provide pension products and services, is required to ensure the protection of consumers – a necessary task with any financial product being sold to non-professionals. Pension supervision is required to achieve the degree of protection needed to support privately managed savings and is a means to help pensions adapt to market risks. Such risks can be particularly problematic with regard to pensions due to the characteristics of these financial products, such as:

- *the long-term nature of the contract involved, and the subsequent requirement for incentives or even compulsion to overcome individual's 'myopia' towards long-term savings;*
- *their coverage of a wide social and economic range of the population (particularly where incentives or compulsion are applied);*
- *the low risk tolerance of pension fund members and beneficiaries, as subsistence rather than discretionary savings is often involved;*
- *the complexity of the products, involving tax issues, assumptions over future salaries, longevity, difficulty in the valuation of assets and liabilities etc. – a complexity which*

is beyond the financial literacy of most investors and which gives rise to asymmetrical information between pension providers or financial intermediaries and consumers;

- *sometimes limited competition and choice, with decisions often made collectively by employers and/ or unions;*
- *their potential impact on financial market and economic stability…"*

4.4. The IOPS Principles go on to state that: *"The objectives of private pension supervision focus on protecting the interests of pension fund members and beneficiaries, by promoting the stability, security and good governance of pension funds. Pension supervision involves the oversight of pension institutions and the enforcement of and promotion of adherence to compliance with regulation relating to the structure and operation of pension funds and plans, with the goal of promoting a well-functioning pensions sector."*

4.5. The OECD Guidelines for the Regulation of Private Pensions are also relevant and set out expectations as follows:

"Legal provisions for the establishment of pension plans, pension funds and pension entities

- *Pension funds and pension entities should be established as independent legal entities. Pension funds that themselves constitute a pension entity should have legal capacity. If a pension fund is managed by a legally separate entity (such as a pension fund management company, an insurer, or other financial institution), this entity should have legal capacity. The ownership structure of the pension funds and/or pension entity should be clearly and transparently disclosed.*
- *Pension fund assets should be legally separate from the assets of any other legal entity, including those involved in managing, administering or acting as custodians of the assets. In the case of occupational pension plans, pension funds or pension entities should be legally separate from the plan sponsor.*
- *Legal provisions should be in place regarding the type of pension plans and/or pension funds that can be established and the permissible legal forms of pension entities.*
- *Legal provisions should be in place requiring the registration and/or licensing of pension funds and pension entities (and, where relevant, pension plans) by the relevant authorities. Licensing and/or registration requirements should be public, objective, fair and promote a competitive market. The registration and/or licensing procedures should be an integral part of private pension regulation. These procedures should be efficient, promote market access and contribute to ensuring that pension plans, funds and entities have appropriate governance structures and mechanisms in place."*

4.6. In its 2016 discussion paper, the GFSC proposed that the introduction of measures should provide:

- an appropriate regulatory and supervisory framework for retirement savings and pension products for consumers using Guernsey based products and services;

- proportionate conduct and reputational measures;
- an environment which can help to foster and support business growth; and
- a framework that supports the reputation of the Bailiwick as a sound financial services jurisdiction and a good place to do business.

4.7. It is important to the Bailiwick's reputation that consistent standards, including appropriate preventative measures, which meet international expectations should be put in place which protect consumers (including protection from exploitation by firms or sponsors such as employers) and which enable them to receive financial services and products that are suitable for their needs. In addition, regulatory requirements should be introduced which are consistent and in accordance with modern expectations and standards.

4.8. This approach would also enable Guernsey based pension providers to market a regulated product internationally. Guernsey firms, through representations made by the Guernsey Association of Pension Providers, have consistently made the point that they consider they are placed at a competitive disadvantage to firms located in jurisdictions with pension regulation. Firms servicing larger international schemes and employers have suggested that the volume of business lost as a result of the absence of pension regulation in the Guernsey has been significant.

4.9. A modern approach which applies a supervisory regime to providers "*as providers of pension services"* and to schemes would also enable firms resident in Guernsey and Alderney potentially to benefit from relevant exemptions under the OECD Common Reporting Standard (insofar as they meet all of the criteria set out in the Standard), thereby reducing firms' administrative burden and reflecting the fact that pension schemes provided in Guernsey and Alderney are considered to be a low risk of being used to evade tax.

5. Way forward

5.1. The States of Deliberation resolved to introduce a revised second pillar pensions arrangement based on private provision in 2016 but the legal foundations for regulation and supervision of private providers and schemes remains unreformed.

5.2. The Policy & Resources Committee considers that the introduction of primary legislation, supported by rules and guidance, would allow Guernsey to have a clear and internationally transparent framework which can meet the standards referred to in section 4 above. The Committee envisages that the GFSC would be appointed as the supervisory authority under the framework.

5.3. In the meantime, in light of the importance which the Committee attaches to the supervision of the provision of services in relation to pension schemes; the benefits of meeting the specific requirements of the OECD Common Reporting Standard on the reporting of financial account information (see below): and the time required for all the necessary steps to be taken for the introduction of primary legislation, the Committee intends to enhance the scope of the GFSC's supervisory activity before

the end of June 2017 as a preliminary step towards the introduction of the more comprehensive framework under primary legislation.

5.4. In order to achieve this enhancement, the Committee intends to make regulations under section 2(2) of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc (Bailiwick of Guernsey) Law, 2000 (the Regulation of Fiduciaries Law), which will add the formation, management or administration of pension schemes to the list of regulated activities set out in that section. This will enable the GFSC to issue scheme rules, registration requirements and specific conduct rules for providers carrying out such regulated activities and servicing pension schemes. Making the regulations and rules by the end of June 2017 will enable Guernsey firms to benefit from an exemption within the OECD Common Reporting Standard on financial account information reporting requirements for pension schemes (insofar as all of the relevant criteria are met). The criteria for considering an exemption is set out in the Income Tax (Approved International Agreements) (Implementation) (Common Reporting Standard) Regulations 2015 which were made under the provisions of sections 75CC and 203A of the Income Tax Law.

5.5. The Guernsey Financial Services Ombudsman's (the Ombudsman) mandate is set out in the Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014 (the Ombudsman Law) as amended by the Financial Services Ombudsman (Exempt Business) (Bailiwick of Guernsey) Order, 2015 (the Order). The Ombudsman Law and the Order identify the activities performed by relevant entities which fall within the Ombudsman's mandate. In general terms, any entity engaged in an activity which requires a licence under any of the Bailiwick's regulatory legislation is within scope (a Relevant Entity)[2]. A complaint can be made by an individual[3] in respect of services provided by a Relevant Entity. The Law and the Order currently place fiduciaries, who provide services under a licence granted pursuant to the Regulation of Fiduciaries Law in respect of a pension scheme, within the Ombudsman's mandate. The proposed amendments to the Regulation of Fiduciaries Law set out in this report will not change the scope of the Ombudsman's mandate in this regard but will extend the underlying scope of activities which can be considered by the Ombudsman to include the formation, management or administration of pension schemes.

5.6. In order to further enhance the overall oversight of pension products in Guernsey and Alderney it is also intended that the Income Tax Law will be amended to provide the option for all pension schemes provided in Guernsey and Alderney to seek approval under the Income Tax Law and, as a result, to enable the Director of Income Tax to require consistent reporting of information concerning all approved schemes and to ensure the Director forms part of the overall oversight of pension products which are provided in the Islands.

[2] See section 9 of the Ombudsman Law and section 1 of the Order.

[3] Section 8 of the Ombudsman Law also allows, inter-alia, microenterprises, charities, trusts and foundations to make complaints.

5.7. The proposal to amend the Income Tax Law will lead to the Director of Income Tax having greater oversight of the pension schemes which are provided by firms in Guernsey and Alderney but do not currently have to seek approval under the Income Tax Law (as the members of the schemes do not require income tax relief, therefore, those members are predominantly non-residents). The ability for the Director of Income Tax to then require consistent reporting of information concerning all such approved schemes (starting with the reporting of information relating to the calendar year 2016) will ensure the Director is able to verify that, for example, the conditions for exempting the income of such schemes from income tax continue to be met.

5.8. These schemes will be required to seek initial approval from the Director of Income Tax followed by annual validation and as such it is intended that the amendments to the Income Tax Law will permit the Policy & Resources Committee to introduce administrative measures by way of regulation.

6. Timetable for primary legislation

6.1. The preparation of primary legislation will require a higher degree of stakeholder engagement than has been undertaken thus far. It will also require preparation of a more detailed policy letter outlining the requirements of such legislation. The Policy & Resources Committee expects to provide the States of Deliberation with such a letter within twelve months of the States' consideration of this policy letter.

7. Private Sector Engagement and Consultation

7.1. A pensions working party, co-ordinated by the GFSC, has been involved in the development of the discussion paper, the rules referred to in paragraph 5.4 and the proposed amendments to the Income Tax Law referred to in paragraphs 5.6 and 5.7 above. The pension working party includes representatives of both the Guernsey Association of Pension Providers and the Guernsey Association of Trustees, as well as officers of the States. The GFSC will work closely with States Committees and the private sector in developing proposals for consideration by the Policy & Resources Committee on the scope and shape of the new supervisory framework under the primary legislation.

8. Consultation with Alderney and Sark

8.1. The Policy & Finance Committee of the States of Alderney and the Policy & Performance Committee of the Chief Pleas of Sark have confirmed that they are content with the proposals in this policy letter. The Policy & Resources Committee will ensure that it will liaise closely with these other authorities.

9. Resources

9.1. At this juncture, in respect of the preparation of the Projet de Loi, civil service resource requirements are confined to staff requirements from the Policy &

Resources Committee and Committee for Economic Development which, given their prescribed roles and responsibilities, are in the ordinary course of their duties. Drafting and advisory resources in connection with the preparation of the regulations and rules referred to at paragraph 5.4 above will also be needed from the Law Officers.

9.2. Resources for the next phase of the project (the implementation of statutory pension regulation by means of primary legislation and the general oversight of pension products) will be provided with the next Policy letter.

10. Recommendations

10.1. The States are asked to decide whether they are of the opinion:-

1. To agree in principle to the enactment of a Projet de Loi to create the necessary legal foundation for the establishment of a new supervisory framework for pension schemes and their providers; and

2. To direct the Policy & Resource Committee to present to the States a further policy letter outlining the detailed requirements of such legislation within a period of 12 months from the date of the States' decision.

3. To agree to the enactment of Ordinance under the Income Tax (Guernsey) Law, 1975 making relevant amendments to that legislation to provide for the approval of further pension schemes and the ability for the Director of Income Tax to require consistent reporting of information concerning those schemes.

11. Proposition

11.1. In accordance with Rule 4(4) of The Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions accompanying this policy letter are supported unanimously by the Policy & Resources Committee. In accordance with the Rules of Procedure, having a potential or perceived interest in the matter, Deputy Lyndon Trott recused himself and was not involved in the Committee's discussions on this policy letter.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

P.2017/40

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY AND
COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

THE ISLAND DEVELOPMENT PLAN – LAND FOR LIGHT INDUSTRIAL USE

The States are asked to decide:-

Whether, after consideration of the Policy Letter of the Development & Planning Authority and the Committee *for the* Environment & Infrastructure entitled 'Land for Light Industrial Use' (dated 25th April, 2017), they are of the opinion:-

1. To note that, of the areas of land identified by the States Trading Supervisory Board in consultation with the Committee *for* Economic Development, it would be acceptable in principle under the existing policies of the Island Development Plan (2016), subject to the meeting of the relevant policy criteria, to use the sites at Mont Crevelt/Longue Hougue reclamation site, Griffith's Yard, Brickfield House (excluding the field where the pump house is located) and Pitronnerie Road for industrial purposes without amendment to that Plan.

2. To note that to enable the sites at Fontaine Vinery, Springfield Cottage, the former Bordeaux Landfill Site, Belgrave Cottage (derelict) & Belgrave Lane (part), the field part of Belgrave Vinery Site, Grand Marais Vinery, Brickfield House field where the pump house is located and Primrose Vinery to be used for industry an amendment to the Island Development Plan and potentially the Strategic Land Use Plan would be required and that this would require a public Planning Inquiry and approval of amendments to the Island Development Plan by the States of Guernsey.

The above propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY AND
COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

THE ISLAND DEVELOPMENT PLAN – LAND FOR LIGHT INDUSTRIAL USE

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

25th April 2017

Dear Sir

1. Executive Summary

1.1 The States resolved (Resolution 9) concerning Billet d'État No XXVII, dated 18th October 2016, to direct the Development & Planning Authority and the Committee *for the* Environment & Infrastructure to submit proposals for consideration by the States which would enable, or potentially enable, an area or areas of land consisting of at least 4 acres owned, or the occupation of which is controlled, by the States, identified and indicated by the States Trading Supervisory Board (STSB), in consultation with the Committee *for* Economic Development, to be used for planning purposes for light industrial use.

1.2 The reference to light industry in this context refers to the types of uses that currently take place at Fontaine Vinery. This includes predominantly open storage but with elements of general and light industry, generally in outdoor compounds. In the context of this policy letter industrial use could include the erection of buildings for industrial purposes as well as open yards.

1.3 The Development & Planning Authority and the Committee *for the* Environment & Infrastructure were provided with 15 areas of land identified by the States Trading Supervisory Board in consultation with the Committee *for* Economic Development.

1.4 The STSB methodology used to identify the 15 sites has included sites which are smaller than the threshold of 4 acres (9.88 vergées) required by Resolution 9. For the purposes of the resolution, sites of less than 4 acres (9.88 vergées) have been considered as they could contribute cumulatively with other sites to provide at least 4 acres (9.88 vergées) in combination. It

has been clarified by the Deputies who proposed and seconded the amendment that the intention of the resolution was not that all identified sites would be pursued for industrial development.

1.5 Four of the identified areas of land are in private ownership and control so, given the wording of the resolution, they have not been considered further. The remaining areas have been assessed to consider how the Island's planning policies can accommodate their industrial use or how the Island Development Plan ("the IDP") would need to be amended to allow use for industry. The planning merits of each area have also been assessed.

1.6 The analysis has concluded that four of the identified areas could be considered for industrial use under the existing planning policies and therefore, without the need to amend the IDP. These areas are at Pitronnerie Road adjacent to the existing industrial estate, Griffith's Yard, Mont Crevelt/Longue Hougue reclamation area and at Brickfield House (excluding the field where the pump house is located).

1.7 The use of any of the other sites identified by STSB for industry would require an amendment to the IDP to be approved by the States, following a public Inquiry. If such an amendment rendered the IDP inconsistent with the strategic direction given in the Strategic Land Use Plan (SLUP), a revision of the SLUP may also be required.

1.8 The amendment of the IDP is required because some of the identified areas lie 'Outside of the Centres'. The IDP's strategy for industry is to focus this use in the Main Centres (and, to a lesser extent, the Local Centres) as per the direction of the SLUP. Also, as two sites are located within areas allocated specifically for housing development in the IDP, an amendment would be needed to alter this allocation.

1.9 The IDP policies make provision for small-scale industrial and storage uses Outside of the Centres, such as some of the types of uses currently located at Fontaine Vinery, through the policy for redundant glasshouse sites (OC7). However, none of the sites indicated by STSB, in States ownership or control, are redundant glasshouse sites to which this policy would apply.

1.10 In each case, therefore, a proposal for industrial use would not comply with the principles or policies of the IDP and it could not be treated as a minor departure from the IDP as allowed under planning legislation.

1.11 The amendment of the IDP to facilitate industrial use of the sites would also have implications for other policy matters in the IDP which would need to be examined by the related public Planning Inquiry. The Inquiry would be anticipated to take around 12-8 months and cost approximately £100,000.

1.12 The independent Planning Inspector, when carrying out a public Inquiry, is obliged to consider whether a proposed amendment is sound, i.e. is supported by robust and credible evidence and that there are clear mechanisms for implementation. An inspector must also take into account representations made and any Environmental Statement (an Environmental Impact Assessment of the amended policies) which is likely to be required if a site were to be reallocated to industrial use.

1.13 The Inspector would also take into account the current evidence of need for further land for industry as identified in the Employment Land Study 2014. This found that the Island is likely to need around 2.26 hectares (13.79 vergées) less industry and storage and distribution land over the period between 2012 and 2025.

1.14 The Development & Planning Authority and the Committee *for the* Environment & Infrastructure note that Resolution 9 does not require the Authority and Committee to recommend further steps which they consider should be taken having identified the land which can be used for planning purposes. However, further work, separate from this policy letter, would be needed to consider the financial and resource implications of any reallocation, development and management of a particular States administered site or sites for industry. Such work should properly be done prior to a decision on what amendments to the IDP should be advanced.

2. Background

Resolution

2.1 The States resolved (Resolution 9) concerning Billet d'État No XXVII, dated 18th October 2016, after considering a report of the Development & Planning Authority attached to the policy letter entitled 'The Island Development Plan-Development & Planning Authority Recommendations' to direct –

(a) the States Trading Supervisory Board in consultation with the Committee *for* Economic Development, by no later than 31st January, 2017 to identify and indicate to the Development & Planning Authority and the Committee *for the* Environment & Infrastructure a suitable area or areas of land consisting of at least 4 acres owned, or the occupation of which is controlled, by the States (such as the Belgrave Vinery site or part of that site) that could be used for light industrial use if suitable amendments were made to Guernsey's planning regime; and

(b) the Development & Planning Authority and the Committee *for the* Environment & Infrastructure, by no later than 30th April, 2017, to submit proposals for consideration by the States which would enable, or potentially enable, the area or areas of land identified and indicated

further to paragraph (a) of this Proposition to be used for planning purposes for light industrial use.

2.2 Further to part (a) of this resolution, in December 2016, the States' Trading Supervisory Board (STSB) in consultation with the Committee *for* Economic Development provided the Development & Planning Authority and Committee *for the* Environment & Infrastructure with information on 15 areas of land. This Policy Letter relates to part (b) of the resolution and sets out what planning policy changes would be required to enable, or potentially enable, each of the relevant sites identified to be considered for use for industry. The planning merits of allowing industrial use on these sites and the implications for the IDP, the SLUP and resources are considered below.

2.3 The requirements of the resolution have been clarified in discussion with Deputies Laurie Queripel and Matt Fallaize ("the Deputies"), who proposed and seconded the amendment that led to the resolution. The reference to light industry in this context refers to the types of uses that currently take place at Fontaine Vinery. This includes predominantly open storage but with elements of general and light industry, generally in outdoor compounds. In the context of this policy letter industrial use could also include the erection of buildings for industrial purposes.

2.4 In addition, the STSB methodology used to identify the 15 sites has included sites which are smaller than the threshold of 4 acres (9.88 vergées) required by Resolution 9. It was confirmed by the Deputies that, for the purposes of the resolution, sites of less than 4 acres (9.88 vergées) should be considered as they could contribute cumulatively with other sites to provide at least 4 acres (9.88 vergées) in combination.

2.5 The Deputies also clarified that the intention of the resolution is not that all identified sites would be pursued for industrial development; therefore, the policy letter has not assessed any cumulative impact.

2.6 The resolution refers to sites in States ownership or control and, therefore, consideration of sites in private ownership and control would go beyond the intentions of the resolution and have not been considered. This approach was also confirmed as acceptable by the Deputies.

<u>Approach to industry in the Island Development Plan</u>

2.7 The IDP's approach to industry (set out in policies MC5 (A), MC5 (B), MC5(C), LC4 (A), LC4 (B) and OC3) reflects the direction of the SLUP which is to focus this use within and around the Main Centres, but also highlighting the potential of Local Centres to provide some opportunities for industrial development of an appropriate scale.

2.8 This approach also reflects the findings of the Employment Land Study 2014. This technical report, produced as evidence for the IDP, through econometric modelling, forecasts and assessment of trends in planning consents found that overall, as a result of the economic downturn and loss of Low Value Consignment Relief on exports, the Island is now over-provided with industrial and storage and distribution space. Forecasts indicate a decline in the industrial sector. The study shows that the Island is likely to need around 2.26 hectares (13.79 vergées) less industry and storage and distribution land over the period between 2012 and 2025.

2.9 There is, therefore, no sound evidence available to the Development & Planning Authority or the Committee *for the* Environment & Infrastructure that demonstrates that, in terms of land supply, there is a need for a further area or areas to be allocated specifically for industry over and above the approach in the adopted IDP.

2.10 This information would be pertinent to a Planning Inquiry examining the justification for any amendment to the IDP which is obliged under the Land Planning and Development (Plans) Ordinance, 2007, to consider the soundness of the IDP if amended. This includes that the policies represent the most appropriate ones in all the circumstances and are founded on robust and credible evidence. This relates to land supply and not to issues of affordability over which the IDP policies have no control.

2.11 In view of the evidence of an oversupply of industrial and storage & distribution land which supports a policy approach of allowing a managed reduction in the amount of industrial land and premises, the policies of the IDP are generally flexible to allow the change use of existing industrial sites to other suitable uses except where these are identified as Key Industrial Areas (KIAs).

2.12 In managing change in this sector it is recognised that there remains a need to specifically protect some land for industry and storage and distribution to ensure suitable land is available that can be readily developed for a range of industrial and storage/distribution purposes. The IDP, therefore, seeks to protect certain areas for industry and storage and distribution uses – Key Industrial Areas (KIAs) and Key Industrial Expansion Areas (KIEAs) – while the policies are generally supportive of change of use away from industry elsewhere. The IDP is also supportive in principle of the continued use, extension, alteration and redevelopment of existing industrial sites throughout the Island.

2.13 The policies of the IDP would support, in principle, a new site for industry without requiring amendment to the Island Development Plan providing that the site is in a Main Centre, within a Key Industrial Area, a Key Industrial Expansion Area (KIEA) (subject to criteria) or elsewhere within a Main Centre or a Main Centre Outer Area through conversion of a redundant building.

There is also potential through existing IDP policies to establish new industrial sites within Local Centres, provided the scale is appropriate for the particular Local Centre (Policy LC4 (A)) and it would not undermine the vitality of a Main Centre, and also Outside of the Centres (Policy OC3) at the KIEA at La Villiaze, St Saviour and through the conversion of redundant buildings (GP16 (A) and GP16 (B)).

2.14 The IDP, following direction given in the SLUP, also makes provision for small scale industrial or storage uses, such as those requiring workshops, secure storage or open yards, which may have a justifiable need to develop outside the Main and Local Centres due to the special requirements resulting from the nature of their operations. This could include small industrial and storage businesses that have no operational requirement to be located within or on the edges of the Main Centres and are unable to find sites within the Key Industrial Areas, or businesses that are unable to compete with larger firms looking for higher quality accommodation.

2.15 These businesses are directed to either brownfield sites or redundant glasshouse sites through Policies OC3 (Offices, Industry and Storage and Distribution Outside of the Centres) and OC7 (Redundant Glasshouse Sites Outside of the Centres). This will ensure that they take advantage of being located on previously developed land or land which may contain a certain level of infrastructure as a result of its former use. This will also ensure that small scale industrial or storage uses do not occupy open land and, in some cases, the development may positively enhance a site through the clearance of redundant glass or associated structures from the landscape.

2.16 With the exception of the KIEA at La Villiaze, St Saviour the IDP does not allocate sites Outside of the Centres for industry and/or storage use as the technical study undertaken in support of the IDP found there to be no strong evidence of a requirement to provide additional land for such businesses through the planning system over the lifetime of the IDP. There was also no direction in the SLUP to make provision for a States controlled site for small-scale industrial and storage use.

2.17 The Employment Land Study 2014 concluded that allocation of sites specifically for small scale businesses, in the absence of demonstrable need would severely restrict the use of areas of such land and would introduce inflexibility for the future use of land contrary to the intentions of the Strategic Land Use Plan and the aims of the IDP.

2.18 The case-by-case approach of Policy OC7 can deliver a range of potential sites, in a range of locations across the Island, meeting any identified need and allowing the merits of each proposal and individual circumstances to be considered whilst retaining flexibility to respond to the demands of other legitimate uses over time.

2.19 In summary, the existing policies in the IDP provide for a range of options for the development of new industrial and storage uses in a range of locations throughout the Island and support existing industrial and storage uses. For example, this policy approach recently resulted in planning permission being granted for a redundant glasshouse site in private ownership (Extension Vineries) to provide small-scale storage space to accommodate the types of open yard storage uses currently found at Fontaine Vinery.

2.20 There is a specific direction in the SLUP for the Development & Planning Authority to liaise with relevant bodies and report on a regular basis to the Committee *for the* Environment & Infrastructure on progress in achieving the objectives of the SLUP. The report should focus on, amongst other things, the provision of adequate employment-related development. The effectiveness of policies in the IDP relating to the provision of land for industry has to be regularly monitored to ensure adequate supply as part of the ongoing monitoring of the effectiveness of Plan policies.

3. Assessment of Sites identified by the States' Trading Supervisory Board (STSB) in consultation with the Committee *for* Economic Development

3.1 The resolution required the States Trading Supervisory Board (STSB) in consultation with the Committee *for* Economic Development to identify a suitable area or areas of land in States ownership or control that could be used for light industry. In December 2016, STSB provided the Development & Planning Authority and Committee *for the* Environment & Infrastructure with information on 15 sites. Eleven of the sites are owned by the States and 4 are privately owned. The resolution refers exclusively to land owned by the States or the occupation of which is controlled by the States. The 4 privately owned sites have, therefore, not been considered further.

3.2 Of the remaining 11 sites:

- four are located within Main Centres and Main Centre Outer Area in the IDP;
- one site is partly in a Main Centre Outer Area and partly Outside of the Centres;
- six sites are located Outside of the Centres of which:
    - one site is largely a brownfield site which has been partly used for open yard storage in the past and which has an extant planning permission for light industrial use. However a small section of this identified site (the field on which the pump house is located) has not been used for industry in the past and has no planning consent for such; and
    - the remaining five sites are located on undeveloped land, 3 of which are within the Agriculture Priority Area. These sites include the Belgrave Vinery area that was referred to in the resolution.

The sites are indicated on the maps in Appendix 1 attached to this report. The key planning policy issues relating to use for industry and storage for each are set out below.

3.3 For the purposes of analysis the areas have been grouped into 3 categories:

- areas of land that could potentially be used for industry under existing IDP policies, subject to the necessary consents, without the need to amend the IDP or the SLUP as they lie within KIEAs or existing industrial sites where development is supported by the IDP;
- areas of land that would require an amendment to the IDP to be used for industry, but where the implications for other policies in the IDP or the SLUP are limited; and
- areas of land where an amendment to the IDP would be required and where such amendment may result in conflict with the SLUP or other IDP policies and where the evidence in favour of other policies and designations may outweigh the evidence for the provision of additional industrial sites, potentially resulting in the IDP being found by a Planning Inquiry Inspector to be 'unsound'.

As some areas of land fall into more than one category, the issues relating to any one piece of land are analysed in the relevant categories.

Areas of land where amendment of the Island Development Plan would not be required if needed for industry in the future

Pitronnerie Road Key Industrial Expansion Area. 1.8 acres (4.5 vergées) - shown on map 6 in Appendix 1

3.4 This identified site is designated in the IDP as a KIEA for the Pitronnerie Road industrial estate which itself is a KIA in the IDP. The site, on its own, would provide less than half of the required 4 acres (9.88 vergées) but could be considered cumulatively with other sites to achieve the minimum size required by the resolution and could provide a comprehensive use of the site with development guidance provided through a Development Framework as required by policy MC5(A). The site is adjacent to a residential area to the east and the boundary would, therefore, need careful treatment in order to maintain reasonable residential amenity. The site has good access.

3.5 The approach to KIEA sites is to allow for expansion of the adjacent KIA, if needed in the future, for further clustering of industrial type uses and enhancement in the quality of accommodation to meet modern needs. The IDP requires the re-use and redevelopment of existing sites before development of the KIEAs in order to consolidate activity and economic investment, primarily, in the KIAs. Applicants proposing development within the KIEAs will need to demonstrate that there is no suitable alternative site

available within any of the existing KIAs or within the Main Centres or Main Centre Outer Areas. If these criteria could not be met, an amendment to the IDP would be required to re-designate a KIEA as a KIA. The site would be suitable for light industry, given that there are adjacent residential areas, as light industry is by definition a use that can take place without detriment to residential amenity.

Mont Crevelt/Longue Hougue Reclamation Site. 33.3 acres (82.2 vergées) - shown on map 5 in Appendix 1

3.6 The area within Longue Hougue that could be developed for industry and storage, after taking into account the waste transfer station development in the KIA, would be in the remaining part of the KIEA. A 4 acre site would use the bulk of the remaining land reclaimed to date.

3.7 As explained above the IDP requires the re-use and redevelopment of existing KIAs before development of the KIEAs and proposals would need to demonstrate that there is no suitable alternative site available within any of the existing KIAs or within the Main Centres or Main Centre Outer Areas. If these criteria could not be met, an amendment to the IDP would be required to re-designate a KIEA as a KIA.

3.8 The site, while clearly industrial in character, and capable of accommodating heavy industrial uses is in a prominent location and development proposals may require mitigation to reduce impacts. The potential impact of development on the Mont Crevelt protected monument would need to be considered. Parts of Longue Hougue are within the Major Hazards Public Safety Zone (see IDP Annex IX for further details). However, the developable area of the site which falls within the Major Hazards Public Safety Zone would be mainly in the 'outer zone' and this would not preclude consideration of development for industry. The site has good access.

3.9 However, the IDP approach to Longue Hougue is for this site to be reserved for a range of heavy and specialist industrial development and strategic infrastructure, including waste facilities (Policy MC5(A)). Although the IDP policies allow for industrial development here, use of the site for other types of industrial or storage use would necessitate a review of potential alternative sites for heavy and specialist industry as part of an amendment to the IDP. An amendment to the policy approach to Longue Hougue to remove the restriction for heavy and specialist industry may not be consistent with the SLUP Policy LP11 which directs that the first priority for land reclamation areas should be strategically essential development.

3.10 Any industrial or storage development would need to ensure that it would not prejudice bringing forward the Local Planning Brief for the St Sampson Harbour Action Area. There is a requirement for a Development Framework

to ensure the most effective and efficient use of the site, including the remaining area to be reclaimed.

Griffith's Yard. 3.7 acres (9.2 vergées) – shown on map 4 in Appendix 1

3.11 This site is in use for storage of boats and States Works vehicles on Northside and is within a KIEA in the IDP. Current adopted policies would therefore allow for the principle of industrial and storage use of the site subject to the requirements for KIEAs set out above but if the criteria set out in policy MC5 (A) could not be met, an amendment to the IDP would be required to re-designate a KIEA as a KIA. This part of the KIEA is within the Major Hazards Public Safety Zone relating to fuel storage blast safety and notably is within the inner area where restrictions on use will occur. The Development Proximity Zone covers a proportion of the site and this would have significant restrictions on the use of this part of the site for health and safety reasons.

3.12 The potential impact of development on the setting of protected monuments (Vale Castle and Mont Crevelt) would need to be considered. While allocated for industry in the IDP the site is highly visible as a minor gateway to the Island and part of the St Sampson Harbour Action Area and Conservation Area. Any proposal would need to demonstrate that the development would not prejudice bringing forward the Local Planning Brief for St Sampson Harbour Action Area. The site has good access. The displacement of existing uses would need to be considered.

3.13 The site lies within a Major Hazards Public Safety Zone (IDP Policy GP17) relating to fuel storage at Northside and North Pier. The purpose of the Major Hazards Public Safety Zone is to manage and limit the number of people who may live, work or congregate within this area in order to limit the consequences of any accidents and to ensure that new development does not significantly worsen the current situation should a major accident occur.

3.14 Whether or not a development proposal will be acceptable from a health and safety aspect is dependent upon in which zone the development lies in relation to the major hazard and what type and number of people will be the primary users of the development. The zones include a Development Proximity Zone and Inner, Middle and Outer Zones. Griffith’s Yard is partly within the Development Proximity Zone where development should not normally be occupied and partly within the Inner Zone where development should be occupied only by a small number of people for a short time. Therefore, the site may be better suited to certain types of storage use, rather than a light or general industrial use. Amending the Major Hazards Public Safety Zone would undermine the Island’s approach to health and safety in relation to fuel storage approved by the Guernsey Health and Safety Executive.

Brickfield House (excluding the field where the pump house is located) - Total Area identified is 14.4 acres (35.5 vergées). Area available for industrial use is 2.1 acres (5.1 vergées) at either side of access road - shown on map 3 in Appendix 1

3.15 There is an area of vacant land at Brickfield House of around 2.1 acres at either side of the access road (excluding the field where the pump house is located which is considered separately below). This is brownfield land that has been used in the past for open storage and industrial purposes. There is an extant planning consent to erect light industrial units – 9 units with a floor space of 2223m^2, granted in February 2016 under the Rural Area Plan and which has not been implemented. The planning permission expires in February 2019 after which the IDP policies would allow for the principle of industrial development under policy OC3 which supports the redevelopment of existing industrial and storage sites Outside of the Centres. This site is within the Agriculture Priority Area. However, IDP policy OC5 (A) recognises existing uses and makes allowance for them. Development for industry would make use of the remaining undeveloped part of the wider Brickfield House site. A proposal would need to consider the impact on the adjacent brick kiln protected monument. The site is adjacent to a residential area to the north-east and the boundary would therefore need careful treatment to ensure reasonable residential amenity. Light industrial use would be, therefore, most appropriate. The site has good access.

Conclusion in relation to Areas of land where amendment of the Island Development Plan would not be required if needed for industry in the future.

3.16 Four of the areas could proceed to be used for industry in the circumstances described above and subject to meeting the relevant policy criteria, subject to the necessary consents, without any amendment to the IDP. The type of industrial use that can take place would vary between the sites with heavy industry best located at Longue Hougue, storage at Griffith's Yard and light industry or indoor storage at Pitronnerie Road and Brickfield House (excluding the site of the pump house).

Other Identified Sites

3.17 A proposal to develop any of the other areas of identified land would not comply with the policies of the IDP. Therefore, if the States wishes to pursue a development on one or more of these areas, it will be necessary to amend the IDP. The resolution refers to suitable amendments to Guernsey's planning regime. Such amendments would be confined to the IDP and potentially the SLUP, but no change would be required to any planning legislation. Where an amendment to the IDP would also require an amendment to the SLUP, this would need to be in place prior to the commencement of the statutory process for amending the IDP; any

amendment of the SLUP would be subject to consistency with the Policy & Resource Plan and subsequent approval by the States.

3.18 The implications of amending the IDP to allow for a particular area or areas of land to be developed for industrial use would vary depending on if there is an existing designation relating to that area or what other IDP policies are relevant. There are potential conflicts with other IDP policies and SLUP policies to consider particularly those relating to Landscape Character and Open Land (policy GP1) and Agriculture Priority Area (policy OC5 (A)). However, the IDP would remain generally consistent with SLUP Policy SLP3 (Industrial and Business Land Supply) which requires development plans to make provision for a comprehensive range of land opportunities for employment uses.

Areas of land where amendment of the Island Development Plan would be required, but where the implications for other policies in the IDP are limited

Belgrave Cottage (derelict) & Belgrave Lane (part). 5.3 acres (13.1 vergées) - shown on map 1 in Appendix 1

3.19 This site is made up of two fields/scrubland (except for Belgrave Cottage and a small storage building and hardstanding to the south of the site), on either side of Belgrave Lane, that are located Outside of the Centres in the IDP. Access is poor and is via Belgrave Lane from Victoria Avenue at the Les Banques junction. Some parts of the site are susceptible to flooding. The potential impact of the surface water and drainage of any development on the adjacent Marais Stream, pumping station and Barker's Quarry reservoir would need to be considered. The site is adjacent to a residential area to the south and the boundary would, therefore, need careful treatment in order to provide reasonable residential amenity.

Springfield Cottage (part of the site located Outside of the Centres). 3.6 acres (8.3 vergées) - shown on map 1 in Appendix 1

3.20 This part of the site is a field which is located Outside of the Centres in the IDP. Access is poor and is via tracks to the south (Belgrave Lane from Victoria Avenue at Les Banques junction) and from Fontaine Vinery to the north. Access from the north is likely to be compromised by development of the Allocated Housing Site identified in the IDP. This part of the site is less than 4 acres but could be developed with adjacent sites. A significant part of the site is within the 1:10 year flood risk zone and the associated costs of drainage infrastructure may inhibit development opportunities to certain types of industrial and storage provision such as open yards. The site is adjacent to a residential area to the east and the boundary would, therefore, need careful treatment in order to provide reasonable residential amenity.

Former Bordeaux Landfill Site. 11.3 acres (29.0 vergées) - shown on map 2 in Appendix 1

3.21 This is a former landfill site with woodland and grassland in recreational use. It is undeveloped land Outside of the Centres in the IDP and is prominent in open views of the landscape. The site lies within a sensitive landscape that is open to long distance views and development of the site for industry is likely to compromise landscape quality and character in this location and therefore conflict with policy GP1 of the IDP. Only about a third of the site would be required for an industrial site which could provide an opportunity to provide substantial landscape buffers and habitat enhancements to address conflicts with policy GP1. There are possible ground condition and safety issues relating to the site's former use as a landfill site that may affect the developable area and it is likely that an Environmental Impact Assessment would be required with an IDP amendment and planning application. The site has poor access and is adjacent to a residential area to the west and the boundary would, therefore, need careful treatment.

Conclusion in relation to Areas of land where amendment of the Island Development Plan would be required, but where the implications for other policies in the IDP are limited.

3.22 In relation to all of the sites identified in this section, the IDP seeks to limit development Outside of the Centres on open undeveloped sites, with limited potential for uses such as agriculture, camping and recreation. Use of open land in the countryside for industrial use may also be inconsistent with SLUP Policy SLP28 (Open Countryside) which seeks to protect such land from development more appropriately located in the centres and on previously developed sites. The most suitable of the open undeveloped sites in planning terms would be Belgrave Cottage due to the relative lack of other planning constraints (it is not located within an Agriculture Priority Area and not constrained by significant flood risk or contamination), the location on the edge of a Main Centre near to the inter-harbour route, although the access is poor, and the size which allows for 4 acres plus land for landscaping and screening.

Areas of land where an amendment of the Island Development Plan would be required and where such amendment may result in the IDP being found by a Planning Inquiry to be 'unsound'.

Fontaine Vinery. 6.4 acres (15.8 vergées) - shown on map 1 in Appendix 1

3.23 The Fontaine Vinery site is located within the Main Centre Outer Area in the IDP and makes up part of a site designated for housing development in the IDP, which, together with part of the Springfield Cottage site forms the Allocated Housing Site known as Belgrave Vinery. Part of the site to the south is within the 1:10 year flood risk zone. The development of the site would

have associated costs for drainage infrastructure, the funding of which would be more viable through development for housing rather than industry. The site is adjacent to a residential area to the east and the boundary would, therefore, need careful treatment. The site has good access.

Springfield Cottage (the part of the site located within the Allocated Housing Site) 4.4 acres (10.8 vergées) - shown on map 1 in Appendix 1

3.24 This part of the site is a field located within the Main Centre Outer Area in the IDP. The site makes up part of an Allocated Housing Site along with the Fontaine Vinery site. Access is available from the east via Vale Avenue and from Fontaine Vinery to the north. Access from the north would be likely to be compromised by development of the Allocated Housing Site. A significant part of the site is within the 1:10 year flood risk zone and there would be associated costs for drainage infrastructure, the funding of which would be more viable through development for housing rather than industry. The site is adjacent to a residential area to the east and the boundary would therefore need careful treatment.

3.25 These two identified sites (Fontaine Vinery and part of the Springfield Cottage site) are located within a Main Centre Outer Area in the IDP however they are part of the Allocated Housing Site known as Belgrave Vinery in the IDP. Policy MC2 would not support the use of this site in whole or part for industrial purposes. An amendment to the IDP would be needed to re-allocate either site for industry and this could have significant implications for the 5-year housing land supply required to be identified in the IDP by the SLUP.

3.26 The Belgrave Vinery Allocated Housing Site, as allocated in the IDP, was formerly part of a Housing Target Area (HTA) in the Urban Area Plan, and has long been identified as being important to strategic housing land supply. The SLUP required specifically that the five Housing Target Areas were reviewed as part of the plan review process to determine how they could contribute to meeting housing supply (Policy SLP14). There are no sites apart from this site and the other four previous HTAs that offer the potential scale of development and strategic location within and around the Main Centres and which are suitable, available and achievable for housing development.

3.27 The development would make a significant contribution to the provision of housing, including affordable housing, and could also contribute to addressing contamination and flood risk issues in the area and the associated infrastructure required to address this. The public Inquiry for the IDP amendment would consider the implications for housing land supply and it is likely that further land for housing would need to be identified and allocated elsewhere.

Field, part of Belgrave Vinery Site. 4.8 acres (11.8 vergées) - shown on map 1 in Appendix 1

3.28 This site is a field that is located Outside of the Centres in the IDP and is part of the Agriculture Priority Area. Access is poor and is via tracks to the east (Belgrave Lane from Victoria Avenue at Les Banques junction). The majority of the site is within the 1:50 year flood risk zone and the associated costs with drainage infrastructure may limit the type of development.

Grand Marais Vinery. 2.9 acres (7.1 vergées) - shown on map 1 in Appendix 1

3.29 This site is a field that is located Outside of the Centres in the IDP and is part of the Agriculture Priority Area. Access to the site is poor and is via tracks to the south (Belgrave Lane from Victoria Avenue at the Les Banques junction) and from Fontaine Vinery to the north. Access from the north is likely to be compromised by development of the Allocated Housing Site. The site is less than 4 acres but could be developed with adjacent sites otherwise it would be isolated.

Primrose Vinery. 1.6 acres (3.9 vergées) - shown on map 1 in Appendix 1

3.30 This site is a field that is located Outside of the Centres in the IDP and is part of the Agriculture Priority Area. Access is poor and is via tracks to the east (Belgrave Lane from Victoria Avenue at the Les Banques junction). A small part of the site is susceptible to flooding (1:100 year). The site is less than 4 acres but could be developed with adjacent sites. The site would be isolated if not developed with sites to the south or north.

Brickfield House (part of the site where the pump house is located) 0.74 acres (1.8 vergées) - shown on map 3 in Appendix 1

3.31 This site is a field that is located Outside of the Centres in the IDP and is part of the Agriculture Priority Area. Access is good.

This field does not form part of the brownfield land that has been used in the past for open storage and industrial purposes and is not part of the site where there is an extant planning consent to erect light industrial units. The site is adjacent to a residential area to the north-east and the boundary would, therefore, need careful treatment to ensure reasonable residential amenity.

3.32 The above sites are identified as Agriculture Priority Area in the IDP. The removal of areas of land which have been identified as APA would be inconsistent with the approach of the IDP and the decision of the States, in adopting the IDP, to give primary consideration in these areas to the need to support agricultural uses and operations. Some of the sites within the Belgrave area are within a tract of contiguous agricultural land so to remove

the land from APA is also potentially inconsistent with SLUP Policy SLP8 (Agriculture) which requires contiguous agricultural land to be protected for agricultural use.

4. Implications for the Island Development Plan

4.1 As set out above, four of the sites identified by the STSB could potentially be used for industry under existing IDP policies, subject to the necessary consents, without the need to amend the IDP.

4.2 If the States support the use of an undeveloped site Outside of the Centres, the IDP policies will need to be amended to refer specifically in Policy OC3 (Offices, Industry and Storage and Distribution Outside of the Centres) to the chosen site or sites. This would be similar to the existing approach in policy terms to the allocation of the KIEA at La Villiaze, St Saviour. This site was included in the IDP as an exception to the spatial strategy and Policy OC3 as it had been identified previously by the States as being of strategic value for light industrial use and reserved for such purposes. To be consistent, a Development Framework will be required for the identified site or sites to be approved by the Development & Planning Authority prior to a planning application being considered.

4.3 A proposal to use any of the areas of identified land for industry and storage that is not in accordance with the relevant IDP policies could not be granted planning permission as a 'minor departure' to the IDP or through any other mechanism without amending the IDP. A Local Planning Brief (LPB) would also not be appropriate as the LPB would be seeking to allow for development that would not otherwise be supported by the IDP. An amendment to the IDP is only possible through a formal statutory process including a public Inquiry in accordance with the Land Planning and Development (Plans) Ordinance, 2007.

4.4 A public Inquiry would follow the same process as was undertaken for the IDP and would involve a number of stages of consultation prior to and during a public Inquiry overseen by an independent inspector.

4.5 The procedure for amending the IDP is set out in the Land Planning and Development (Plans) Ordinance, 2007, the Land Planning and Development (Plans Inquiry) Regulations, 2008 and the Land Planning and Development (Environmental Impact Assessment) Ordinance, 2007. These require a minimum level of consultation and community involvement. The process would require:

- A draft of the amendment to be prepared and an Environmental Impact Assessment Screening Opinion issued, an Environmental Impact Assessment carried out and an Environmental Statement prepared if required;
- Pre-publication consultation with key stakeholders;

- A Certificate of Consistency with the Strategic Land Use Plan from the Committee *for the* Environment & Infrastructure;
- Appointment of an independent Inspector to oversee the Inquiry;
- Once the draft amended Plan is published, two stages of public consultation – initial and further representations;
- Response to all representations from the Development & Planning Authority;
- Public Hearings if any of those who made a representation wish to appear;
- A report from the Inspector;
- A policy letter from the Development & Planning Authority with their conclusions and recommendations.

The Inquiry may require to be re-opened if the States seek amendments to the draft amended Plan.

4.6 This process is anticipated to take approximately 12-18 months and would cost in the region of £100,000.

4.7 One of the main purposes of the Inquiry would be to consider whether the proposed amendment is sound, i.e. is supported by robust and credible evidence and that there are clear mechanisms for implementation. The Planning Inspector would also take account of representations made and the Environmental Statement (if one is required).

5. Resources and Implementation

5.1 The identified financial and resource management implications from this policy letter relate to a public Inquiry should an amendment to the IDP be required. This policy letter does not address the costs of delivering the site for industry. There is no requirement for any new legislation.

6. Engagement and consultation

6.1 This policy letter responds to a specific resolution of the States and as such no additional consultation has been carried out.

7. Conclusions

7.1 The IDP (2016) was prepared by the Development & Planning Authority in accordance with the Land Planning and Development (Guernsey) Law, 2005 and sets out the land planning policies for Guernsey. It was approved by the States in November 2016. The IDP policies have been formulated in accordance with the guidance and direction in the SLUP which was approved by the States in 2011 and sets out the States strategic land use objectives for the Island as well as the findings of the Employment Land Study 2014 which found that the Island is now over-provided with industrial and storage and

distribution space and is likely to need around 2.26 hectares (13.79 vergées) less industry and storage and distribution land over the period between 2012 and 2025. There is a specific direction in the SLUP for the Development & Planning Authority to liaise with relevant bodies and report on a regular basis on progress to achieving the objectives of the SLUP focussing on, amongst other things, the provision of adequate employment-related development.

7.2 The effectiveness of policies in the IDP relating to the provision of land for industry will be the subject to ongoing and regular monitoring to ensure adequate supply. This review responds to a specific resolution of the States and, in addition to the regular monitoring, fulfils the States objective as expressed in the SLUP of making provision for a comprehensive range of land opportunities for employment uses (policy SLP3). The work is also relevant to the Policy & Resource Plan Phase 1 objective of 'ensuring conditions that encourage and foster enterprise and remove barriers to business, keeping regulation appropriate and proportionate, whilst respecting environmental and social safeguards'.

7.3 Of the fifteen areas of land indicated to the Development & Planning Authority and the Committee *for the* Environment & Infrastructure by the States Trading Supervisory Board, in consultation with the Committee *for* Economic Development, four were not considered further as they are in private ownership and control.

7.4 Four of the areas could proceed to be used for industry in the circumstances described above and subject to meeting the relevant policy criteria, subject to the necessary consents, without any amendment to the IDP. The type of industrial use that can take place would vary between the sites with heavy industry best located at Longue Hougue, storage at Griffith's Yard and light industry or indoor storage at Pitronnerie Road and Brickfield House.

7.5 The remaining seven areas may be suitable for a range of general and light industrial uses, storage and open compounds, subject to necessary mitigation of impacts, but would require an amendment to the IDP to be approved by the States in order for a planning application for those sites to be in compliance with the planning policy.

7.6 This would require draft amendments to the IDP to be subjected to a formal statutory process including a public Inquiry which includes public consultation. This would examine the evidence in support of the proposed amendment and the implications of the amendment for other IDP policies. The independent planning inspector may conclude that the amendments were not based on sound evidence if there was no need for further land for industry but there was a demonstrable need or justification for the designations and policies of the IDP as adopted by the States in 2016 which are amended as a result.

7.7 Before an Inquiry could proceed, the draft amended IDP would require a Certificate of Consistency with the SLUP from the Committee *for the* Environment & Infrastructure as required by The Land Planning and Development (Plans) Ordinance, 2007. The Committee would need to consider if the amendment to the IDP was consistent with SLUP objectives and policies. If not, amendments to the SLUP would be required to be prepared and approved by the States in the first instance. Any SLUP amendments would need to be consistent with the States Policy & Resource Plan.

7.8 The process to seek to amend the IDP could be triggered by a States resolution to make relevant amendments to the IDP to enable one or more of the 7 sites, where plan policies would not currently allow use for industry, to be used for those purposes. This policy letter provides information to inform such a decision and asks the States to note the implications for the planning system as a whole of a decision to enable particular sites to be used for light industrial purposes.

7.9 Further work is required to consider the full financial and resource implications of the States pursuing the development and management of particular site[s] for industry. In the event that the States decides to pursue this option for one or more sites there would need to be a more detailed estimate of the resource implications to the States consistent with rule 4(3) of the Rules of Procedure of the States prior to a decision being made on any amendment being directed to the IDP. This is why at this stage the Development & Planning Authority and the Committee *for the* Environment & Infrastructure are only asking the States to note the Authority's and Committee's conclusions.

The States are asked to decide:-

Whether, after consideration of the Policy Letter of the Development & Planning Authority and the Committee *for the* Environment & Infrastructure entitled 'Land for Light Industrial Use' (dated 25th April, 2017), they are of the opinion:-

1. To note that, of the areas of land identified by the States Trading Supervisory Board in consultation with the Committee *for* Economic Development, it would be acceptable in principle under the existing policies of the Island Development Plan (2016), subject to the meeting of the relevant policy criteria, to use the sites at Mont Crevelt/Longue Hougue reclamation site, Griffith's Yard, Brickfield House (excluding the field where the pump house is located) and Pitronnerie Road for industrial purposes without amendment to that Plan.

2. To note that to enable the sites at Fontaine Vinery, Springfield Cottage, the former Bordeaux Landfill Site, Belgrave Cottage (derelict) & Belgrave Lane (part), the field part of Belgrave Vinery Site, Grand Marais Vinery, Brickfield House field where the pump house is located and Primrose Vinery to be used for industry an amendment to the Island Development Plan and potentially the Strategic Land Use Plan would be required and that this would require a public Planning Inquiry and approval of amendments to the Island Development Plan by the States of Guernsey.

Committee Support for Propositions

In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of The Development & Planning Authority and The Committee *for the* Environment & Infrastructure.

Yours faithfully

DEVELOPMENT & PLANNING AUTHORITY
J A B Gollop
President

D A Tindall
Vice-President

L C Queripel
V S Oliver
M P Leadbeater

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE
B L Brehaut
President

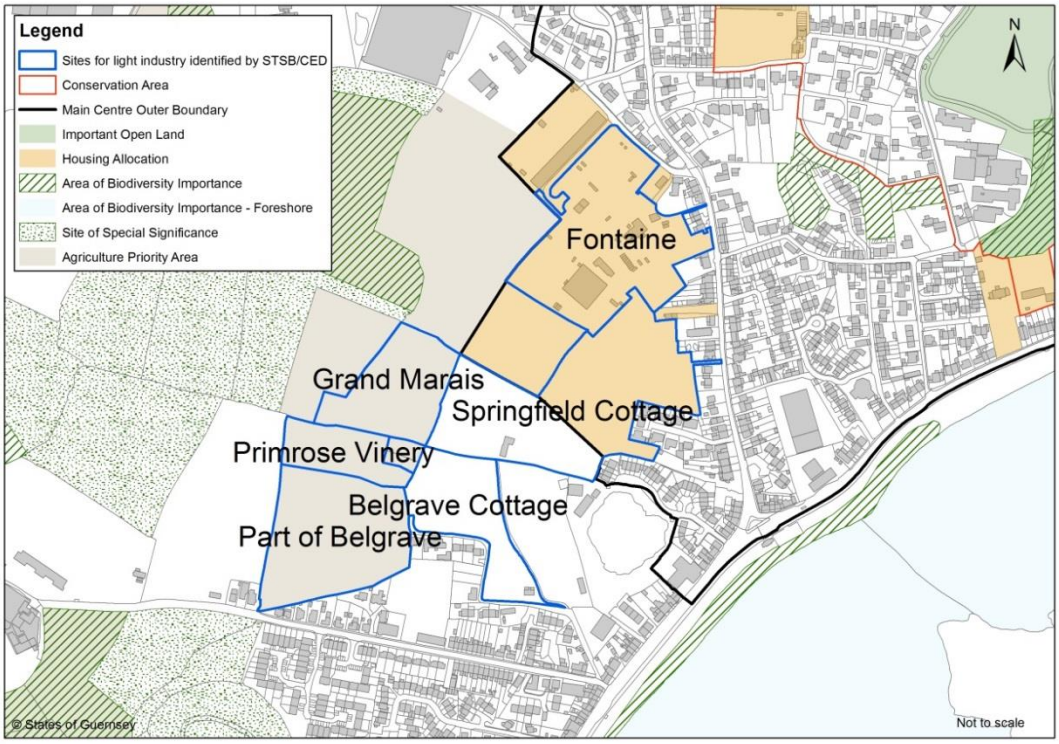
M H Dorey
Vice President

S L Langlois
H L de Sausmarez
S T Hansmann Rouxel

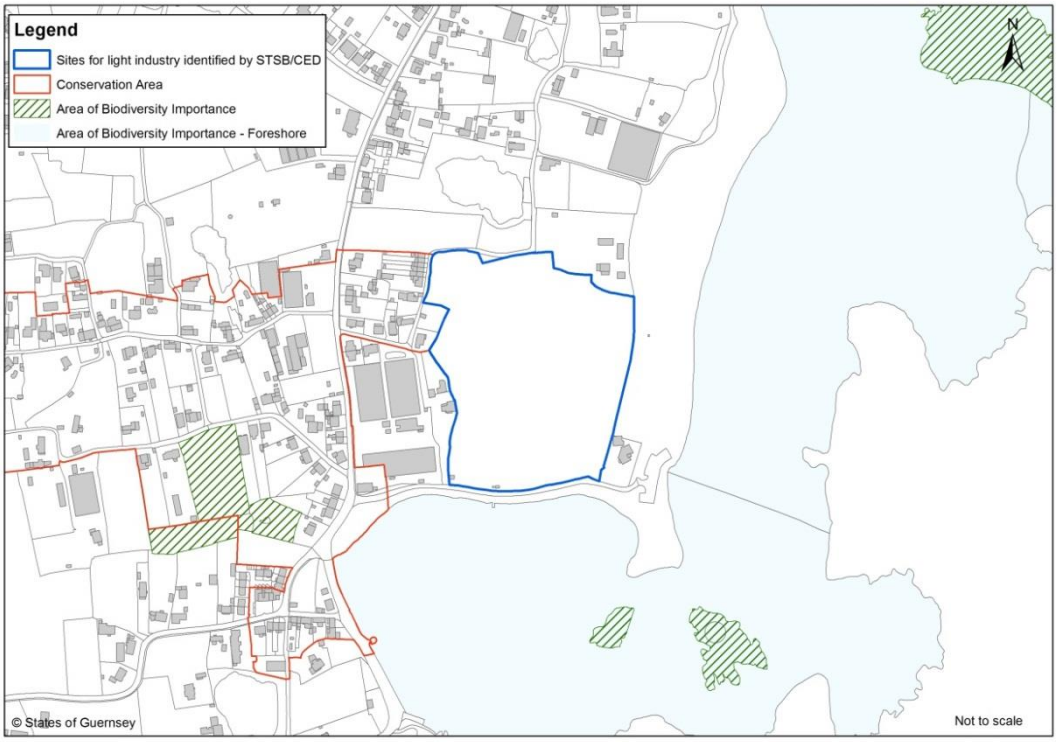
APPENDIX 1

MAPS OF THE SITES IDENTIFIED WITH THE ISLAND DEVELOPMENT PLAN PROPOSALS MAP – EXCLUDING THOSE SITES IN PRIVATE OWNERSHIP AND CONTROL

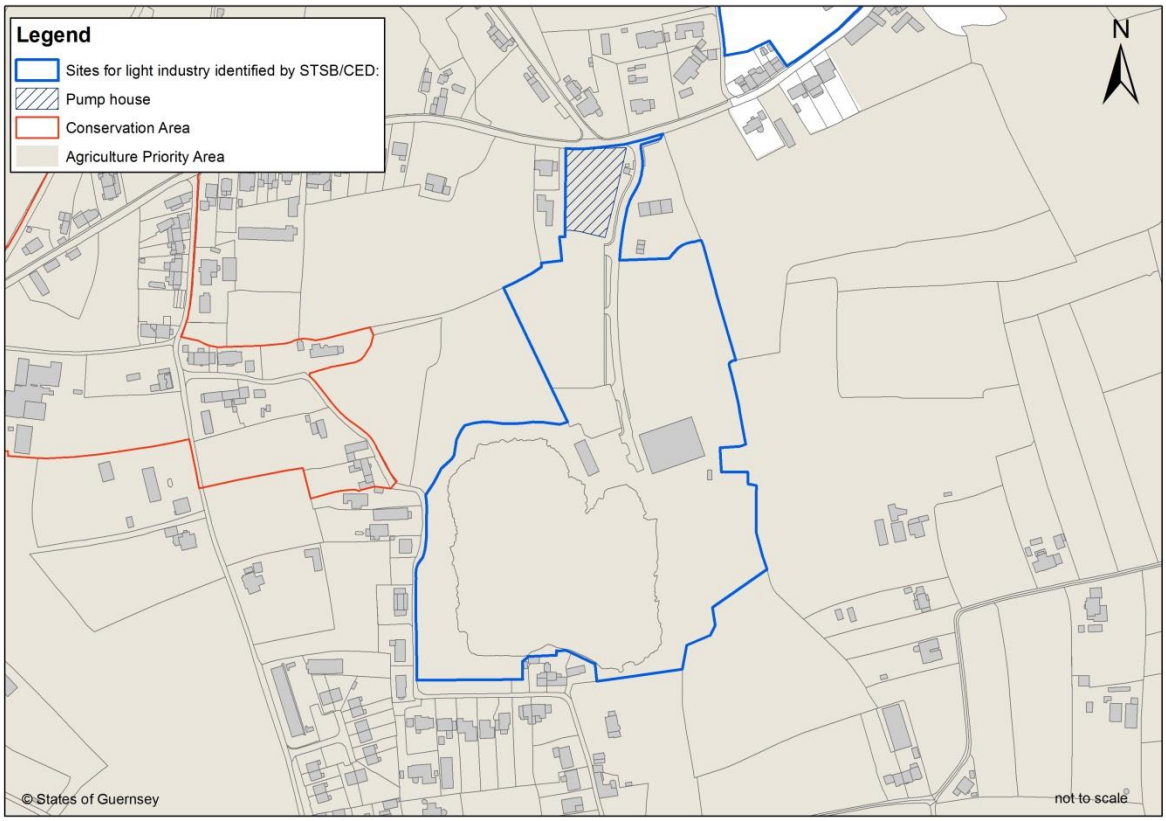
Map 1: Fontaine Vinery, Springfield Cottage, Belgrave Cottage (derelict) & Belgrave Lane (part), field part of Belgrave Vinery Site, Grand Marais Vinery and Primrose Vinery



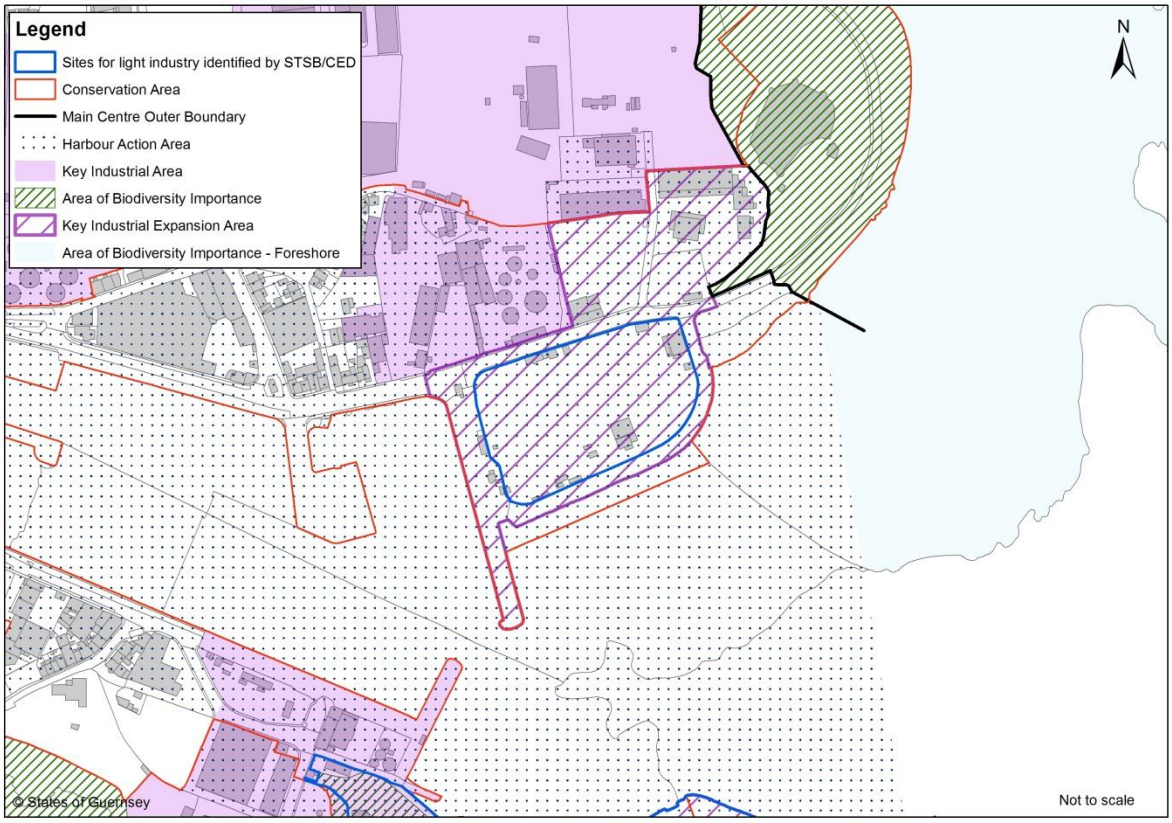
Map 2: Former Bordeaux Landfill Site



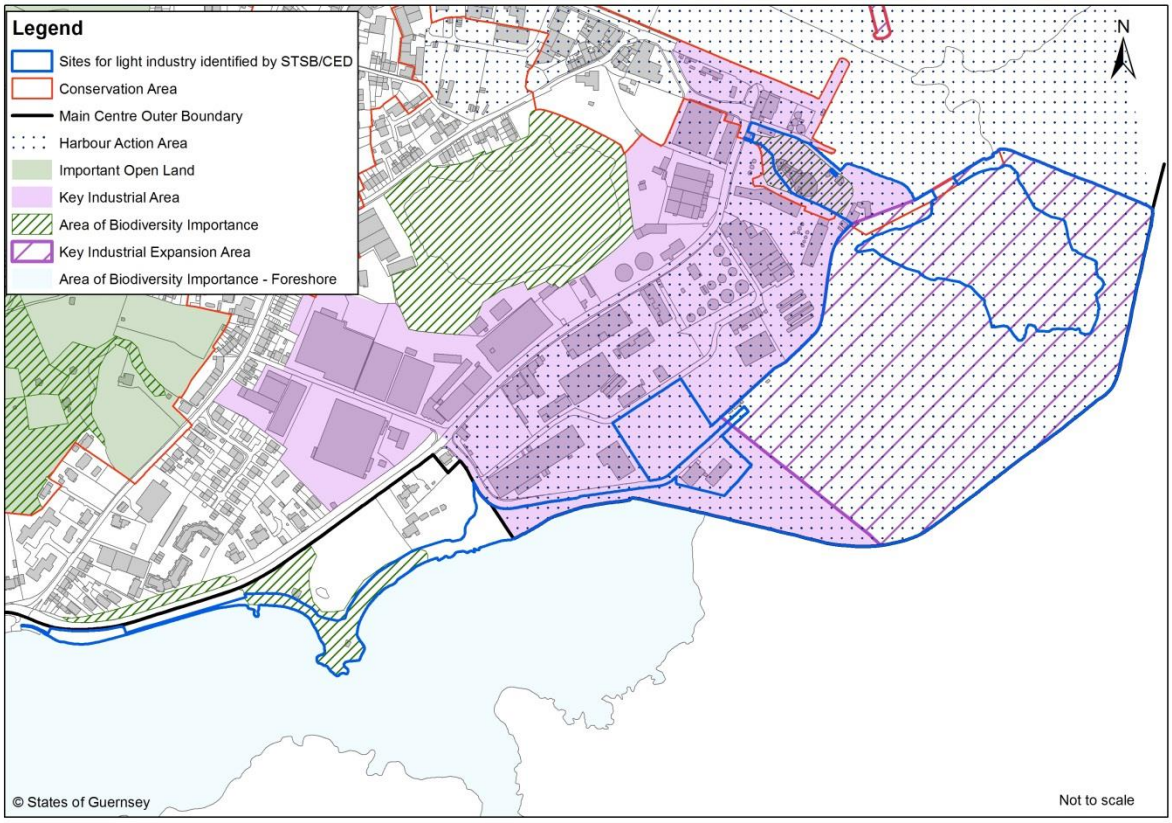
Map 3: Brickfield House



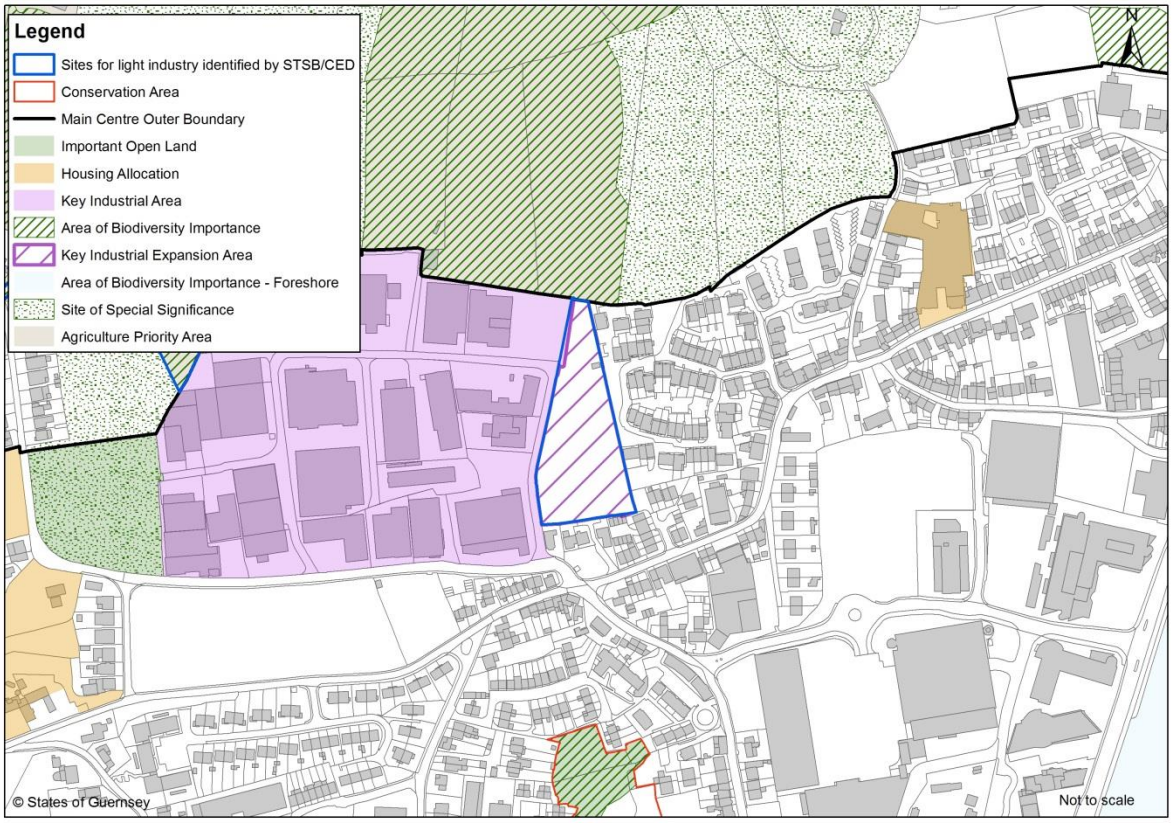
Map 4: Griffith's Yard



Map 5: Mont Crevelt/Longue Hougue Reclamation Site



Map 6: Pitronnerie Road Key Industrial Expansion Area



P.2017/41

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

THE ISLAND DEVELOPMENT PLAN – PROVISION FOR A CAFÉ AT STAN BROUARD GROUP'S LANDES DU MARCHE SITE THROUGH THE INTRODUCTION OF CERTIFICATES OF LAWFUL USE

The States are asked to decide:

Whether after consideration of the report of The Development & Planning Authority attached to the Policy Letter entitled 'The Island Development Plan – Provision for a café at Stan Brouard Group's Landes du Marche site through the introduction of Certificates of Lawful Use' they are of the opinion:

1. To approve the proposals to make provision for certificates of lawful use under the Land Planning and Development (Guernsey) Law, 2005, so as to allow applications to be made to regularise unlawful changes of use, where –

   (a) a compliance notice cannot be issued in respect of that unlawful change of use under that Law, and

   (b) the use does not amount to a contravention of a compliance notice in force at the time of the application,

   including provision for a right of appeal against the refusal of a certificate and other procedural provisions including the making of applications and revocations and provision for fees.

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

The above Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

DEVELOPMENT & PLANNING AUTHORITY

THE ISLAND DEVELOPMENT PLAN – PROVISION FOR A CAFÉ AT STAN BROUARD GROUP'S LANDES DU MARCHE SITE THROUGH THE INTRODUCTION OF CERTIFICATES OF LAWFUL USE

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

25th April 2017

Dear Sir

1. Executive Summary

1.1 The States has resolved (Resolution 6) concerning Billet d'État No XXVII, dated 18th October 2016, to direct the Development & Planning Authority, after consultation with other relevant committees of the States, to determine which changes would need to be made to legislation or policy in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store.

1.2 The existing retail use at the Stan Brouard Group's Landes du Marche site is unauthorised under Planning Law, although enforcement action cannot be taken. There is no means of regularising the existing unauthorised use under Planning Law and hence there can be no development of a café. This situation has been criticised as unsatisfactory by independent Planning Inspectors.

1.3 Planning policy within the Island Development Plan (IDP), which is based on States strategic planning policy within the Strategic Land Use Plan (SLUP) and the findings of the Guernsey Retail Strategy, precludes the granting of retrospective planning permission for any retail development in this location. An application for a café at the site would therefore be rejected under the IDP as it was rejected under the Rural Area Plan.

1.4 Changes to existing planning policy to permit retail development at a site Outside the Centres such at the site at the Landes du Marche would need to be extensive, impacting on the IDP, the SLUP and the Retail Strategy, and the costs would be very considerable, both financially and in terms of the time required.

The outcome of such a process cannot be predicted with any certainty and this approach is not considered to represent a viable option.

1.5 However, The Land Planning & Development (Guernsey) Law, 2005 ("the Law") contains a power for the States to provide by Ordinance a means by which a use of a site could be declared lawful. This Ordinance could allow for the issuance of certificates of lawful use or certificates advising whether any enforcement action can be taken under Part V of the Law (section 22(2)). The Authority has concluded that the introduction of such a system of certificates would be likely to deliver the outcome sought by the States Resolution without the very significant, immediate and medium term resource implications involved in amending strategic and detailed planning policy. This approach is supported by both the Committee *for the* Environment & Infrastructure and the Committee *for* Economic Development.

1.6 It would also potentially resolve an existing unsatisfactory situation, which has been criticised by independent Planning Inspectors, in providing a means of regularising longstanding unlawful uses in respect of which no enforcement action can be taken under the Law. In practice, where the breach preceded the coming into force of the Law or the time limits for the issuing of a compliance notice under the Law have expired no enforcement action can be taken.

1.7 Whilst Resolution 6 directed the Authority to look solely at a gateway in relation to the development of a café at the Landes du Marche site, the States is asked to note that, if the propositions are approved and the legislation passed, the ability of the Authority to issue certificates will apply to any scenario, both current and those which may arise in the future, whereby an unlawful use can be declared lawful.

2. Background

2.1 The Stan Brouard Group occupies premises presently known as the Garden, Leisure and Furniture Store at Landes du Marche, Vale. The Stan Brouard Group has for a number of years expressed the desire to create a café at their Landes du Marche premises, in conjunction with a retail use which presently exists at the site.

2.2 The existing retail use at the Stan Brouard Group's Landes du Marche premises has grown over the years without the benefit of planning permission and is consequently unlawful. However, due to the time elapsed it is no longer possible to take enforcement action against this unauthorised use. Enforcement action was not taken at the time the use developed because under the previous Island Development (Guernsey) Laws, 1966-1990, enforcement powers were limited to prosecution and did not provide for compliance notices which could have dealt with the incremental "creeping"

change of use. The current 2005 Planning Law contains effective civil enforcement powers and the same situation should not occur today.

2.3 An appeal against refusal of planning permission for a café at the Stan Brouard Group's premises was dismissed by an independent Planning Tribunal in July 2014, having regard particularly to the unauthorised status of the existing retail use, that the proposed development would not be of a type and scale consistent with the function and character of either of the nearest Rural Centres, and that there was no evidence to demonstrate that the proposal would support the viability and vitality of a Rural Centre. The Tribunal concluded that the requirements of Rural Area Plan Policy RE4(b) were not satisfied and consequently there was no policy "gateway" to grant planning permission for the proposed development; the appeal therefore failed.

2.4 The issue of a café for the Stan Brouard Group was subject of specific representations to the Planning Inquiry for the IDP held in 2015. The Inspectors recommended no changes to the IDP as drafted, but commented in their Report (para 130) that:

"The unfortunate existing situation pertaining at this site brings no credit to the business, which made the change of use without the necessary planning permission and has not subsequently applied for retrospective planning permission; to the former Island Development Committee which failed or was unable to take enforcement action at the appropriate time; nor to the Island planning system, which does not provide the Environment Department with a route to regularise the situation other than through an application (by the developer) for retrospective planning permission. The situation at this site is most unusual, effectively a legacy of the legal framework prior to enactment of the current Planning Law and so unlikely to reoccur. It seems to us that it would be very much in the public interest for it and any similar cases to be remedied so that the development can be brought under proper planning control. However, as we understand it the potential remedies lie outside the ambit of the IDP and hence we cannot make any recommendation to that end."

3. The States Resolution

3.1 The issue of enabling a café to be created at the current site of the Stan Brouard Group Garden, Leisure and Furniture Store was subject of a specific amendment proposed by Deputy Trott and seconded by Deputy Fallaize at the time the States considered the IDP. The amendment was approved by the States, resulting in a States Resolution.

3.2 The States resolved (Resolution 6) concerning Billet d'État No XXVII, dated 18th October 2016, after considering a report of the Development & Planning

Authority attached to the policy letter entitled 'The Island Development Plan-Development & Planning Authority Recommendations':

"to direct the Development & Planning Authority, after consultation with other relevant committees of the States, to determine which changes would need to be made to legislation or policy in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store; and if, during the course of the work and consultation described above, it becomes clear that such a gateway could not be established without first altering the Strategic Land Use Plan also to direct the Committee *for the* Environment & Infrastructure to consider whether it should exercise its powers under Section 5(2) of the Land Planning and Development (Guernsey) Law, 2005 to propose such alteration to the Plan; and also to direct that the Authority, and the Committee if appropriate, shall report its or their conclusions to the States in propositions and a policy letter or policy letters to be submitted to Her Majesty's Greffier by no later than the 30th of April, 2017."

4. Current planning policy approach

4.1 The SLUP was approved by the States in November 2011 and sets the high level policy for land use within the Island. The SLUP specifically guided the review of the Island's previous Development Plans, the Urban Area Plan and Rural Area Plan, and preparation of the IDP. The SLUP sets out a spatial strategy for the Island which is for:

"*development concentrated within and around the edges of the urban centres of St Peter Port and St Sampson/Vale, with some limited development within and around the edges of local centres to enable community growth and the reinforcement of sustainable centres*."

4.2 In terms of retail development, the SLUP seeks to support Town and The Bridge as the main retail centres with St Peter Port maintaining primacy, together with allowing a limited quantity of convenience retail development in Local Centres to support their role as sustainable local settlements. The SLUP noted specifically that:

"*It is fundamental to ensure that the vitality and viability of Town and the Bridge are sustained and enhanced through continued new investment and regeneration. Retail areas need to constantly keep pace with the demands of the modern shopper, although this will represent a challenge within the historic town centre of St Peter Port*".

4.3 The SLUP also states that the IDP should take account of the Retail Strategy for Guernsey produced by the Guernsey Retail Strategy Group in December 2013.

The Retail Strategy was approved by the Board of the former Commerce & Employment Department, although not presented to the States for approval.

4.4 The Retail Strategy recognised that although retail in Guernsey – chiefly in Town – has been a strong economic sector for many decades, it faces 21st Century challenges that could make life difficult for traditional retailers, particularly in the comparison goods area. The Retail Strategy recommended 31 "Strategy Proposals" to respond to these challenges and strengthen the retail sector in Guernsey. The relevant Strategy Proposals sought to concentrate the comparison goods retail offer in the main urban centres whilst allowing for improvement of convenience shopping but not comparison shopping in the local centres, and recommended that the then Environment Department should maintain and strengthen its position on restrictions for change of use to comparison goods sales at out of town locations. In this respect, Strategy Proposal 9 recommends:

"*For the Environment Department to review the current rules regarding effective restrictions placed on comparison goods sales outside Town and St Sampson's and, as part of the new Development Plan, to introduce a stronger regime to support the main centres*".

4.5 The Stan Brouard Group's Garden and Leisure Store is specifically mentioned in paragraph 246 of the Retail Strategy, under the heading "*Out-of-Town Comparison Retail*". The Strategy in this paragraph states that:

"*The Group can see merits in a land planning mechanism that brings together at the St Sampson's Bridge area many of the uses mentioned in this Out of town comparison retail category."*

The Strategy suggests that this could be a win-win situation which, by moving such stores from their current location, would bring greater business and footfall to St Sampson.

4.6 The IDP was prepared in accordance with the strategic policy direction set out in the SLUP of November 2011 and taking into account the Retail Strategy of December 2013. The IDP proposals were certified as consistent with the SLUP as required by section 5 of the Land Planning & Development (Plans) Ordinance, 2007.

4.7 In accordance with the strategic direction of the SLUP and the Strategy Proposals of the Retail Strategy, the policies of the IDP do not permit any new retail development at Landes du Marche, which is not within either of the Main Centres or any of the Local Centres as defined in the IDP. IDP Policy OC4 – Retail Outside of the Centres confirms that:

"*New convenience retail development will only be permitted where it would result from the change of use of existing buildings located on, or within close proximity to, the coast and where the retail provision would support the recreational enjoyment of the coastal location. Proposals for the creation of new comparison retail uses will not be permitted.*"

4.8 For the purposes of the policy set out in the SLUP, the Retail Strategy and the IDP, cafes and restaurants are treated as convenience retail and are specifically identified as falling within convenience retail in the IDP (see paragraph 17.2.4 of the IDP). Therefore, permission for a new café at the Stan Brouard site would not be consistent with the above policy unless it were ancillary to an existing lawful use on the site in which case permission would not be required.

5. Potential changes to policy

5.1 The first part of the States Resolution directs the Development & Planning Authority, after consultation with other relevant committees of the States, to determine which changes would need to be made to legislation or policy in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store.

5.2 When considering the option of changing policy in order to establish such a gateway, it is clear to the Authority from the policy background summarised in the preceding section of this Policy Letter that changes would be required to both the IDP and the SLUP. Any policy change made within the IDP to permit either the existing comparison retail use or convenience café retail use in this location would be inconsistent with the strategic land use policy approach of the SLUP and with the overall spatial strategy contained therein for land use on Guernsey. This inconsistency would make it impossible to obtain a certificate of consistency with the SLUP as required under section 5 of the Land Planning & Development (Plans) Ordinance, 2007. In the absence of such certification, the IDP proposals could not be published and a Planning Inquiry could not be held. Therefore, it would be necessary to first amend both the SLUP and current Retail Strategy.

5.3 Alterations to the SLUP which could potentially enable either an independent comparison or convenience retail use at this location would require a fundamental shift in the existing strategic policy approach to retailing and in the Island's overall spatial land use strategy. The spatial strategy would have to be amended and a new or amended Retail Strategy would be required.

5.4 The implications of such a policy change for the future of the main urban centres of St Peter Port and St Sampson's/The Bridge and for the complementary role of the Local Centres would have to be very carefully considered and any new SLUP proposals would need to be subject of

considerable consultation, evidence and analysis. The 2011 SLUP was itself the product of extensive consultation and evidence gathering through the 'Guernsey Tomorrow' process.

5.5 The Authority is unable to confirm the exact costs of such a process, but they are likely to be very considerable in the short to medium term, both financially and in terms of the time required. It is estimated that the costs of a Planning Inquiry alone would be likely to exceed £100,000, even if it were legally possible for a certificate of consistency to be obtained for the draft IDP amendments due to their inherent inconsistency as noted at paragraph 5.2 above.

5.6 At a time of reducing budgets and an imperative for care with public spending, it would appear to the Authority that it could be imprudent and disproportionate for the States to embark on such a route, particularly when the only intended benefit is that one commercial business might potentially be able to establish a café in an out of centre location. There would be a multitude of variables to consider within such a process of policy review and it is, therefore, difficult to predict with any certainty what the eventual outcome might be. However, it seems clear from the evidence of the current SLUP and Retail Strategies, which together directed and informed the current IDP policies, that the likely disadvantages of such a substantial policy change, even if it were realistically possible to achieve, in terms of potential negative impacts on the Main Centres of Town and St Sampson's/The Bridge and the complementary role of the Local Centres are likely to be significant, widespread and long lasting.

6. Potential changes to legislation

6.1 The first part of the States Resolution directs the Development & Planning Authority, after consultation with other relevant committees of the States, to consider which changes would need to be made to legislation, as well as to policy, in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store.

6.2 When considering the option of changing legislation in order to establish such a gateway, it became clear to the Authority that this route would be practical at a greatly reduced cost.

6.3 The Land Planning & Development (Guernsey) Law, 2005 contains a power for the States to provide by Ordinance for certificates of lawful use or as to whether any enforcement action can be taken under Part V of the Law (section 22(2)). This Ordinance-making power has not yet been used by the States. Section 22 of the Law states as follows:

"Planning status: use registration, certificates and opinions.

22. *(1) The States may, by Ordinance under this subsection, make provision –*

(a) for the registration of the existing use of any land, and

(b) as to the effect of such registration for the purposes of this Law.

(2) The States may, by Ordinance under this subsection, make provision –

(a) for applications to be made to the [Authority] for it to give its opinion as to whether any proposed use of, or proposed building or other operations on, any land would constitute or involve development or require planning permission,

(b) for applications to be made to the [Authority] for it to issue a certificate –

(i) as to the lawfulness of any existing use or of any such operations which have been carried out or of any such proposed use or operations, or

(ii) as to whether any action or omission is one in respect of which any action may be taken under Part V of this Law,

(c) as to the giving of such opinions and issuing of such certificates,

(d) as to the effect of such opinions and certificates for the purposes of this Law or any provisions of it, and

(e) for such incidental, consequential and transitional matters as they consider appropriate."

6.4 As noted above, the existing retail use at the Stan Brouard Group's premises has grown over the years without the benefit of planning permission and is consequently unlawful. However, due to the time elapsed it is no longer possible to take enforcement action against this unauthorised use.

6.5 An Ordinance under Section 22 of the 2005 Law, if enacted by the States, would appear to offer a potential way to regularise the position of the current retail use at the Stan Brouard Group's Landes du Marche site and thus to potentially enable a café to be established in the future on that site.

6.6 The actual granting of a certificate of lawful use under an Ordinance, when enacted, would be a matter for the Development & Planning Authority to consider. It would depend, in particular, on whether the information supplied by any applicant demonstrated that no enforcement action could be taken under the 2005 Law and that the use did not contravene a requirement of an extant compliance notice. The inability to take such enforcement action would include showing that sufficient time had elapsed since the original unlawful change of use so that no action could be taken or the time limits for serving a compliance notice under the 2005 Law had expired.

6.7 If such a certificate was issued in the case of the Landes du Marche site, it would be theoretically possible for a café to then be established without planning permission being required. The use of part of the site as a café could be an ancillary or ordinarily incidental use associated with a lawful principal retail use on the site in accordance with section 2 of the Use Classes Ordinance.

6.8 Whilst this would enable a café to be established, it would also regularise the position at the site generally as regards the present unlawful retail use. In principle, further alterations that are of an ancillary or ordinarily incidental nature associated with a lawful principal retail use at this site could then also be made without the need for planning permission. However, the existing unauthorised retail use operates within a defined area of the site which could not be expanded further without express planning permission and it is considered that all possible ancillary or ordinarily incidental uses, other than the café, are already undertaken at the site.

6.9 It is also recommended that an amendment be made to section 22 of the 2005 Law itself, using the general amendment power in section 89(1) of that Law. This amendment would clarify that an Ordinance may provide for the issuing of certificates for a use to be made lawful where enforcement action, in particular the issuing of a compliance notice, cannot be taken under the 2005 Law. It would also confirm that a certificate could be issued when the use did not amount to a breach of a requirement of a compliance notice issued by the Authority which was in force as at the date of the application. This reflects the position in the UK and the Isle of Man where certificates of lawful use can be issued in such circumstances.

6.10 Provision would need to be made for procedural provisions, in particular in relation to the making of applications, for the applicant to have a right of appeal to the Planning Tribunal against decisions of the Authority in relation to applications for certificates. The Authority would also need to have the power to revoke a certificate in the rare situation where one has been issued on the basis of information later shown to be incomplete, false or misleading. Consequential amendments may also be needed to other provisions of the planning legislation, in particular the enforcement provisions.

6.11 Although not creating a potential “policy gateway” through changes to the IDP and SLUP, as outlined in the preceding section of this Policy Letter, such changes to legislation as are described in this section could have the effect of establishing a potential legal gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store. The Authority, by determining this as a legal gateway for this purpose has complied with the direction of the States Resolution.

6.12 This option is more likely to enable the outcome sought by the States Resolution in practice and also has the wider benefits set out by the independent Planning Inspectors in paragraph 2.4 above and referred to in paragraph 7.4 below.

7. Engagement and consultation

7.1 As directed by the States Resolution, the Development & Planning Authority has consulted on this matter with other relevant committees of the States, namely the Committee *for the* Environment & Infrastructure and the Committee *for* Economic Development.

7.2 **The Committee *for the* Environment & Infrastructure**, by letter of 21st February 2017, noted that it agreed with the Development & Planning Authority that whilst the approach [relating to certificates of lawful use] would not, strictly speaking, offer a 'policy gateway' for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store, it would nonetheless offer a practical route by which a café in this location could be achieved, by providing the potential for it to form an ancillary element of a then authorised retail use. The approach [relating to certificates of lawful use] would therefore provide in practice a 'gateway' through legislation change as required by the States Resolution, without the need to alter strategic spatial policy or amend the IDP.

7.3 The Committee *for the* Environment & Infrastructure also noted that the approach [relating to certificates of lawful use] would inevitably have resource implications for the States, including in relation to future appeals provisions, which is a matter within the Committee *for the* Environment & Infrastructure's mandate. However, the alternative of proposing amendments to strategic spatial policy through alterations to the SLUP and then seeking to amend the IDP including the holding of a public Planning Inquiry would have much more significant immediate and medium term resource implications for the States, both in terms of time spent and financial cost. This was not considered justified by the Committee *for the* Environment & Infrastructure, particularly given that this issue has arisen purely from consideration of the situation of one single business by the States.

7.4 In contrast, the approach [relating to certificates of lawful use] would have the benefit of providing a route whereby anyone with an unauthorised use once immune from enforcement action could seek to regularise their position, whilst at the same time helping to resolve the specific issue to which this particular States Resolution relates.

7.5 In conclusion, therefore, the Committee *for the* Environment & Infrastructure supported the approach [relating to certificates of lawful use] of using the Ordinance-making power within the 2005 Planning Law to make provision for

certificates of lawful use to regularise an unlawful use where enforcement action cannot be taken under Part V of the Law.

7.6 **The Committee *for* Economic Development**, by letter of 27th February 2017, noted that it agreed that the approach [relating to certificates of lawful use] represented a satisfactory means of achieving the aims of the amendment to the IDP debate, led by Deputies Trott and Fallaize.

7.7 The Committee *for* Economic Development, however, expressed the view that although granting a certificate of lawful use for the existing retail area at the Stan Brouard Limited site would regularise the current unauthorised use, it will be important to safeguard against any further retail development at the same site, as this would be contrary to States' policies in respect of retail outside of the Main Centres, and the position of the Retail Strategy for Guernsey.

8. Resources and Implementation

8.1 For the reasons noted previously in this Policy Letter, the potential option of seeking to change planning policy in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store is likely to be very costly in the short to medium term, both financially and in terms of time. The outcome of such an approach, which would involve many complex variables, is also extremely difficult to predict. It is impossible to provide an accurate estimate of the resources that would be required for such an approach. The costs of a Planning Inquiry alone would be likely to exceed £100,000, and as detailed above it is likely that a prior amendment would be required to the SLUP and the Retail Strategy involving additional prior cost.

8.2 The introduction of a new system to provide for certificates of lawful use would also have resource implications, although these would be likely to be far less than would be incurred in seeking to amend planning policy. There would be costs to the States in drafting the legislation and creating the processes required for such a system to operate. Applications for certificates of lawful use would have to be made, processed and determined, in a similar way to planning applications at present. Where such a certificate is refused, there would be a right of appeal to the Planning Tribunal. There is a significant amount of case law on certificates of lawful use in the UK as these are controversial because of the potential financial implications in relation to land values. A fee would be charged for an application for a certificate of lawful use, which in the UK is currently around £200. It is recommended that similar fees be levied in Guernsey for applications and appeals.

8.3 However, indications from legal practitioners specialising in planning matters in Guernsey are that there are likely to be relatively few applications made for

certificates of lawful use, if such a system were introduced, and that the appeal work arising from such a system is unlikely to be onerous. At the present time, there is only one other known instance of a similar case to that at the Stan Brouard Group premises. It will be, however, necessary to ensure sufficient resources are available to remain vigilant to ensure that such situations do not arise in the future. Therefore, the costs of establishing and operating such a system may be able to be met from existing budgets and using existing staff resources, if such resources were not reduced any further.

9. Conclusions

9.1 The States Resolution arising from the amendment brought by Deputies Trott and Fallaize directs the Development & Planning Authority, after consultation with other relevant committees of the States, to determine which changes would need to be made to legislation or policy in order to establish a gateway for the development of a café on the current site of the Stan Brouard Group Garden, Leisure and Furniture Store.

9.2 The States Resolution seeks to enable one individual commercial business to achieve a café facility. Such a facility cannot be provided under current planning policy having regard to the circumstances of that business. The Development & Planning Authority has reservations as to whether this is an appropriate function for Government and justifies amending public policy or changing legislation.

9.3 The Authority has complied with the directions of the States in this matter, and has determined that the introduction of a system of certificates of lawful use, as provided for within the Land Planning & Development (Guernsey) Law, 2005, would be likely to deliver the outcome sought by the States Resolution without significant resource implications. The potential alternative of seeking to change planning policy is not considered to represent a viable option for the reasons explained in this Policy Letter.

9.4 The introduction of a system of certificates of lawful use is supported by both the Committee *for the* Environment & Infrastructure and the Committee *for* Economic Development. As pointed out by the Committee *for the* Environment & Infrastructure, this approach would have the benefit of providing a route whereby anyone with an unauthorised use once immune from enforcement action could seek to regularise their position, ensuring that such development can be brought under proper planning control and so helping to contribute to broader States objectives.

9.5 The introduction of a system of certificates of lawful use would also potentially resolve an existing unsatisfactory situation at the Stan Brouard Group's site which has been criticised by independent Planning Inspectors. The Committee *for* Economic Development is concerned to safeguard against any further retail

development at the Stan Brouard Group's site. However, no precedent would be set for the reasons outlined in paragraph 6.6 above.

10. Propositions

The States are asked to decide:-

Whether after consideration of the report of The Development & Planning Authority attached to the Policy Letter entitled 'The Island Development Plan – Provision for a café at Stan Brouard Group's Landes du Marche site through the introduction of Certificates of Lawful Use' they are of the opinion:-

1. To approve the proposals to make provision for certificates of lawful use under the Land Planning and Development (Guernsey) Law, 2005, so as to allow applications to be made to regularise unlawful changes of use, where –

   (a) a compliance notice cannot be issued in respect of that unlawful change of use under that Law, and

   (b) the use does not amount to a contravention of a compliance notice in force at the time of the application,

   including provision for a right of appeal against the refusal of a certificate and other procedural provisions including the making of applications and revocations and provision for fees.

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

Committee Support for Propositions

In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Authority.

Yours faithfully

J A B Gollop
President

D A Tindall
Vice-President

L C Queripel
V S Oliver
M P Leadbeater

P.2017/39

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTE

AMENDMENT TO THE CUTTING OF HEDGES ORDINANCE, 1953

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Amendment to the Cutting of Hedges Ordinance, 1953" dated 25th April 2017, they are of the opinion:-

1. To amend Section 1(1) of the Cutting of Hedges Ordinance, 1953 to require the owner of land bordering a public road to, between the 1st day and the 15th day of June and between the 15th day and the 30th day of September in each year, cut away such parts of all hedges as overhang such public road and immediately thereafter remove from such public road all material cut from such hedges; and

2. To direct the preparation of the legislation.

The above propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications in accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees.

POLICY & RESOURCES COMMITTEE

AMENDMENT TO THE CUTTING OF HEDGES ORDINANCE, 1953

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

25th April 2017

Dear Sir

1. Executive Summary

1.1 The purpose of this Policy Letter is to ask the States to approve a minor amendment to the Cutting of Hedges Ordinance, 1953. The proposition is to move responsibility from the occupier to the owner of the land (in all cases) for the cutting of hedges bordering a public road and the subsequent clearing of the cuttings from the public road.

2. Background

2.1 Under Section 1(1) of the Cutting of Hedges Ordinance, 1953 ("the 1953 Ordinance"), the occupier of land bordering a public road or, if the land is unoccupied, the owner thereof, shall between the 1st day and the 15th day of June and between the 15th day and the 30th day of September in each year, cut away such parts of all hedges as overhang such public road and shall immediately thereafter remove from such public road all the cut material. This legislation applies to Guernsey.

2.2 On 1st September 2015, the Parochial Administration Ordinance, 2013 ("the 2013 Ordinance") came into force and amended, inter alia, the enforcement powers under the 1953 Ordinance. The new enforcement powers allowed the Constables and Douzeniers of the parishes to serve Warning Notices on and collect Civil Penalties from persons failing to comply with the provisions of Section 1(1) (as amended) of the 1953 Ordinance. An independent appeal system was also introduced at the same time.

3. Review of New Enforcement Powers

3.1 Since the introduction of these new enforcement powers, the Policy & Resources Committee ("the Committee") has consulted with the Parochial

Appeals Tribunal ("PAT") and parishes through the Douzaine Liaison Group on the impact of both the Warning Notices and the Civil Penalties.

3.2 PAT is the independent appeal body established on 1st September 2015, under the 2013 Ordinance to determine appeals against decisions made by the various Parochial Douzaines in respect of the legislation regarding roadside hedges, clearing of controlled streams and applications for Bornements. PAT is independent of the Parochial Douzaines and the Committees of the States of Guernsey. PAT's responsibilities upon an appeal being submitted is to review the decision by a Parochial Douzaine to issue a formal Warning Notice or Civil Penalty Notice in relation to the cutting of hedges, overhanging hedges and the clearing up of any debris afterwards. Its scope for appeals also includes other areas, such as the clearing of controlled streams or a Notice giving a landowner notice of an intention to instruct the Public Services Department to clear a stream and to recover the costs of the work from the landowner.

3.3 Although PAT is yet to sit for a Tribunal Hearing, it has already acknowledged that one of the key issues it expects to consider when hearing an appeal is whether the appellant concerned was without doubt the responsible party for ensuring a particular hedge was cut. Any ambiguity in this regard could cause PAT difficulties in reaching its findings.

3.4 The parishes, through the Douzaine Liaison Group, have advised that the new enforcement powers have generally improved compliance with the 1953 Ordinance. To date only one parish has pursued a Civil Penalty. Several parishes have issued Warning Notices and these have almost invariably resulted in the occupier or owner of the land cutting the hedge and clearing the cuttings from the public road. In addition, the parishes have reported that the introduction of an advisory letter prior to the commencement of the enforcement provisions set out in the 2013 Ordinance has worked very well and resulted in a high level of compliance at an early stage.

3.5 However the feedback from the parishes has highlighted one area of difficulty when considering whether or not to commence formal enforcement action. Under the 1953 Ordinance if the owner is not the occupier of a property, e.g. it is rented out, then the occupier not the owner is the responsible party for ensuring that hedges are cut and cleared properly. The parishes have advised the Douzaine Liaison Group that, whilst they have up to date information and contact details regarding property owners, this is not the case for a tenanted property (whether domestic, commercial or agricultural field). Several parishes have found it can be difficult and/or time-consuming to identify who is the responsible occupier. The main issues are that:

- The owners refuse, or takes a prolonged period, to provide the parish with the necessary details for the occupiers/tenants, and

- The owners decline to provide details of the occupiers/tenants because they believe doing so may breach data protection legislation.

3.6 PAT has also raised concerns that it is the occupier or, if the land is unoccupied, the owner of the land who is legally responsible for the cutting of hedges and clearing the cuttings etc. Members considered that this splitting of responsibility is more likely to lead to ambiguity when it needs to be established who the responsible party is when considering an appeal, as described in paragraph 3.3 above. Members have also noted the practical difficulties that the parishes face when trying to establish who might be renting land.

3.7 PAT and the parishes have therefore both requested that Section 1(1) of the 1953 Ordinance be amended to place sole responsibility for the cutting of any hedges overhanging a public road and the clearing of cuttings from the public road on the owner of the property (and not the occupier if a different person). The parishes strongly believe that this amendment would overcome the difficulties they have highlighted in identifying the tenant. Such a change would not preclude the owner of the property, by agreement, passing on any costs to the tenant. The parishes have also confirmed that they are easily able to identify the owners of a property through the Cadastre records.

3.8 Further, at the same time the above enforcement powers were introduced, the Loi Relative aux Douits, 1936 ("the 1936 Law") was also amended to introduce similar enforcement powers where a property owner fails to properly maintain a douit or controlled stream. The parishes have noted that under the 1936 Law, the duty to maintain a douit or stream rests solely with the owner of the land, regardless of who may occupy the land. Based on the parishes' experiences this owner based approach appears a far more pragmatic and efficient arrangement than the current position with the cutting of hedges. This adds further weight to the proposal that the current anomaly in regard to hedges should be rectified to mirror the provisions for streams.

4. Consultation

4.1 The Policy & Resources Committee has consulted with the Law Officers of the Crown.

5. Propositions

5.1 The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Amendment to the Cutting of Hedges Ordinance, 1953" dated 25th April 2017, they are of the opinion:-

(a) To amend Section 1(1) of the Cutting of Hedges Ordinance, 1953 to require the owner of land bordering a public road to, between the 1st day and the 15th day of June and between the 15th day and the 30th day of September in each year, cut away such parts of all hedges as overhang such public road and immediately thereafter remove from such public road all material cut from such hedges.

(b) Direct the preparation of the legislation.

6. Committee Support for Propositions

6.1 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

RESPONSIBLE OFFICER FOR THE BAILIWICK OF GUERNSEY

Under "The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015"

ANNUAL REPORT FOR THE YEAR 2016

Dr Peter Rabey, MBChB, FRCA.

Responsible Officer

States of Guernsey.

Submitted: 14th March 2017.

Contents

1. Executive summary

It is a duty of the Responsible Officer to submit an annual report to the States of Assembly, through Committee *for* Health & Social Care, as to the discharge of the Responsible Officer's functions. This report provides a summary of activity relating to regulation and revalidation of doctors in 2016.

The year 2016 was a year of change and progress in the regulation of medical practitioners in the Bailiwick of Guernsey. Dr Peter Rabey was appointed as Responsible Officer in succession to Dr Nicholas Lyons in March 2016, and was confirmed by the General Medical Council as Suitable Person.

Key Findings:

- At the end of 2016 there were a total of 211 doctors on the Guernsey Register and with a licence to practice. Of these 146 were "local practitioners" and 65 were "UK-connected Practitioners". A breakdown of these numbers is given in the report.
- 94.2% of local practitioners had appraisals conducted on time in 2016. This compares favourably with UK rates of 87.5% for NHS Southern region (latest figures).
- Plans are in place for all delayed and missed appraisals. The RO works closely with Appraisal Leads as described in the report.
- Only two local doctors required revalidation recommendations to the GMC by the RO in 2016. Both received positive recommendations, which were accepted by the GMC, and they revalidated successfully.
- Formal management of concerns was required for 5 doctors in 2016: 1 at high level (health); 3 at medium level (2 capability, 1 conduct); and 1 at low level (conduct).
- Eight doctors were subject to Fitness to Practice investigations by the General Medical Council during 2016 – four of these were ongoing from earlier years and were closed without further action in 2016. Four remained under investigation at the close of 2016.
- The Responsible Officer referred one local doctor to the GMC during 2016.
- Governance: The Responsible Officer maintains strong links with the General Medical Council, NHS England, and the Faculty of Medical Leadership and Management (FMLM).
- In 2016 the FMLM conducted a "Higher Level Responsible Officer Quality Review" of systems and processes in the Bailiwick, with positive feedback.
- Appointments have been made to the Medical Practitioners Registrations Panel, which will commence work early in 2017.
- Complaints: There was one complaint about the RO in 2016. The matter was investigated by the Chief Secretary for Health and Social Care and closed.

2. Purpose of the Report

This report is to inform the Committee *for* Health & Social Care, and through them the States of Deliberation, as to the discharge of the Responsible Officer's functions during the calendar year 2016. This is a requirement of the Responsible Officer under the Ordinance.

3. Background

Medical revalidation was launched by the General Medical Council in 2012 to strengthen the way that doctors are regulated, with the aim of improving the quality of care provided to patients, improving patient safety and increasing public trust and confidence in the medical system.

In 2015 the States of Deliberation created "The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015". This Ordinance established the role of Responsible Officer for the States of Guernsey. The legislation describes two classes of medical practitioner: "Local Practitioners" (those doctors on the local register who do not have a connection to UK designated body), and "UK Connected Practitioners" (those doctors on the local register who do).
The position of Responsible Officer was filled by Dr Nicholas Lyons until March 2016.

On 8th March 2016, the States of Deliberation appointed Dr Peter Rabey as Responsible Officer for the States of Guernsey, for both classes of medical practitioner.

The General Medical Council confirmed Dr Peter Rabey as Suitable Person for doctors "with a licence to practise who do not have a prescribed connection elsewhere and who practice in Guernsey, Alderney, and Sark which fall within the Bailiwick of Guernsey" on 17th February 2016. The Suitable Person role is similar to the UK Designated Body Responsible Officer role in terms of making recommendations to the GMC about revalidation of doctors; but a Suitable Person does not act for an NHS Designated Body. The Bailiwick of Guernsey (as for Jersey, Isle of Man, Gibraltar, etc) is not an NHS Designated Body, and the GMC therefore recognise a Suitable Person role rather than a Responsible Officer role.

4. Duties of the Responsible Officer

The duties of the Responsible Officer as laid out in the Ordinance are as follows:

Duties of responsible officer – appraisals and fitness to practise.
(1) In relation to the evaluation of the fitness to practise of every practitioner, the responsible officer must –
(a) assess –
(i) whether the practitioner undergoes regular appraisals, and
(ii) whether those appraisals satisfy the requirements of subparagraph (2), and receive such appraisals submitted by the practitioner,

(b) assess whether the designated body of the practitioner has established and is carrying out appropriate procedures, using appropriate persons, to investigate concerns about that practitioner's fitness to practise raised by any person,
(c) where appropriate, take all reasonably practicable steps to investigate concerns about the practitioner's fitness to practise raised by any person,
(d) where appropriate, refer concerns about the practitioner to a relevant body or officer for a relevant purpose,
(e) take any steps necessary to protect patients, including recommend to the designated body of the practitioner that that practitioner should be suspended from practising as a medical practitioner or should have conditions or restrictions placed upon his or her practice,
(f) where the practitioner is subject to conditions imposed by, or undertakings agreed with, the General Medical Council, monitor compliance with those conditions or undertakings,
(g) make recommendations to the General Medical Council about the practitioner's fitness to practise,
(h) maintain records of the practitioner's fitness to practise evaluations, including appraisals and any other investigations or assessments, and
(i) communicate to the designated body of the practitioner any concerns held by the responsible officer regarding the discharge or adequate discharge of that designated body's functions under this Ordinance.

5. Governance Arrangements

Register of Local Doctors:

The day to day running of the local register of doctors is supported by the Registrations Officer, Mr Edward Freestone, with administrative support from Ms Linda Nel. The register describes the two classes of medical practitioners ("local" and "UK-connected"), and indicates whether the doctors main link is with MSG, HSC, Primary Care, or "Other".

The list of names of doctors on the register is in the public domain, as is their GMC registration. The local register of doctors may be accessed by the public through the HSC website at https://gov.gg/healthprofessionalregisters.

The Registrations Panel:

The Registrations Panel has responsibility for supporting the local register, to ensure that unsuitable applicants are not registered, and to prevent registration where there are good grounds for concern. The Panel also serves as a review body to review decisions made by the Responsible Officer relating to registration under the Ordinance.

Provisional appointments to the Panel are currently awaiting confirmation by Policy and Resources Committee. The Registrations Panel will meet in the first quarter of 2017. The panel will have a legally-qualified Chair, lay-representation, and an independent medical practitioner who has not worked in the Bailiwick for 20 years.

Appraisal of Doctors:

The Responsible Officer works closely with Appraisal Leads to ensure that appraisals of doctors on the Local Practitioners List are conducted to appropriate and high standards.

The following acted as Appraisal Leads in 2016 for the different groups of Local Practitioners:

HSC Doctors:	Dr Nichola Brink
MSG Doctors:	Dr Graham Beck
General Practitioners:	Dr Tony Chankun, (supported by Karen Diamond.)

Appraisal policies are in place for all these doctor groups.

The Responsible Officer receives copies of all appraisal documentation including: scope of practice, supporting evidence, inputs (including incidents and complaints), details of continuing professional development, reflection, personal development plan, and the appraisal output form completed by the appraiser. The appraiser in every case must determine whether or not any concerns should be escalated to the RO, and sign statements about the doctor's fitness to practice.

The RO can access real-time information about appraisals, allowing the monitoring of progress against completions. Progress is monitored regularly and any issues flagged with the appraisal leads in the first instance.

Appraisal Quality Review:

New local appraisers undergo appraisal training delivered by the Wessex Area Team from NHS England, and update training is provided annually. The first 3 appraisals conducted by a new appraiser are subjected to quality review.

An Appraisers Network meeting takes place quarterly, jointly chaired by the Appraisal Lead for HSC and MSG.

External Quality Assurance of appraisals is scheduled to take place as part of a visit by the Appraisal Lead team for Southampton University Hospitals on 31/3/17. Individual feedback will be given by the external team to each local appraiser.

In addition the RO provides feedback to local appraisers, and all appraisees provide feedback about their appraisal, which is provided in anonymised form to appraisers.

External appraisers undergo quality review from their host organisation: Wessex Area Team, NHSE.

Higher Level Responsible Officer Quality Review:

The Faculty of Medical Leadership and Management (FMLM), under the auspices of the Academy of Medical Royal Colleges, conducted a "Higher Level Responsible Officer Quality Review" of systems in Guernsey in August 2016. The review looked in detail at systems in place for revalidation of doctors in the Bailiwick, including the designated body, engagement, processes for appraisal, monitoring performance, and addressing concerns. Feedback from that review was positive. The FMLM made some recommendations following the visit, and an Action Plan has been drawn up to

ensure that we maximise learning from their visit. The action plan has been approved by CHSC; many of the recommendations are fully in place. Outstanding recommendations relate to improving patient and public engagement in the processes, and the establishment of CareWatch and the establishment of the Registrations Panel will provide opportunity to do this in 2017. The visit provided assurance that local systems and practice relating to revalidation were of an acceptable standard.

Engagement with External Bodies:

The RO is an active participant in the Responsible Officer Network organised by NHS England, and also attends the Suitable Person Reference Group meetings organised by the General Medical Council. The RO meets quarterly with the GMC Employment Liaison Advisor, and has further ad-hoc communication as required. The RO has a contract in place with Wessex Area Team of NHS England to provide support, advice, and expertise for concerns regarding primary care doctors. The RO has an external Responsible Officer – Mr Peter Lees of the Faculty of Medical Leadership and Management, and takes part in appraisal and revalidation under the auspices of that organisation.

6. Register of Doctors

The Register of doctors is a live document and is amended regularly to reflect additions, departures, and other changes. The Guernsey register is available in summary form on-line at https://gov.gg/healthprofessionalregisters.

At the end of 2016 there were a total of 211 doctors on the Guernsey Register and with a licence to practice. Of these 146 were "local practitioners" and 65 were "UK-connected Practitioners". .

A breakdown for the position at the end of 2016 is provided in the table below:

Local Register of Medical Practitioners, 2016.					
	Hospital Doctors with HSC (including visiting consultants)	Medical Specialist Group Consultants	General Practitioners	Others	Total
Local Practitioners	32	43	67	4	146
UK Connected Practitioners	32 (visiting)	7 (5 locums)	12	14	65
Total	64	50	79	18	211

UK Connected Doctors: There were 32 UK-connected doctors working for HSC in 2016: this included visiting doctors and visiting appraisers for doctors. Seven doctors working for MSG in 2016 retained a UK connection: this included 5 locum doctors and 2 new arrivals who still had a UK connection. A total of 12 GP's were connected to UK designated bodies; most of these acted as locums while in the Bailiwick.

Doctors Classed as "Others": Among those classed as "Others" were the Sark doctor (local practitioner), some recently retired doctors who wished to stay on the register, 3 visiting doctors involved in the bowel-screening programme, 2 prison doctor locums, and some doctors who provide medical advice to local firms or do occasional private clinics.

The local RO is able to identify and communicate with any UK-connected doctors Responsible Officer through use of GMC Connect – the GMC's online portal for revalidation of doctors. In addition the public can search the GMC register to identify a doctor's Responsible Officer through the GMC website: http://www.gmc-uk.org/index.asp .

Conditions: The RO has authority to add conditions to a doctor's local registration. In 2016 background checks resulted in one doctor working in the Bailiwick with conditions. The doctor was assigned a clinical supervisor, and there were no incidents of concern during their period here. The doctor has since left the Bailiwick. A second doctor had conditions added during 2016, and although remaining on the local register has not worked in the Bailiwick since.

7. Medical Appraisal

a. Appraisal and Revalidation Performance Data

In 2016 there were 138 locally connected doctors who required an appraisal in-year. This is not the same as the total number of local practitioners (146) because of movement within year, for example some had appraisals done before arriving in Guernsey. A total of 130 appraisals were completed within the agreed time period. The table below gives details:

Appraisals: Due and Completed, 2016.					
	Hospital Doctors with HSC (including visiting consultants)	Medical Specialist Group Consultants	General Practitioners	Others	Total
Number of doctors with appraisal due within year 2016	29	41	64	4	138
Appraisals Completed within agreed time period.	27 (93.1%)	36 (87.8%)	64 (100%)	3 (75%)	130 (94.2%)

Of appraisals not completed within prescribed time period:

- HSC: 2 doctors missed appraisals for health reasons, and the delays were agreed with the RO.
- MSG: 5 late appraisals. 4 are scheduled to take place in early 2017 with the RO aware of the delay – 3 of these had recently joined MSG. One was a missed appraisal without agreement from the RO. That doctor has left the island, and the doctor's new RO has been informed.
- GP's: 100% compliance.
- Others: One doctor missed an appraisal for health reasons, and the delay was agreed with the RO in advance.

If the RO believes that a doctor may not be engaging appropriately in the process of revalidation he may, after consultation with the GMC Employment Liaison Advisor, request that the GMC send a non-engagement concern to the doctor directly by completing a "Rev6" form. In 2016, no Rev6 forms were submitted by the RO.

No doctors are involved in disciplinary processes because of missed or delayed appraisals, although one was reported to his new RO.

b. Appraisers

Medical appraisal is the cornerstone of revalidation of doctors. Doctors with a UK connection take part in appraisal and revalidation with their UK designated body. For locally-connected doctors there are 2 groups of appraisers. Most doctors fit cleanly into one of these groups, but for doctors in the "other" category, their appraiser is determined by best-fit (nearly always obvious).

Primary Care; Doctors in General Practice in Guernsey undertake appraisals with the Wessex Appraisal Service, a service run by Health Education England. In 2016, a total of 64 primary care doctors underwent appraisals, with an average of 4 appraisals per appraiser. As well as receiving all individual appraisal information, the RO receives an annual report from the Wessex Appraisal Service, reported from April to April. The latest report demonstrated that feedback rates from Guernsey doctors were higher than their UK counterparts (77% vs 55%). 91% of respondents said that appraisal had helped to facilitate improvements to patient care in the past year, compared to 33.4% who responded to the RCGP Revalidation Survey. This demonstrates high levels of engagement and quality from the primary care appraisal service. The commentary expressed a desire for allocation of appraisees to appraisers to be modified to allow greater continuity of pairings in future.

Secondary Care: The secondary care appraisal team in 2016 consisted of a group of nine trained doctors comprising of both States Employed Doctors and doctors from the Medical Specialist Group. 63 appraisals were conducted by this team in 2016. Individual appraiser feedback demonstrates high levels of satisfaction with the quality of appraisers. New local appraisers undergo appraisal training delivered by the Wessex Appraisal Service Team from Health Education England, and update training is provided annually. The first 3 appraisals conducted by a new appraiser are subject to quality review. A local Appraisers Network meeting takes place quarterly, jointly chaired by the Appraisal Lead for HSC and MSG.

In 2017 approximately half of secondary care doctors will have appraisals conducted by off-island appraisers arranged through Southampton University Hospitals, who will also provide quality assurance of the on-island appraisal process.

c. Quality Assurance

In August 2016 the Faculty of Medical Leadership and Management (FMLM) conducted a “Higher Level Responsible Officer Quality Review” of systems in Guernsey in August 2016 (see section 5 above). The Faculty were assured that appropriate standards are in place, and commented favourably on engagement with appraisal among doctors on the island.

Routine ongoing quality assurance is achieved by active involvement of the appraisal leads and the RO. This includes:

Appraisal portfolios:

- Review of appraisal folders to provide assurance that the appraisal inputs, including pre-appraisal declarations and supporting information provided is appropriate and available .
- Review of appraisal folders to provide assurance that the appraisal outputs including personal development plan, summary and sign-offs are complete and to an appropriate standard.
- Review of appraisal outputs to provide assurance that any key items identified pre-appraisal as needing discussion during the appraisal are included in the appraisal outputs.

For the individual appraiser:

- An annual record of the appraiser's reflection on his or her appropriate continuing professional development is included in their appraisal
- An annual record of the appraiser's participation in appraisal calibration events such as reflection on appraisal network meetings.
- 360° feedback from doctors for each appraiser is collected at the conclusion of the appraisal process. The information is collected and reviewed by the appraisal leads, and collated and fed back to the appraiser in an anonymised manner. It is calibrated with the feedback for other appraisers and feedback to each appraiser includes anonymised score averages for all appraisers.

For the organisation:

- The RO receives real-time timelines of process of appraisal for each group of doctors.
    - Feedback from appraisees includes views on the systems used.

d. Access, Security and Confidentiality

The RO deals with a significant amount of sensitive personal data, and it is important that this is dealt with in line with best practice.

The Responsible Officer is registered with the Data Protection Commissioner for the Channel Islands, and attended Data Protection training in December 2016.

Appropriate safeguards are in place. Paper records are kept in locked filing cabinets, in offices which are locked when not occupied. Doctors' appraisal portfolios are kept in secure on-line systems designed for the purpose: MSG and HSC doctors use the PreP system and Primary Care doctors use the Clarity system. A few doctors use other systems including the "Fourteen Fish" online appraisal system. Each of these systems has security built in. The RO has access to doctors' appraisal details via these systems. A few UK connected doctors are required to use the electronic MAG form (Medical Appraisal Guidance form, developed for NHS England), which must be stored electronically and does not have inbuilt security.

Doctors are firmly instructed that patient-sensitive data must not be uploaded into their appraisal portfolio, and if an appraiser discovers that this has inadvertently happened they request that the information be redacted.

The RO is not aware of any information governance breaches in this area in 2016.

e. Clinical governance

In preparation for appraisal each doctor is sent a list of all complaints and incidents in which they have been named in the relevant time period. This report is prepared by the governance team. The doctor will reflect on these in preparation for their appraisal.

This allows transparency as the report is available to the appraiser, appraisal lead, and to the RO; who can ensure that appropriate reflection and learning has taken place and been evidenced at appraisal.

8. Revalidation Recommendations

Revalidation typically takes place over a five year cycle, at the end of which the GMC seek a recommendation from the doctor's RO / Suitable Person (if they have one). In 2016, only two doctors required revalidation recommendations to the GMC. Positive recommendations were made by the RO for both doctors, following review of their appraisal portfolios and the evidence submitted against all the GMC requirements.

No doctors required a deferral recommendation (made when the doctor has not produced sufficient evidence to support a positive recommendation, or when a process concerning fitness to practice is in place).

There were no notifications to the GMC of non-engagement by a doctor in processes for revalidation.

All recommendations were made on time, and the GMC accepted all submitted recommendations for revalidation of doctors. (Appendix B presents numerical details using the NHS England audit template.)

9. Recruitment and engagement background checks

It is essential that appropriate background checks are made before a doctor's name is added to the local register. Guernsey is in a favourable position in this regard, as the use of very short-term locums is impractical for geographical and regulatory reasons, and there are robust processes for identifying and checking on any new doctors who work in the Bailiwick.

Before a doctor's name is added to the local register, checks are carried out including:

- Checks of GMC registration:
    - Current GMC Registration
    - Holds a valid Licence to Practice
    - On the Specialist Register or GP Register (as appropriate)
- Curriculum Vitae (CV) of the doctor
- References x2
- Form of information completed (contact details, training, qualifications, etc.)
- Specimen Signature
- Registration fee paid (£80).

When a doctor's name is added to the local register a circular is sent widely (including all island pharmacies) informing them of the name, specialty, and role of the new doctor, and providing a specimen signature.

The doctor will, of course, undergo the normal employment checks by their prospective employer in addition to the process of adding to the local register.

10. Responding to Concerns and Remediation

Concerns about doctors can be raised in many ways. Local policies for responding to concerns are in place and up to date for both Primary and Secondary Care. The policies are based on "Maintaining High Professional Standards", and provide pathways for action when a concern arises, including:

- involvement of independent advice (from NHS England),
- how the concern must be investigated and escalated,
- management of confidentiality,
- the processes to be gone through regarding any restriction of practice,
- exclusion from work,
- management of risk to patients,
- reviews of any exclusions,
- informing other organisations, and
- procedures for dealing with disciplinary, capability and health issues.

Concerns about doctors may result in informal or formal management. Informal management typically is used for minor matters, and when there is no risk to patients, the doctor demonstrates insight, and the consultative group consider that the matter can appropriately be closed with informal action. Appendix A presents numerical information about formal management of new concerns raised about doctors in 2016. Formal management of concerns was required for 5 doctors in 2016: 1 at high level (health); 3 at medium level (2 capability, 1 conduct); and 1 at low level (conduct).

Eight doctors were subject to Fitness to Practice investigations by the General Medical Council during 2016. Four were ongoing investigations from a previous year, and all four were closed without further action. One was referred in 2016 by the RO (see below), and remains ongoing. One was self-reported, and was still under investigation at the end of 2016. Two were the result of a complaint to the GMC from a patient's family, and both remained under investigation at the close of 2016.

The Responsible Officer referred one local doctor to the GMC during 2016. This doctor has had conditions imposed on their practice by an Interim Orders Tribunal of the Medical Practitioners Tribunal Service (MPTS), and has not worked in the Bailiwick since. The doctor will face an MPTS hearing in 2017.

Remediation programmes for doctors are developed using the "Back on Track" framework developed by the National Clinical Assessment Service.

Formal remediation programmes were in place for two doctors in 2016. One programme was completed successfully in-year, and resulted in the closure of a GMC investigation with "no further action". The GMC Case Examiners specifically referred to the doctor's remediation in their reasoning for determining that the doctor's fitness to practice was not impaired. The second doctor's programme is continuing.

Good Governance Institute Report: In March 2016 the Good Governance Institute produced their "Independent Review of the Health and Social Services Department's actions in relation to Dr Rory Lyons". The report dealt with events between February and April 2015 when concerns were raised about the practice of Dr Lyons, a GP in Alderney. The report is critical of many aspects of the way events were handled by

HSSD at the time. The present RO notes with sorrow the effect these events and actions had on Dr Lyons, who was subsequently cleared of all the allegations.

Although none of the formal recommendations applied directly to the RO role, the report included observations on the reporting of professional concerns to the GMC, and notes that the authority and responsibility for patient safety and primary care were, at the time, "challenging and complicated". Since then the Ordinance has been amended, and the role and powers of the RO have been strengthened and clarified. The present RO is acutely aware of the lessons of these events.

11. Risks and Issues:

Complaint: In 2016 one complaint was received about the discharge of the RO functions. A patient had escalated a complaint about their management in primary care to the RO, which the RO investigated. The RO found that the Practice had acted reasonably in response to the patient's concerns, although there was evidence that a meeting between the Practice and the patient had not been handled well. The patient complained that the RO had "sided with the doctors" and had made up his mind before meeting with them.
The complaint was investigated by the Chief Secretary to the Committee *for* Health & Social Care. Further independent medical opinions were obtained, and the investigation found that the RO had been correct in his assessment. The matter was closed following a further meeting between the Chief Secretary and the patient.

12. Next Steps

Much progress has been made in 2016, but there is always scope for further improvement. Plans for 2017 include the following:

Registrations Panel:

- Panel members to be appointed (confirmed by Policy and Resources in early 2017).
- An induction programme to be held in March 2017,
- The Panel to commence its statutory functions forthwith. This is a requirement of the Ordinance.

Appraisals:

- External Appraisals: Approximately half of secondary care doctors will receive appraisals from off-island appraisers in 2017, in line with the appraisals policy. Off-island appraisers have been identified through Southampton University Hospitals.
- Quality Assurance: in 2017 external quality assurance of the Secondary care doctor appraisals will take place, led by the Appraisal Lead for Southampton University Hospitals. The Appraisal Leads and RO will receive feedback, and each appraiser will have an individual feedback session.
- Further training for on-island appraisers will be provided, again under the auspices of Southampton University Hospitals.

FMLM Review:

- Most of the actions in response to the FMLM review of 2016 (Section 7c above) are complete, but in 2017 the establishment of CareWatch will allow improved patient and public involvement in processes of revalidation, in line with the outstanding FMLM recommendations.

13. Conclusion

This annual report has presented details of the discharge of the Responsible Officer's functions in the year 2016. Evidence has been presented to demonstrate that significant progress has been made in terms of implementation of the Ordinance, and compliance with the requirements of regulation and revalidation of doctors in the Bailiwick. Further progress in planned for the coming year.

The RO would like to thank all those involved in helping to deliver high quality regulation of doctors in the Bailiwick in 2016.

14. Annual Report Appendix A: Audit of concerns about a doctor's practice.

Concerns about a doctor's practice	High level[1]	Medium level[2]	Low level[2]	Total
Number of doctors with concerns about their practice in the last 12 months (new concerns).	1	3	1	5
Capability concerns (as the primary category) in the last 12 months	0	2	0	2
Conduct concerns (as the primary category) in the last 12 months	0	1	1	2
Health concerns (as the primary category) in the last 12 months	1	0	0	1
Remediation/Reskilling/Retraining/Rehabilitation				
Numbers of doctors with whom the designated body has a prescribed connection as at 31 December 2016 who have undergone formal remediation between 1 January 2016 and 31 December 2016. Formal remediation is a planned and managed programme of interventions or a single intervention e.g. coaching, retraining which is implemented as a consequence of a concern about a doctor's practice				2
Consultants				2
Staff grade, associate specialist, specialty doctor				0
General practitioner				0
Trainee: doctor on national postgraduate training scheme				0
Doctors with practising privileges who are independent healthcare providers,				0
Temporary or short-term contract holders				0
Other (including all responsible officers, and doctors registered with a locum agency, members of faculties/professional bodies, some management/leadership roles, research, civil service, other employed or contracted doctors, doctors in wholly independent practice, etc) All Designated Bodies				1
TOTALS				3
Other Actions/Interventions				
Local Actions:				
Number of doctors who were suspended/excluded from practice between 1 January and 31 December 2016:				0
Duration of suspension:				0

[1] http://www.england.nhs.uk/revalidation/wp-content/uploads/sites/10/2014/03/rst_gauging_concern_level_2013.pdf

Less than 1 week 1 week to 1 month 1 – 3 months 3 - 6 months 6 - 12 months	
Number of doctors who have had local restrictions placed on their practice in the last 12 months?	2
GMC Actions: Number of doctors who:	
Were referred by the designated body to the GMC between 1 January 2016 and 31 December 2016	1
Underwent or are currently undergoing GMC Fitness to Practice procedures between 1 January and 31 December (includes investigations; see section 10 above)	8
Had conditions placed on their practice by the GMC or undertakings agreed with the GMC between 1 January and 31 December	2
Had their registration/licence suspended by the GMC between1 January and 31 December	0
Were erased from the GMC register between 1 April and 31 March	0
National Clinical Assessment Service actions:	
Number of doctors about whom the National Clinical Advisory Service (NCAS) has been contacted between 1 April and 31 March for advice or for assessment	0
Number of NCAS assessments performed	0

15. Annual Report Appendix B – Audit of revalidation recommendations.

Revalidation recommendations between 1 January 2016to to 31 December 2016	
Recommendations completed on time (within the GMC recommendation window)	2
Late recommendations (completed, but after the GMC recommendation window closed)	0
Missed recommendations (not completed)	0
TOTAL	2
Primary reason for all late/missed recommendations For any late or missed recommendations only one primary reason must be identified	
No responsible officer in post	0
New starter/new prescribed connection established within 2 weeks of revalidation due date	0
New starter/new prescribed connection established more than 2 weeks from revalidation due date	0
Unaware the doctor had a prescribed connection	0
Unaware of the doctor's revalidation due date	0
Administrative error	0
Responsible officer error	0
Inadequate resources or support for the responsible officer role	0
Other	0
Describe other	-
TOTAL [sum of (late) + (missed)]	0