



BILLET D'ÉTAT

WEDNESDAY, 24th OCTOBER, 2018

XXIII
2018

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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 **24th October, 2018** 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

27th September, 2018

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HOME AFFAIRS

APPOINTMENTS TO THE POPULATION EMPLOYMENT ADVISORY PANEL

The States are asked to decide:-

Whether, after consideration of the Policy Letter 'Appointments to the Population Employment Advisory Panel' dated 10 September 2018, they are of the opinion:-

1. To elect as ordinary members of the Panel-
 - a. Mr Antony Victor John Brassell, Mr Timothy Charles Guilbert and Mr Timothy James Nicholas Martin, each for a period of four years, and
 - b. Mr Luke William Wheadon for a period of two years.

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

COMMITTEE FOR HOME AFFAIRS

APPOINTMENTS TO THE POPULATION EMPLOYMENT ADVISORY PANEL

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

10 September, 2018

Dear Sir

1 Executive Summary

1.1 In 2013 (Billet d'État XI), the States of Deliberation agreed to the establishment of an Advisory Panel to provide independent advice in relation to population management policies to the then Policy Council. In 2015 (Billet d'État XIV), the States of Deliberation approved the Constitution of the panel.

1.2 It was further agreed by the States of Deliberation in 2015 that the Panel Members would be appointed by the States of Deliberation on the recommendation of the Policy Council. This responsibility subsequently transferred to the Committee for Home Affairs following the changes to the machinery of government on 1 May 2016.

1.3 In September 2016 (Billet d'État XXIII), the panel was renamed the Population Employment Advisory Panel (the Panel) and the States of Deliberation appointed the original members to the Panel. The Mandate of the PEAP was amended at this States' meeting to provide that:

"The six ordinary members shall [...] service a four year term of office, save that the membership shall be staggered such that three of the ordinary members are replaced every two years. As a consequence, three of the original members will be elected for only a two year term of office."

1.4 Following the election of the original members in September 2016, the first set of three ordinary members have now come to the end of their two year term. These members are Mr Larry Granger, Mr Tony Brassell and Advocate Elaine

Gray. In addition, Mr Kenrick Brooks has stepped down from his position on the Panel so there is an additional position that needs to be filled. Unlike the other appointments, this would be for the remaining two years of the original four year term of office.

1.5 Following consideration of recommendations made by the Panel, the Committee *for* Home Affairs would like to recommend that the following individuals be elected as ordinary members of the Panel:

- a. Mr Antony Victor John Brassell, Mr Timothy Charles Guilbert and Mr Timothy James Nicholas Martin, each for a period of four years, and
- b. Mr Luke William Wheadon for a period of two years.

2 Membership of the Panel

2.1 In the September 2016 policy letter (Billet d'État XXIII) it was stated that:

“Clearly with an ordinary membership of only six people, not every economic sector can be directly represented on the Panel. The former Policy Council’s Population Steering Group therefore consulted the former Commerce and Employment Department on the mix of membership that would ensure the widest representation across those sectors”.

2.2 The sector groupings, and the current Panel members are as follows:

| | |
|--|-------------------|
| Construction/Infrastructure/Utilities | Mr Larry Granger |
| E-Industry and potential new sectors | Mr Tony Brassell |
| Finance and Professional Services | Adv. Elaine Gray |
| Public Sector (including private health and education) | Mr Tim Langlois |
| Service Industries | Mr Mark Edgar |
| Tourism and Hospitality | Mr Kenrick Brooks |

2.3 Following the election of the original members in September 2016, the first set of three ordinary members have now come to the end of their two year term. These members are Mr Larry Granger, Mr Tony Brassell and Advocate Elaine Gray. In addition, Mr Kenrick Brooks has stepped down from his position on the Panel so there is an additional position that needs to be filled. Unlike the other appointments, this would be for the remaining two years of the original four year term of office.

2.4 Nominated Panel members to replace the above are as follows (Appendix 1 provides a summary of each candidate’s employment history and relevant

attributes):

| | | |
|---------------------------------------|------------------|-------------|
| Construction/Infrastructure/Utilities | Mr Tim Guilbert | 4 year term |
| E-Industry and potential new sectors | Mr Tony Brassell | 4 year term |
| Finance and Professional Services | Mr Tim Martin | 4 year term |
| Tourism and Hospitality | Mr Luke Wheadon | 2 year term |

- 2.5 The Committee thanks the individuals named above for agreeing to stand as members of the Panel and it is please to endorse their nomination and to recommend they are elected as ordinary members.

3 Compliance with Rule 4

- 3.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 3.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 3.3 In accordance with Rule 4(3), the Committee confirms that there are no significant financial implications to the States arising from these proposals as Panel members devote their time on a voluntary basis.
- 3.4 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.
- 3.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States on the population management regime.

Yours faithfully

M M Lowe
President

R G Prow
Vice-President

R H Graham, LVO, MBE
M P Leadbeater
V S Oliver

SUMMARY INFORMATION FOR NOMINEES

Mr Antony Victor John Brassell – E-Industry and potential new sectors

After 33 years in the Civil Service, in varied roles including as a Senior Officer within the Commerce & Employment Department's Business Development team, Mr Brassell left to start his own business. He subsequently became an advisor with the Guernsey Enterprise Agency LBG, now known as Startup Guernsey, where he undertakes the role of General Manager.

Following a year as Captain of the L'Ancrese Golf Club, at the end of 2012 Mr Brassell was asked to become Branch Officer of the Institute of Directors Guernsey Branch. In addition to these roles, Mr Brassell is still a web-site builder and developer.

Mr Luke William Wheadon – Tourism and Hospitality

Mr Wheadon has had a varied career within the hospitality sector. From 2008 to 2016 he was the owner and operator of Coffee House Limited, trading as Hojo, while from 2009 to date he has been a Director of Bella Luce limited, since 2012 being an owner and the Managing Director. He is also the founder and Managing Director of Wheadon's Gin.

From 2012 to 2017 he was the Chairman of Chamber of Commerce's sub-group for tourism and hospitality during which time he worked with the then Commerce & Employment Department and Visit Guernsey on the tourism strategy.

Prior to the implementation of the current population regime Mr Wheadon worked with Housing Department staff, providing advice on the needs of the Industry.

Mr Timothy Charles Guilbert – Construction/Infrastructure/Utilities

Mr Guilbert has a wide range of knowledge and experience, particularly of modern building techniques and specialist processes involved in Telecommunications related buildings, established over a varied career.

He has spent the last 20 years in the Guernsey construction industry both in his own business and for companies such as RG Philips and Rihoy & Son Limited. Since 2012 he has been the Managing Director and owner of Consult & Build Limited which is a consultancy business providing project management and construction consultancy services to the construction industry.

He is a Fellow of Chartered Management Institute, Chartered Construction Manager and Chartered Manager.

Mr Guilbert has served as Douzaineer, Senior Constable, Constable and Procureur of St Martin's Parish.

Mr Timothy James Nicholas Martin – Finance and Professional Services

Mr Martin, a Chartered member of the Chartered Institute for Securities and Investments has in excess of 30 years' experience in the financial services industry. He started his career in 1985 with Barings Asset Management where he spent 10 years in middle and back office operations. Since 1995, he has held project management and operationally focused positions with leading institutions such as Royal Bank of Scotland, Lloyds TSB Securities Services, State Street Bank & Trust and Royal Bank of Canada.

In 2013, Mr Martin became Managing Director of Oppenheim & Co Limited, a licensed Investment Management firm. He is the current Chairman of the Guernsey Investment Managers and Stockbrokers Association.

Mr Martin has previously worked in Banking, Fund Management and the Fiduciary Sector, he has just completed the Society of Trust and Estate Practitioners (STEP) Diploma and is currently applying for full membership of STEP.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**ELECTION OF ORDINARY MEMBERS OF THE GUERNSEY FINANCIAL SERVICES
COMMISSION**

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 10th September 2018, of the Policy & Resources Committee, they are of the opinion:-

1. To elect Mrs. Wendy Dorey as an ordinary member of the Guernsey Financial Services Commission for a three year term with effect from the 1st November 2018

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 AND RESOURCES COMMITTEE

ELECTION OF ORDINARY MEMBERS OF THE GUERNSEY FINANCIAL SERVICES COMMISSION

Presiding Officer
Royal Court
St Peter Port
Guernsey

10th September 2018

Dear Sir

1. Executive Summary

1.1 Mrs. Wendy Dorey term as an ordinary member of the Guernsey Financial Services Commission (GFSC) comes to an end on 31st October 2018.

1.2 In order to seek to ensure continuity of experience this report proposes the election of Mrs. Wendy Dorey as an ordinary member of the GFSC for a three year term with effect from 1st November 2018.

2. Report

Mrs Wendy Dorey

2.1 Mrs. Wendy Dorey has been a commissioner since 1st November 2015. She has spent nearly twenty years in the financial services industry in the UK, France and Guernsey and has considerable experience in dealing with external regulators and strong technical fund knowledge across multiple asset classes.

2.2 Before moving to the island in 2010, Mrs. Dorey occupied senior posts at M&G Asset Management in London where she was responsible for internal audit reporting, external risk reporting to the Financial Services Authority and embedding new "Treating Customers Fairly" processes. She has had various other roles such as sitting on the liquidity management boards for the Property and Leveraged Finance Funds. In November 2017, she was also appointed as a Non-Executive Director of Schroders (C.I) Limited.

2.3 Mrs. Dorey offers extensive skills and knowledge and her experience will enable her to contribute to the overall governance and strategic direction of the GFSC.

3. Conclusion

3.1 The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, specifies that ordinary members of the Commission should “be persons having knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick”.

3.2 Based on their significant professional experience, the Policy & Resources Committee are of the opinion that the current Commissioners meet the criteria of the Law and are pleased to nominate Mrs. Wendy Dorey for re-appointment as an ordinary member of the GFSC.

4. Recommendation

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

1. To elect Mrs. Wendy Dorey as an ordinary member of the Guernsey Financial Services Commission for a three year term with effect from 1st November 2018.

5. Proposition

5.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.

5.2 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 have the unanimous support of the Policy and Resource Committee.

5.3 In accordance with Rule 4(5), the Committee has liaised with the commission as set out in the policy letter.

5.4 Also in accordance with Rule 4(5), the Propositions relate to the duties of the Committee policies in accordance with the Financial Services Commission (Bailiwick of Guernsey) Law, 1987.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard

J P Le Tocq
T J Stephens

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

PLANNING PANEL - APPOINTMENT OF AN ORDINARY MEMBER

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Planning Panel – Appointment of an Ordinary Member” dated 3rd September 2018, they are of the opinion:-

To elect Mr. George Jennings as an Ordinary Member of the Planning Panel, in accordance with section 86 of the Land Planning and Development (Guernsey) Law, 2005, with effect from 1st November 2018 to hold office until 31st March 2024.

The above Proposition has 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.

COMMITTEE *for the* ENVIRONMENT & INFRASTRUCTURE

PLANNING PANEL – APPOINTMENT OF AN ORDINARY MEMBER

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

3 September 2018

Dear Sir

1. Executive Summary

1.1 The purpose of this Policy Letter is to ask the States to:

- a) Elect Mr George Jennings as an Ordinary Member of the Planning Panel (“the Panel”); and
- b) Note the resignations of Mrs Sheelagh Evans and Ms Julia White as Ordinary Members of the Panel.

2. Background

2.1 The Land Planning and Development (Guernsey) Law, 2005 (“the 2005 Law”) came into force on 6th April 2009. Section 86 of the 2005 Law explains the requirements for establishing the Planning Panel:

Establishment of Planning Panel.

86. (1) *The States shall, on the recommendation of the Committee for the Environment & Infrastructure, draw up and maintain a panel to be called the Planning Panel which shall consist of nine independent persons and from which the members of the Planning Tribunal shall, from time to time, be appointed.*

(2) *A recommendation of the Committee for the Environment & Infrastructure under subsection (1) may be amended by resolution of the States to the intent that persons other than those recommended by the Committee for the Environment & Infrastructure may be elected to the Planning Panel.*

- (3) *Of the members of the Planning Panel –*
 - (a) *not less than four shall be permanently resident within the Channel Islands,*
 - (b) *not less than two, who shall be designated by States’ resolution as the “**professional members**”, shall be persons with such qualifications and experience in planning matters as in the opinion of the States is necessary for the hearing and determination of appeals to the Planning Tribunal,*
 - (c) *one shall be designated by States’ resolution as the Chairman of the Planning Panel, and*
 - (d) *one shall be designated by States’ resolution as the Deputy Chairman thereof.*
- (4) *The members of the Planning Panel shall, subject to the provisions of subsection (5), hold office for a term of six years, and a person may be elected for more than one term of office.*

Such appointments are made by the States following a recommendation of the Committee *for the Environment & Infrastructure*.

2.2 Under the provisions of Section 4 of the Land Planning and Development (Appeals) Ordinance, 2007, the following individuals are precluded from serving as a member of the Panel:

- (a) a Member of the States of Deliberation within the meaning of the Reform (Guernsey) Law, 1948;
- (b) an employee of the States who is employed by the States within the Development & Planning Authority, a member of the Authority or a person who carries out work for, or provides services to the Authority in relation to any functions of the Authority under the 2005 Law or the repealed enactments¹;
- (d) a person who holds appointment to any judicial office in Guernsey; or
- (e) any person who has been such a person at any time within the period of two years ending on the date of the proposed election.

2.3 In April 2018, Ms White resigned from the Panel and in August 2018, Mrs Evans also resigned.

¹ This refers to the previous planning legislation. The reference was relevant when the current legislation first came into force as work was being carried out under the former legislation as part of transitional arrangements.

- 2.4 The Committee *for the* Environment & Infrastructure advertised for new Panel members in June 2018. The advertisement was placed in partnership with the Committee *for* Employment & Social Security which was seeking to appoint new members to the Housing Appeals Tribunal.
- 2.5 The advertisement attracted a number of candidates and the applications were assessed against the key criteria for Tribunal members and the applicants' knowledge of planning matters. Appendix 1 sets out the key criteria the candidates were scored against.

3. Resignations

- 3.1 The Committee wishes to record its thanks to Mrs Evans and Ms White for their hard work, commitment and contributions as members of the Panel. The Committee notes that both have been involved with the Panel since it was established in April 2009 and have helped contribute to its development and to ensuring that planning appeals are determined fairly and openly.
- 3.2 The Committee recognises the important contribution members of the public willing to serve on appeal tribunals make to the wider administration of justice in Guernsey and help to ensure that appeal tribunals are fair and accessible to those making appeals.

4. Election of Planning Panel Member

- 4.1 The Committee agreed to recommend to the States of Deliberation the election of Mr George Jennings as an Ordinary member of the Panel with effect from 1st November 2018 to hold office until 31st March 2024.
- 4.2 Mr Jennings retired as Guernsey Post's Operations Director in early 2016, having been with the company for 31 years. Mr Jennings was awarded a BSc (Hons) in Applied Social Science (Labour Studies) by Southampton University in 2006.
- 4.3 Mr Jennings was appointed to the Employment and Discrimination Tribunal Panel in 2009 and is also a member of the Employees Panel established under the Industrial Disputes and Conditions of Employment (Guernsey) Law, 1993.

5. Conclusion

- 5.1 The Committee recommends to the States the election of Mr George Jennings as an Ordinary Member of the Planning Panel for a six-year term. The Committee thanks Mrs Sheelagh Evans and Ms Julia White for their service on the Panel.

5.2 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 have the unanimous support of the Committee *for the Environment & Infrastructure*.

Yours faithfully

B L Brehaut
President

M H Dorey
Vice-President

H L de Sausmarez

S T Hansmann Rouxel

S L Langlois

APPENDIX 1

The Planning Tribunal is an independent judicial body and therefore approaches all its deliberations in accordance with the six principles known as the Bangalore Principles of Judicial Conduct endorsed at the 59th session of the UN Human Rights Commission in April 2003. These principles are:

- (i) Judicial independence is a prerequisite to the rule of law and a fundamental guarantee of a fair trial. A Tribunal member shall therefore uphold and exemplify judicial independence in both its individual and institutional aspects.
- (ii) Impartiality is essential to the proper discharge of the judicial office.
- (iii) Integrity is essential to the proper discharge of the judicial office.
- (iv) Propriety, and the appearance of propriety, are essential to the performance of all of the activities of a Tribunal member.
- (v) Ensuring equality of treatment to all before the courts is essential to the due performance of the judicial office.
- (vi) Competence and diligence are prerequisites to the due performance of judicial office.

The applicants for the vacancy on the Planning Panel were assessed against the following key criteria and these reflect the principles set out above:

- 1. To be able to act with integrity and have independence of mind.
- 2. Work independently and as part of a team.
- 3. Excellent communication and interpersonal skills when dealing with people from a wide range of backgrounds.
- 4. Absorb, interpret and question complex information, including written material and verbal submissions, and identify the salient points.
- 5. Readily read situations and respond appropriately.
- 6. Play an effective role by listening, persuading and showing respect for the views of others, whilst also presenting one's own point of view.
- 7. Challenge the views of others constructively and without becoming confrontational.
- 8. Weigh all the facts relating to a matter without being unduly swayed by any particular point of view or set of circumstances and then reach a balanced decision.
- 9. Take balanced, open-minded and unbiased decisions whilst also taken into account the provisions of the relevant legislation and previous Tribunal decisions.



Committee *for the*
Environment & Infrastructure

Raymond Falla House
Longue Rue
St. Martin
Guernsey
GY4 6HG

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St. Peter Port
Guernsey
GY1 1FH

13 September 2018

Dear Deputy St Pier

Policy Letter “Planning Panel – Appointment of an Ordinary Member”

In accordance with Rule 4(1) of the Rules of Procedure for the States of Deliberation and their Committees, it is requested that the Policy Letter entitled “Planning Panel – Appointment of an Ordinary Member” be considered by the States of Deliberation at its meeting on Wednesday 24th October 2018.

The request is made to ensure that the Planning Panel’s new ordinary member is available to sit as a member of a Planning Tribunal from 1st November 2018.

Yours sincerely

B L Brehaut

President
Committee *for the* Environment & Infrastructure

ORDINANCE LAID BEFORE THE STATES

THE REPUBLIC OF MALDIVES (RESTRICTIVE MEASURES) (GUERNSEY) ORDINANCE, 2018

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Republic of Maldives (Restrictive Measures) (Guernsey) Ordinance, 2018", made by the Policy & Resources Committee on the 20th July, 2018, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994. The Ordinance gives effect to EU Regulation No. 2018/1001 of the 16th July, 2018 concerning restrictive measures against the Republic of Maldives.

The Ordinance was made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948, and came into force on the 20th July, 2018. Under the proviso to Article 66A(1) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 28 of 2018

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO.4) REGULATIONS, 2018

In pursuance of sections 10 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.4) Regulations, 2018 made by the Committee *for* Employment & Social Security on 26th June 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit and remove two forms of a drug. An alternative form of the same drug is substituted.

These Regulations came into operation on 26th June, 2018.

No. 29 of 2018

THE INCOME SUPPORT (GUERNSEY) (AMENDMENT) REGULATIONS, 2018

In pursuance of sections 6A(2)(c) and 15B of the Income Support (Guernsey) Law, 1971, the Income Support (Guernsey) (Amendment) Regulations 2018, made by the Committee *for* Employment & Social Security on 4th July, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations further amend the Income Support (Guernsey) Regulations, 2014 so as to make it a condition of the payment of reasonable medical expenses, under section 6A of the Income Support (Guernsey) Law, 1971, that the capital resources of the applicant do not exceed the limit set out in respect of that person in the new Schedule 2 to the Regulations. This aligns with the policy currently applied. The Committee intend to address the policy in its annual benefit uprating report.

These Regulations come into force on the 6th day of July, 2018.

No. 30 of 2018

**THE ELECTORAL SYSTEM REFERENDUM (MISCELLANEOUS PROVISIONS) REGULATIONS,
2018**

In pursuance of section 30(1)(c) of the Electoral System Referendum (Guernsey) Law, 2018, the Electoral System Referendum (Miscellaneous Provisions) Regulations, 2018, made by the States' Assembly & Constitution Committee on 5th July 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, made by the States' Assembly & Constitution Committee, amend Schedule 3 (Application of Provisions of Reform (Guernsey) Law, 1948 and Reform (Amendment) (Guernsey) Law, 1972) to the Electoral System Referendum (Guernsey) Law, 2018 ("the Law"). The main effect is to make clear that donations to campaign groups are not referendum expenses within the meaning of the Law and so do not come within the £100 limit on referendum expenses incurred by or on behalf of any individual or body (except a campaign group, in respect of which a different, higher limit applies) set out in section 17 of the Law. They came into force on the day they were made.

These Regulations came into force on 5th July, 2018.

No. 35 of 2018

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO.5) REGULATIONS, 2018**

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.5) Regulations, 2018 made by the Committee for Employment & Social Security on 31st July, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit and remove one drug from that list.

These Regulations came into operation on 1st day of August, 2018.

No. 36 of 2018

THE MISUSE OF DRUGS (MODIFICATION NO. 3) ORDER, 2018

In pursuance of section 30(3) of the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974, as amended, "The Misuse of Drugs (Modification No. 3) Order, 2018" made by the Committee *for* Health & Social Care on the 4th July 2018 is laid before the States.

EXPLANATORY NOTE

This Order amends the Misuse of Drugs (Bailiwick of Guernsey) Ordinance, 1997 ("the Ordinance") as recently amended by the Misuse of Drugs (Modification) Order, 2018.

The Misuse of Drugs (Modification) Order, 2018 exempted low-cannabinol preparations from various prohibitions in the Misuse of Drugs (Bailiwick of Guernsey) Law, 1974 relating to import, export, possession, supply and administration of a controlled drug. However, it also imposed a mandatory requirement for all such preparations to be certified by an official certificate of analysis, in order to be treated as falling within the exemption.

This Order came into force on the 1st August, 2018.

No. 37 of 2018

THE AIR TRANSPORT LICENSING (EXEMPTION OF NON-ESSENTIAL ROUTES) (GUERNSEY) REGULATIONS, 2018

In pursuance of section 24(3) of the Air Transport Licensing (Guernsey) Law, 1995, the Air Transport Licensing (Exemption of Non-Essential Routes) (Guernsey) Regulations, 2018, made by the Committee *for* Economic Development on 16th August, 2018, are laid before the States.

EXPLANATORY NOTE

These regulations exempt from the licensing requirements of the Air Transport Licensing (Guernsey) Law, 1995 all air services on non-essential routes between Guernsey and any of the other British Islands, with the effect that only essential i.e. lifeline routes, as defined in these regulations, fall within the ambit of the Law

These Regulations will come into force on the 3rd day of September, 2018.

No. 40 of 2018

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO.6) REGULATIONS, 2018**

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.6) Regulations, 2018, made by the Committee *for* Employment & Social Security on 21st August, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations add two drugs to the list of drugs that may be prescribed as pharmaceutical benefit.

These Regulations came into force on the 22nd day of August, 2018.

No. 43 of 2018

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT)
(AMENDMENT NO.7) REGULATIONS, 2018**

In pursuance of section 35 of the Health Service (Benefit) Law, 1990, the Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No.7) Regulations, 2018 made by the Committee *for* Employment & Social Security on 4th September, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations add a number of drugs to the list of drugs that may be prescribed as pharmaceutical benefit and substitute three drugs on that list with other forms of the same drug.

These Regulations come into force on the 5th September, 2018.

The full text of the statutory instruments and other legislation included in this document can be found at: <http://www.guernseylegalresources.gg/article/163343/2018>

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

PROJET DE LOI

Entitled

**THE EUROPEAN UNION (AMENDMENT OF LEGISLATION)
(BAILIWICK OF GUERNSEY) LAW, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Projet de Loi entitled "The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018", and to authorise the Bailiff to present a most humble petition to Her Majesty praying for Her Royal Sanction thereto.

This proposition has 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.

EXPLANATORY MEMORANDUM

The European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 (the "Brexit Law"), approved by the States of Deliberation on the 6th June, 2018, preserves in domestic law the directly applicable European legislation which had effect in the Bailiwick immediately before exit day ("Preserved EU law"). The Brexit Law provides powers for Preserved EU law to be amended and repealed by regulations, but only where it is necessary and expedient to do so in consequence of the repeal of the European Communities Law, 1973 or otherwise in consequence of Brexit.

Section 1 of the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018 (the "Amendment of Legislation Law") permits the repeal or amendment of Preserved EU law for broader policy purposes by Ordinance of the States of Deliberation (in relation to Guernsey and the Bailiwick as a whole) and the States of Alderney and the Chief Pleas of Sark (in relation to their respective islands). In addition, section 1 permits the repeal or amendment of any Ordinance made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 for broader policy purposes by Ordinance.

Section 2 of the Amendment of Legislation Law sets out examples of the matters in relation to which Ordinances may make provision, including customs and trade, financial services, agriculture and fisheries.

PROJET DE LOI

ENTITLED

The European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018

THE STATES, in pursuance of their Resolution of the 8th day of November, 2017^a, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Bailiwick of Guernsey.

General power to make Ordinances amending EU-related law.

1. (1) The States may by Ordinance -
 - (a) provide for the disapplication of Preserved EU law,
 - (b) provide that any Preserved EU law shall have effect subject to such exceptions, adaptations and modifications as may be prescribed by the Ordinance, and
 - (c) amend or repeal any Ordinance made under the Implementation Law,

^a Article III of Billet d'État No. XXI of 2017.

for any purpose.

(2) The powers conferred by subsection (1) are in addition to, and not in derogation from, the powers conferred by the Implementation Law.

(3) For the avoidance of doubt, subsection (1) does not displace the presumption that a statutory power to –

(a) prescribe exceptions, adaptations or modifications in respect of, or

(b) amend,

an enactment does not include power to prescribe exceptions, adaptations or modifications, or make amendments, that are outwith the scope of that enactment.

Examples of specific matters for which Ordinances may make provision.

2. An Ordinance under section 1 may, without limitation and by way of example, make provision in relation to the following matters -

(a) customs and trade,

(b) financial services,

(c) transport,

(d) energy,

(e) agriculture and horticulture, and

- (f) fisheries.

General provisions as to Ordinances.

- 3. (1) An Ordinance under this Law -

- (a) may be amended or repealed by a subsequent Ordinance hereunder,

- (b) may contain such consequential, incidental, supplementary, transitional, savings and other ancillary provisions as may appear to be necessary or expedient, including (without limitation) -

- (i) provision as to the creation and punishment of offences in respect of contraventions of the Ordinance and as to the creation of new duties, obligations, liabilities, remedies, penalties, sanctions and other consequences (but subject to the provisions of subsection (2)),

- (ii) provision amending, or applying exceptions, adaptations and modifications to, any of the provisions of this Law or any other enactment,

- (iii) provision repealing, replacing, amending, extending, adapting, modifying or disapplying any rule of customary or common law.

(2) The power conferred by subsection (1)(b)(i) does not include power -

- (a) to provide for offences to be triable only on indictment,
- (b) to authorise the imposition, on summary conviction of an offence, of a term of imprisonment or a fine exceeding the limits of jurisdiction for the time being imposed on the Magistrate's Court by section 9 of the Magistrate's Court (Guernsey) Law, 2008^b, or
- (c) to authorise the imposition, on conviction on indictment of any offence, of a term of imprisonment exceeding two years.

(3) Any power conferred by this Law to make an Ordinance may be exercised -

- (a) in relation to all cases to which the power extends, or in relation to all those cases subject to specified exceptions, or in relation to any specified cases or classes of cases, and
- (b) so as to make, as respects the cases in relation to which it is exercised -

^b Order in Council No. XVIII of 2009; amended by Ordinance No. XXII of 2009; No. IX of 2016.

- (i) the full provision to which the power extends, or any lesser provision (whether by way of exception or otherwise),
- (ii) the same provision for all cases, or different provision for different cases or classes of cases, or different provision for the same case or class of case for different purposes,
- (iii) any such provision either unconditionally or subject to any prescribed conditions.

(4) Without prejudice to the generality of the foregoing provisions of this Law, an Ordinance under this Law -

- (a) may empower any committee of the States of Guernsey, the States of Alderney or the Chief Pleas of Sark, and any other body (including, without limitation, the Royal Court and any other court of the Bailiwick), to make or issue orders, rules, regulations, codes or guidance, for the purposes of this Law or any Ordinance or regulations made under it,
- (b) may provide that no liability shall be incurred by any specified person or body in respect of anything done or omitted to be done in the discharge or purported discharge of any of their functions under the Ordinance unless the thing is done or omitted to be done in bad faith (but may not prevent an award of

damages in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000^c),

- (c) may make provision for the purpose of dealing with matters arising out of or related to any EU provision or Preserved EU law,
- (d) may direct that any EU provision, Preserved EU law or any enactment shall extend to or otherwise have effect in the part of the Bailiwick to which the Ordinance applies with such exceptions, adaptations and modifications as may be specified in the Ordinance,
- (e) without prejudice to the provisions of paragraph (d), may make provision by reference to, and may adopt or incorporate (by reference, annexation or otherwise), any provision, law or enactment described in paragraph (d), which provision shall (subject to any exceptions, adaptations and modifications specified in the Ordinance) thereupon have the same force and effect as an Ordinance under this Law,
- (f) may make provision under the powers conferred by this Law notwithstanding the provisions of any

^c Order in Council No. XIV of 2000; amended by Order in Council No. I of 2005; Ordinance No. XXXVII of 2001; No. XXXIII of 2003; No. XX of 2015; No. IX of 2016; G.S.I. No. 27 of 2006.

enactment for the time being in force,

- (g) may, in the case of an Ordinance of the States of Deliberation, specify penalties, in relation to offences tried before the Court of Alderney or the Court of the Seneschal, exceeding the limits of jurisdiction for the time being imposed on those courts by section 13 of the Government of Alderney Law, 2004^d or, as the case may be, section 11 of the Reform (Sark) Law, 2008^e,
- (h) where it is an Ordinance of the States of Alderney or the Chief Pleas of Sark, may not specify a penalty in respect of an offence triable summarily or on indictment which exceeds the maximum penalty specified by Ordinance of the States of Deliberation in respect of that offence when tried summarily or, as the case may be, on indictment or the limits of jurisdiction for the time being imposed upon the Court of Alderney by section 13 of the Government of Alderney Law, 2004 or, as the case may be, the Court of the Seneschal by section 11 of the Reform (Sark) Law, 2008, whichever is greater, and

^d Order in Council No. III of 2005; amended by No. XXII of 2010; No. XI of 2012; No. V of 2014; Alderney Ordinance No. IX of 2016.

^e Order in Council No. V of 2008; amended by Nos. VI and XXVII of 2008; No. XIV of 2010; No. XII of 2011; No. XI of 2014; No. IX of 2016; No. II of 2018; Sark Ordinance No. II and VI of 2015; No. XI of 2017.

- (i) without prejudice to the generality of the foregoing, may make any such provision of any such extent as might be made by Projet de Loi other than any provision which imposes or increases taxation or which takes effect from a date earlier than that of the making of the Ordinance.

(5) For the purposes of paragraphs (d) and (e) of subsection (4) only, "**enactment**" includes an Act of Parliament and an Order in Council.

(6) Before a committee of the States of Guernsey recommends that the States of Deliberation agrees to make an Ordinance under this Law having effect in Alderney or Sark, the committee must consult –

- (a) in the case of an Ordinance having effect in Alderney, the Alderney Committee, and
- (b) in the case of an Ordinance having effect in Sark, the Sark Committee,

in relation to the terms of the proposed Ordinance; but a failure to comply with this subsection does not invalidate any Ordinance made under this Law.

(7) An Ordinance made under this Law by the States of Deliberation applying in Alderney or Sark ceases to have effect -

- (a) in Alderney if, within the period of four months immediately following the approval date, the States of

Alderney resolve to disapprove its application to Alderney, and

- (b) in Sark if, at the first or second meeting of the Chief Pleas of Sark following the approval date, the Chief Pleas resolve to disapprove its application to Sark.

(8) If the States of Alderney or the Chief Pleas of Sark resolve to disapprove the application of an Ordinance in accordance with subsection (7), the Ordinance ceases to have effect in Alderney or (as the case may be) Sark, but without prejudice to -

- (a) anything done under the Ordinance in Alderney or (as the case may be) Sark, or
- (b) the making of a new Ordinance having effect in Alderney or (as the case may be) Sark.

(9) In subsection (7), "**approval date**", in relation to an Ordinance, means the date of its approval by the States of Deliberation.

Interpretation.

4. In this Law, unless the context otherwise requires -

"**the Alderney Committee**" means the Policy and Finance Committee of the States of Alderney or such other Committee as the States of Alderney may appoint by Ordinance for the purposes of this Law,

"committee" of the States of Guernsey, States of Alderney or Chief Pleas of Sark means any committee, council, department, authority, board or like body thereof, however called,

"EU provision" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"the Implementation Law" means the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^f,

"Preserved EU law" has the meaning given in the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018,

"the Sark Committee" means the Policy and Performance Committee of the Chief Pleas of Sark or such other Committee as the Chief Pleas of Sark may appoint by Ordinance for the purposes of this Law, and

"the States" means -

- (a) in relation to an Ordinance having effect in Alderney only, the States of Alderney,
- (b) in relation to an Ordinance having effect in Sark only, the Chief Pleas of Sark, and

^f Ordres en Conseil Vol. XXXV (1), p. 65; amended by Order in Council No. * of 2018.

(c) in any other case, the States of Deliberation.

Citation.

5. This Law may be cited as the European Union (Amendment of Legislation) (Bailiwick of Guernsey) Law, 2018.

Commencement.

6. This Law shall come into force on the day appointed by Ordinance of the States of Deliberation; and different days may be appointed for different provisions of this Law or for different purposes.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE PAROCHIAL COLLECTION OF WASTE (GUERNSEY) ORDINANCE, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Parochial Collection of Waste (Guernsey) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance makes provision in relation to the assessment and levying of the Parish waste rate by the Douzaines under the Parochial Collection of Waste (Guernsey) Law, 2015 ("the Law") and as to the level of the civil fixed penalty payable by the occupier of premises for failing to comply with requirements in relation to the putting out of waste (including black bag waste and kerbside recycling) for collection under the Law.

Section 5 of the Law imposes a duty on a Douzaine to levy the Parish waste rate in respect of dwelling houses, lodging houses and business premises, as defined under the Law, admitted into the Parish waste collection and transfer service. Section 1 of the Ordinance provides for the Parish waste rate to be levied on the owners of dwelling houses and lodging houses and the owners of businesses which operate from business premises admitted into the Parish waste collection and transfer service.

Sections 2 to 4 provide for the basis of calculation of the Parish waste rate for each year and the date from which it may be levied and provide that the rate may not be levied by a Douzaine unless authorised to do so by a Royal Court Order. The main differences from the current Parochial Collection of Refuse (Guernsey) Law, 2001 ("2001 Law") are that only the cost of collection and transfer of waste to sites (not disposal) are included in calculating the rate and the total cost is then divided equally between all premises and not assessed on a TRP basis (i.e. on the number of assessable units of the property in accordance with the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007).

Sections 5 to 8 set out the provisions relating to payment, collection and recovery of the Parish waste rate. Sections 5(1) and 8 are similar to provisions in the 2001 Law in that it is the owner of the dwelling house or lodging house who is liable to pay the Parish waste rate and from whom the Douzaine may recover any sums not paid, but

those sums may be recovered by an owner as a civil debt from the occupiers of the premises. Also, there is provision for owners to recover from subsequent owners of dwelling houses, lodging houses and businesses where ownership of the same changes during a year.

The remainder of section 5 and sections 6 and 7 provide as to when accounts may be served, liability to pay and the time within which payment must be made including express provision for instalment payments. Section 6 is a new provision allowing for a penalty payment where an account or instalment is not paid within 30 days. This provision is consistent with the penalty provision in Article 6 of the *Ordonnance relative aux Taxes Paroissiales, 1931* payable in respect of the owner's rate for which most parishes charge in the same invoice as the current refuse rate.

Section 9 provides the level of the civil fixed penalty payable by the occupier of premises for failing to comply with requirements in relation to the putting out of waste for collection under the Law; this is £40 if payment is made within 14 days starting from the date of the service of the relevant fixed penalty notice, and £60 if payment is made later than that.

The Ordinance is to come into force on 1st January, 2019.

The Parochial Collection of Waste (Guernsey)

Ordinance, 2018

THE STATES, in pursuance of their Resolutions of the 12th February, 2014^a, the 10th December, 2014^b and the 14th December, 2017^c, and in exercise of the powers conferred on them by sections 5(2) and (3), 12 and 19 of the Parochial Collection of Waste (Guernsey) Law, 2015^d and of all other powers enabling them in that behalf, hereby order:-

PART I

PARISH WASTE RATE

Levying of Parish waste rate.

1. The Parish waste rate must be levied by the Douzaine –
 - (a) in respect of dwelling houses and lodging houses in the Parish, on the owner of the dwelling house or lodging house, and
 - (b) in respect of business premises admitted into the Parish waste collection and transfer service under section 2 of the Law, on the owner of the business

^a Billet d'État No. II of 2014.

^b Article X of Billet d'État No. XXVI of 2014.

^c Article XIII of Billet d'État No. XXIV of 2017.

^d Order in Council No. XV of 2015 as amended by Ordinance No. IX of 2016.

which operates from the business premises,

as at the applicable date.

Basis on which Parish waste rate is to be calculated.

2. (1) A Douzaine must calculate the Parish waste rate by –
 - (a) calculating the projected total cost to the Douzaine in the year to which the rate relates of –
 - (i) making arrangements for the regular collection of waste from –
 - (A) dwelling houses and lodging houses in the Parish, and
 - (B) business premises admitted into the Parish waste collection and transfer service,

and the efficient transfer of such waste to specified sites in accordance with sections 1 and 2 of the Law, and
 - (ii) any related costs of making such arrangements including administrative and other incidental costs connected with such arrangements, and

- (b) dividing the total projected cost under paragraph (a) equally between all dwelling houses, lodging houses and business premises in respect of which the rate must be levied under section 5(1) of the Law.

(2) The cost of making arrangements referred to in subsection (1) must include in particular the costs incurred, or estimated costs to be incurred, under any contract entered into by the Douzaine for the collection and transfer of waste to meet its duties under section 1 and 2 of the Law.

(3) The amount of the Parish waste rate calculated under this section must be approved by a parish meeting prior to the Constables of a Parish making an application to the Royal Court under section 4 for permission to levy the Parish waste rate for that year.

Applicable date for Parish waste rate.

3. The Parish waste rate may be levied on and from –

- (a) the first day of the year to which it relates, or
- (b) the day of the granting by the Royal Court of an order under section 4 authorising the levy of the rate,

whichever is later ("**the applicable date**").

Application to Royal Court.

4. (1) The Douzaine must not levy a Parish waste rate in relation to any year unless authorised to do so by an order of the Royal Court but, for the avoidance of doubt, once such an order is granted, the rate may be levied in respect

of any period of the year in question falling before the date of granting of such order.

(2) An application for an order under subsection (1) must be made by the Constables of the Parish and must specify the amount it is proposed to levy as the Parish waste rate for the year calculated in accordance with section 2.

(3) Notice of the date and time on which it is proposed to make an application for an order under subsection (1) must be published by the Constables of the Parish –

- (a) in La Gazette Officielle, or
- (b) in such other manner as they think fit to bring the same to the attention of those likely to be affected.

(4) The owner of –

- (a) a dwelling house or lodging house in the Parish, or
- (b) a business operating from business premises which are admitted into the Parish waste collection and transfer service,

may oppose an application for an order under subsection (1).

Payment and collection of Parish waste rate.

5. (1) The Parish waste rate is payable by the person who is the owner of the dwelling house, lodging house or business, as the case may be,

referred to in section 1 as at the applicable date.

(2) Accounts specifying the matters set out in subsection (3) may be served by the Constables of a Parish on behalf of themselves and the Douzaine –

- (a) at any time on or after the applicable date in the year in question, and
- (b) annually, twice-yearly or quarterly as the Constables think fit.

(3) Subject to the provisions of this Ordinance, liability to pay the Parish waste rate, or part or it, in respect of any premises arises upon service by the Constables of the Parish on the owner specified in subsection (1) of an account specifying –

- (a) where accounts are served annually, the amount of the Parish waste rate due for the year in question, or
- (b) where accounts are served twice-yearly or quarterly, the amount of the Parish waste rate due for the half-year or quarter of the year in question.

(4) The Parish waste rate, or part of it, for which an account has been served by the Constables of the Parish in respect of the premises, or an instalment payment of the same, is payable –

- (a) within 30 days starting from -

(i) the date of issue of the account, or

(ii) in the case of an instalment payment, the date for payment of the relevant instalment specified in the account or otherwise notified to the owner, and

(b) by such means as the Constables may reasonably specify in the account.

(5) In any proceedings for the recovery of a Parish waste rate, or part of it, a copy of an account produced by the Constables of the Parish (whether from data stored electronically or other means) is evidence of the contents of the account.

(6) In subsections (4) and (5), "**the account**" includes any information provided with the account.

Penalty for late payment of Parish waste rate.

6. Where the Parish waste rate, or part of it, for which an account has been served, or an instalment payment of the same, is not paid within the 30 day period specified under section 5(4), the Constables of the Parish may, in their absolute discretion, levy whichever of the following is the greater–

(a) a flat rate penalty of £25 for each part of a month in which the amount due is not paid, or

(b) interest on the sum due at the rate of 10% per annum calculated from the date on which the payment

becomes due until the date on which the payment is made.

Recovery of Parish waste rate and penalty by the Douzaine and liability for the same.

7. (1) The Parish waste rate, or part of it, in respect of any premises, or an instalment payment of the same, not paid within the 30 day period specified under section 5(4), together with any penalty payable in respect of the rate under section 6 is recoverable from the owner of the dwelling house or lodging house or the owner of the business specified in section 5(1), as the case may be, as a civil debt due to the Douzaine.

(2) If two or more persons are the owners of a dwelling house, lodging house or a business as specified in section 5(1), as the case may be, their liability for the Parish waste rate and any penalty in respect of the same is joint and several.

Recovery of Parish waste rate by the owner.

8. (1) The Parish waste rate levied in respect of a dwelling house or a lodging house on the owner may be recoverable by the owner, as at the applicable date, as a civil debt from the occupiers of that dwelling house or lodging house in equal shares.

(2) An owner of a dwelling house, lodging house or business who -

(a) is liable under section 5(1) for the payment of the Parish waste rate in respect of any year because they are the owner as at the applicable date, and

- (b) subsequently during that year ceases to own the dwelling house, lodging house or business operating from the business premises, as the case may be,

is entitled to recover from the subsequent owner of the dwelling house, lodging house or business operating from the business premises, as the case may be, such part of the Parish waste rate as bears the same proportion to the whole of the Parish waste rate in respect of the dwelling house, lodging house or business premises for that year as the unexpired portion of that year bears to the whole of that year.

PART II

AMOUNT OF CIVIL FIXED PENALTY

Amount of civil fixed penalty.

9. (1) The amount of the civil fixed penalty payable by an occupier of premises to a Douzaine under a civil fixed penalty notice served under section 11 of the Law in respect of contraventions of section 9 of the Law (duties on occupiers of premises) is –

- (a) £40 where payment of the civil fixed penalty is made in full within 14 days starting from the date of service of the civil fixed penalty notice, or
- (b) £60 where payment of the civil fixed penalty is made at any time after the expiry of the period specified in paragraph (a).

- (2) For the avoidance of doubt, no additional daily penalty or

interest for late payment of the civil fixed penalty is provided for under this Ordinance.

PART III GENERAL PROVISIONS

Interpretation.

10. (1) In this Ordinance, unless the context requires otherwise –

"**the applicable date**": see section 3,

"**the Douzaine**" means the Douzaine of a Parish and related expressions are construed accordingly,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**the Law**" means the Parochial Collection of Waste (Guernsey) Law, 2015,

"**owner**", in relation to any real property, means -

- (a) where the property is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour the order has been made,
- (b) where the property is not the subject of such saisie

proceedings but is the subject of a right of usufruit or a droit d'habitation, the usufructier or (as the case may be) the habitant,

(c) where the property is not the subject of such saisie proceedings or right of usufruit or droit d'habitation -

(i) where the property is held in trust, the trustees,
or

(ii) where the property is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, an estate of inheritance therein,

and related expressions are construed accordingly,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"year" means any period of 12 consecutive months,

and other expressions have the same meaning as in the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

11. This Ordinance may be cited as the Parochial Collection of Waste (Guernsey) Ordinance, 2018.

Commencement.

12. This Ordinance shall come into force on the 1st January, 2019.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE WASTE MANAGEMENT SERVICES (CHARGING) ORDINANCE, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Waste Management Services (Charging) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance makes provision under section 32A of the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law") in relation to the assessment and levying of charges for certain waste management services provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority (WDA). Section 32A is inserted into the 2004 Law by the Environmental Pollution (Guernsey) (Amendment) Law, 2015.

Section 1 provides for charges for waste management services to be payable through the prescribed bag charges and annual fixed charge set out in the Schedule. The annual fixed charge is payable in respect of dwelling houses, lodging houses and business premises admitted into the Parish waste collection and transfer service as the charge relates to waste collected from those premises. The section also provides for the prescribed charges in the Schedule to be amended by Regulations of the WDA.

Section 2(2) excludes from the definition of waste management services those services provided in relation to waste delivered to public waste management sites by commercial waste operators or by private individuals for which a charge is already made by way of a gate fee under section 32(3)(c) of the 2004 Law. Therefore, the waste management services in relation to which the charge is made relate primarily to the recovery and disposal of waste collected and transferred to site by the Parish waste collection and transfer service. The capital and other costs to be charged to the Capital Reserve, in accordance with the relevant April, 2018 States' resolution, are also excluded under section 2(3).

Sections 3 and 4 provide for the basis on which future amendments are to be made by the WDA of the charges set out in the Schedule. The charges must be calculated to meet the projected total cost to the WDA and the States of providing waste

management services for the year in question subject to the adjustments allowed under section 3(2). Section 4(1) allows the WDA to take into account certain principles in setting the prescribed bag charges.

Section 5 imposes a duty on the WDA to make arrangements (which may be by commercial agreement) to ensure that WDA tags or bags are sold at the prescribed wholesale and retail charges so that prices for those buying tags or bags remain consistent throughout the island. The Ordinance retains the option of charging for bags to allow operational flexibility for the future although the initial charging is to be through sale of tags.

Part III provides for the levying of the annual fixed charge and for its calculation where the WDA amend the Schedule in future years. The future calculation is based on the projected total cost of providing the relevant services minus any income to be derived from projected prescribed bag charges with the resulting sum divided equally between all dwelling houses, lodging houses and relevant business premises in respect of which a charge is payable.

Sections 7 and 8 provide for the annual fixed charge to be levied on the owners of dwelling houses and lodging houses and of businesses which operate from business premises admitted into the Parish waste collection and transfer service and the date from which it may be levied.

Sections 8 to 12 set out the provisions relating to payment, collection and recovery of the annual fixed charge which are consistent with those set out for payment of the Parochial waste rate. The owner of a dwelling house, lodging house or of the relevant business is liable to pay the charge and is the person from whom the WDA may recover any sums not paid. However, an owner of a dwelling house or lodging house may in turn recover the annual fixed charge from the occupiers of the premises as a civil debt (section 12(1)). There is also provision for recovery of the relevant part of the annual fixed charge from subsequent owners for owners of dwelling houses, lodging houses and businesses where ownership of the same changes during a year (section 12(2)).

The remainder of section 9 and sections 10 and 11 provide as to when accounts may be served, liability to pay and the time within which payment must be made including express provision for instalment payments. Section 10 allows for a penalty payment where an account or instalment is not paid within 30 days.

Section 14 clarifies that the WDA may take into account any deficit from 2019 which may arise if it does not require occupiers to affix WDA tags to receptacles from 1st January, 2019 but only from a later date.

The Ordinance is to come into force on 1st January, 2019 except for section 5 relating to agreements with suppliers, distributors and retailers and certain general provisions

necessary to give effect to that section. That section and the related provisions come into force on 1st November, 2018 as the agreements etc. may need to be entered into and take effect before January, 2019.

The Waste Management Services (Charging) Ordinance, 2018

THE STATES, in pursuance of their Resolutions of the 12th February, 2014^a, the 10th December, 2014^b, the 14th December, 2017^c and the 19th April, 2018^d, and in exercise of the powers conferred on them by sections 32A and 72 of the Environmental Pollution (Guernsey) Law, 2004^e and of all other powers enabling them in that behalf, hereby order:-

PART I WASTE MANAGEMENT CHARGES

Waste management charges.

1. (1) A charge is payable for waste management services through –
 - (a) the sale by or on behalf of the Waste Disposal Authority of WDA tags or WDA receptacles at the charges set out in Part I of the Schedule ("**prescribed bag charges**"), and

^a Billet d'État No. II of 2014.

^b Article X of Billet d'État No. XXVI of 2014.

^c Article XIII of Billet d'État No. XXIV of 2017.

^d Article V of Billet d'État No. XI of 2018.

^e Order in Council No. XIII of 2004 as amended by Order in Council No. XIII of 2010 and No. XVI of 2015, Ordinance No. XXXIII of 2003, No. XXXVIII of 2006, No. XLIX of 2006, No. XIII of 2007, No. XVIII of 2010, No. V of 2011 and No. IX of 2016.

(b) the levying of the annual fixed charge set out in Part II of the Schedule by the Waste Disposal Authority ("**annual fixed charge**") in respect of –

(i) dwelling houses and lodging houses in Guernsey, and

(ii) business premises admitted into the Parish waste collection and transfer service.

(2) A prescribed bag charge may provide for a fixed charge or a range of charges on the wholesale or retail sale of a WDA tag or a WDA receptacle.

(3) The Schedule may be amended or substituted by Regulations of the Waste Disposal Authority in accordance with the provisions of this Ordinance.

Waste management services.

2. (1) For the purposes of this Ordinance, "**Waste management services**" means, subject to subsections (2) and (3), the provision of waste management services provided, managed, arranged, operated or funded by or on behalf of the Waste Disposal Authority and matters connected with or incidental to the same and includes –

(a) the capital, operational and administrative costs reasonably incurred by the Waste Disposal Authority

and the States in providing such services, and

- (b) without prejudice to the generality of paragraph (a), the services set out in section 32A(5) of the Law.

(2) Waste management services do not include any such services provided by the Waste Disposal Authority under section 32(1) of the Law at public waste management sites in relation to waste –

- (a) collected and transferred to a public waste management site by a means other than the Parish waste collection and transfer service, and
- (b) in respect of which a charge has or will be imposed by the Waste Disposal Authority as a precondition of its acceptance of that waste at such a site during the year in question under section 32(3)(c) of the Law.

(3) Waste Management services do not include any of the capital and other costs to be charged to the Capital Reserve in accordance with a Resolution of the States^f.

Basis on which charges are to be calculated.

3. (1) Where the Waste Disposal Authority amends or substitutes the Schedule by regulations under section 1(3), it must calculate any new prescribed bag charges and annual fixed charge by imposing such charges as are necessary to

^f See resolution 1A b) of 19th April, 2018 on Article V of Billet d'État No. XI of 2018.

meet the projected total cost to the Waste Disposal Authority and the States of providing waste management services for the year in question.

(2) The Waste Disposal Authority in calculating the projected total cost under subsection (1) may, for the avoidance of doubt, adjust the total to –

- (a) take into account a surplus or deficit from previous years, or
- (b) spread out costs incurred in order to avoid a significant increase or decrease in the annual fixed charge in any one year.

(3) For the avoidance of doubt, nothing in this Ordinance requires the Waste Disposal Authority to amend any prescribed bag charge or the annual charge each year.

PART II

PRESCRIBED BAG CHARGES AND RELATED MATTERS

Prescribed bag charges.

4. (1) Where the Waste Disposal Authority amends or substitutes the prescribed bag charges by regulations under section 1(3), it may take into account the following matters –

- (a) the position in the waste hierarchy of the operations to which the waste, intended to be put into the receptacle in question, is to be subject, and

- (b) the principle that the person generating such waste should pay for its disposal or recovery.

(2) For the avoidance of doubt, the Waste Disposal Authority may prescribe a zero charge for any description of WDA tag or WDA receptacle.

Agreements with suppliers, distributors and retailers etc. in relation to WDA tags or receptacles.

5. (1) The Waste Disposal Authority must make such arrangements as may be necessary in relation to the supply, distribution and sale of WDA tags or WDA receptacles, including those to ensure that -

- (a) any wholesale sale of WDA tags or WDA receptacles is at the prescribed wholesale charge, and
- (b) any retail sale of WDA tags or WDA receptacles is at the prescribed retail charge.

(2) In making arrangements under subsection (1), the Waste Disposal Authority may, without prejudice to the generality of that subsection, enter into agreements or other arrangements with distributors or retailers, whether as agents of the Waste Disposal Authority or otherwise, in relation to -

- (a) the supply of WDA tags or WDA receptacles by the Waste Disposal Authority to distributors or retailers and payment for the same,
- (b) the distribution and wholesale sale of WDA tags or WDA receptacles by distributors to retailers,

- (c) the retail sale of WDA tags or WDA receptacles, and
- (d) such incidental and ancillary matters as the Waste Disposal Authority considers appropriate.

(3) Where the Waste Disposal Authority enters into an agreement under subsection (2), the agreement must provide for -

- (a) payment by retailers to the Waste Disposal Authority or to a distributor, for WDA tags or WDA receptacles supplied to retailers, at the prescribed wholesale charge, and
- (b) the retail sale of WDA tags or WDA receptacles by retailers, at the prescribed retail charge.

PART III

CHARGE IN RESPECT OF PREMISES

Annual fixed charge in respect of premises.

6. (1) Where the Waste Disposal Authority amends or substitutes the annual fixed charge by regulations under section 1(3), it must calculate the charge by -

- (a) calculating the projected total cost to the Waste Disposal Authority and the States of providing waste management services for the year in question in accordance with section 3,

- (b) deducting from the total cost in paragraph (a), any income derived, or to be derived, by the Waste Disposal Authority in the year in question from projected sales of WDA tags or WDA receptacles, and
- (c) dividing the resulting cost equally between all dwelling houses, lodging houses and business premises in respect of which the annual fixed charge is levied under section 1(1)(b).

(2) For the avoidance of doubt and subject to subsection (1), the Waste Disposal Authority may prescribe a zero charge for the annual fixed charge.

Levying of annual fixed charge.

7. The annual fixed charge must be levied by the Waste Disposal Authority –

- (a) in respect of dwelling houses or lodging houses in Guernsey, on the owner of the dwelling house or lodging house, and
- (b) in respect of business premises admitted into the Parish waste collection and transfer service, on the owner of the business which operates from the business premises,

as at the applicable date.

Applicable date for annual fixed charge.

8. The annual fixed charge may be levied on and from the first day of the year to which it relates ("**the applicable date**").

Payment and collection of annual fixed charge.

9. (1) The annual fixed charge is payable by the person who is the owner of the dwelling house, lodging house or business, as the case may be, referred to in section 7 as at the applicable date.

(2) Accounts specifying the matters set out in subsection (3) may be served by the Waste Disposal Authority –

- (a) at any time on or after the applicable date in the year in question, and
- (b) annually, twice-yearly or quarterly as the Waste Disposal Authority thinks fit.

(3) Subject to the provisions of this Ordinance, liability to pay the annual fixed charge, or part or it, in respect of any premises arises upon service by the Waste Disposal Authority on the owner specified in subsection (1) of an account specifying –

- (a) where accounts are served annually, the amount of the annual fixed charge due for the year in question, or
- (b) where accounts are served twice-yearly, or quarterly, the amount of the annual fixed charge due for the

half-year or quarter of the year in question.

(4) The annual fixed charge, or part of it, for which an account has been served by the Waste Disposal Authority in respect of the premises, or an instalment payment of the same, is payable -

(a) within 30 days starting from -

(i) the date of issue of the account, or

(ii) in the case of an instalment payment, the date for payment of the relevant instalment specified in the account or otherwise notified to the owner, and

(b) by such means as the Waste Disposal Authority may reasonably specify in the account.

(5) In any proceedings for the recovery of the annual fixed charge, or part of it, a copy of an account produced by the Waste Disposal Authority (whether from data stored electronically or other means) is evidence of the contents of the account.

(6) In subsections (4) and (5), "**the account**" includes any information provided with the account.

Penalty for late payment of annual fixed charge.

10. Where the annual fixed charge, or part of it, for which an account has been served, or an instalment payment of the same, is not paid within the 30 day

period specified under section 9(4), the Waste Disposal Authority may, in its absolute discretion, levy whichever of the following is the greater–

- (a) a flat rate penalty of £25 for each part of a month in which the amount due is not paid, or
- (b) interest on the sum due at the rate of 10% per annum calculated from the date on which the payment becomes due until the date on which the payment is made.

Recovery of annual fixed charge and penalty by the Waste Disposal Authority and liability for the same.

11. (1) The annual fixed charge, or part of it, in respect of any premises, or an instalment payment of the same, not paid within the 30 day period specified under section 9(4), together with any penalty payable in respect of the charge under section 10 is recoverable from the owner of the dwelling house or lodging house or the owner of the business specified in section 9(1), as the case may be, as a civil debt due to the Waste Disposal Authority.

(2) If two or more persons are the owners of a dwelling house, lodging house or a business as specified in section 9(1), as the case may be, their liability for the annual fixed charge and any penalty in respect of the same is joint and several.

Recovery of annual fixed charge by the owner.

12. (1) The annual fixed charge levied in respect of a dwelling house or a lodging house on the owner may be recoverable by the owner, as at the applicable date, as a civil debt from the occupiers of that dwelling house or lodging

house in equal shares.

(2) An owner of a dwelling house, lodging house or business who-

(a) is liable under section 9(1) for the payment of the annual fixed charge in respect of any year because they are the owner as at the applicable date, and

(b) subsequently during that year ceases to own the dwelling house, lodging house or business operating from the business premises, as the case may be,

is entitled to recover from the subsequent owner of the dwelling house, lodging house or business operating from the business premises, as the case may be, such part of the annual fixed charge as bears the same proportion to the whole of the annual fixed charge in respect of the dwelling house, lodging house or business premises for that year as the unexpired portion of that year bears to the whole of that year.

PART IV GENERAL PROVISIONS

Interpretation.

13. (1) In this Ordinance, unless the context requires otherwise –

"**annual fixed charge**": see section 1(1)(b),

"**applicable date**": see section 8,

"**business**", except in the definitions of "**retail**" and "**wholesale**", has the meaning in the Parochial Collection Law,

"**business premises**" has the meaning in the Parochial Collection Law,

"**disposal**" has the meaning in section 30(3) of the Law,

"**dwelling house**" has the meaning in the Parochial Collection Law,

"**enactment**" includes a Law, an Ordinance, any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**Guernsey**" means the island of Guernsey and, for the avoidance of doubt, does not include the islands of Herm or Jethou,

"**the Law**" means the Environmental Pollution (Guernsey) Law, 2004,

"**lodging house**" has the meaning in the Parochial Collection Law,

"**owner**", in relation to any real property, means -

- (a) where the property is the subject of saisie proceedings which have resulted in the making of an interim vesting order, the person in whose favour the order has been made,
- (b) where the property is not the subject of such saisie

proceedings but is the subject of a right of usufruit or a droit d'habitation, the usufruitier or (as the case may be) the habitant,

(c) where the property is not the subject of such saisie proceedings or right of usufruit or droit d'habitation -

(i) where the property is held in trust, the trustees,
or

(ii) where the property is not held in trust, the person in whom there is for the time being vested, whether solely or jointly with another person, an estate of inheritance therein,

and related expressions are construed accordingly,

"the Parochial Collection Law" means the Parochial Collection of Waste (Guernsey) Law, 2015⁸,

"Parish waste collection and transfer service" has the meaning in the Parochial Collection Law,

"prescribed bag charges": see section 1(1)(a),

"prescribed retail charge" means the retail charge or range of retail

⁸ Order in Council No. XV of 2015 as amended by Ordinance No. IX of 2016.

charges set out in Table B of Part I of Schedule 1,

"prescribed wholesale charge" means the wholesale charge or range of wholesale charges set out in Table A of Part I of Schedule 1,

"receptacle" means a bag or other receptacle and includes a holder for such a receptacle,

"recovery" has the meaning in section 30(3) of the Law,

"retail sale" means any sale except a wholesale sale and related expressions are construed accordingly,

"subordinate legislation" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance,

"trade mark" has the meaning in the Trade Marks (Bailiwick of Guernsey) Ordinance, 2006^h,

"waste hierarchy" has the meaning in section 32(5) of the Law,

"waste management services": see section 2,

"WDA receptacle" means a bag or other receptacle, marked with the

^h Ordinance No. I of 2006 as amended by Ordinance No. XXXIX of 2006 and No. IX of 2016.

name or trademark of the Waste Disposal Authority or otherwise identified as being a Waste Disposal Authority approved receptacle, in which an occupier is required to put out waste for collection under the Parochial Collection Law,

"WDA tag" means a tag which –

- (a) is marked with the name or trademark of the Waste Disposal Authority or otherwise identified as being approved by the Waste Disposal Authority, and
- (b) an occupier is required to affix to a receptacle in which waste is put out for collection under the Parochial Collection Law,

"wholesale sale" means any sale for resale in the course of a trade or business and includes a sale by –

- (a) the Waste Disposal Authority to a distributor or retailer, and
- (b) a distributor to a retailer,

and related expressions are construed accordingly,

"year" means any period of 12 consecutive months,

and other expressions have the same meaning as in the Law.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Transitional Provision.

14. (1) This section applies where, despite the provisions of this Ordinance, the Waste Disposal Authority requires an occupier, in accordance with sections 8 and 9 of the Parochial Collection Law, to affix a WDA tag to a receptacle in which waste is put out for collection only from a date after 1st January, 2019.

(2) When the Waste Disposal Authority next amends or substitutes the Schedule by regulations under section 1(3) it may, for the avoidance of doubt, take into account any deficit from 2019 arising from the circumstances in subsection (1).

Extent.

15. This Ordinance has effect in Guernsey.

Citation.

16. This Ordinance may be cited as the Waste Management Services (Charging) Ordinance, 2018.

Commencement.

17. (1) This Ordinance, except as provided in subsection (2), shall come into force on the 1st January, 2019.

(2) Section 5 (agreements with suppliers, distributors and retailers etc. in relation to WDA tags or receptacles) and sections 13, 15 and 16, insofar as it necessary to give effect to section 5, shall come into force on the 1st

November, 2018.

SCHEDULE

Sections 1, 3 and 13(1)

PART I

PRESCRIBED BAG CHARGES

TABLE A

| WDA Tag or WDA Receptacle | prescribed wholesale charge per WDA tag or WDA receptacle |
|---|--|
| Residual waste bag of up to and including 50 litres in capacity | £1.40 |
| Residual waste bag of 51 to 90 litres in capacity | £2.50 |
| Blue or clear recycling bag | zero |
| Glass recycling bag | zero |
| Food caddy | zero |

TABLE B

| WDA Tag or WDA Receptacle | prescribed retail charge per WDA tag or WDA receptacle |
|---|---|
| Residual waste bag of up to and including 50 litres in capacity | £1.40 |
| Residual waste bag of 51 to 90 litres in capacity | £2.50 |
| Blue or clear recycling bag | zero |
| Glass recycling bag | zero |
| Food caddy | zero |

PART II
ANNUAL FIXED CHARGE

The annual fixed charge is £85 per annum.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE SARK MACHINERY OF GOVERNMENT (TRANSFER OF FUNCTIONS) (GUERNSEY)
ORDINANCE, 2018**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance is made under the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991. Amongst other provisions, that Law empowers the States by Ordinance to vary any enactment which confers a function on a named Committee of the States of Deliberation, of the States of Alderney or of the Chief Pleas of Sark, so as to transfer that function to another Committee. This Ordinance transfers functions under "relevant enactments" which apply to the Bailiwick other than those which are applicable only in Sark (an equivalent Ordinance of the Chief Pleas of Sark, approved on 4th July 2018, will transfer functions under enactments applicable only in Sark).

Section 1 of the Ordinance transfers the functions of the committees and chairmen named in column 1 of the Schedule to the committees and chairmen named in column 2 of the Schedule; and section 2 substitutes references in relevant enactments to the committees named in column 1 of the Schedule for references to the committees named in column 2 of the Schedule.

This Ordinance is to come into force on 11th January, 2019.

The Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018

THE STATES, on the representations of the States Policy & Resources Committee, and in exercise of the powers conferred on them by sections 1 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^a, and all other powers enabling them in that behalf, hereby order:-

Transfer of functions under relevant enactments.

1. The functions, rights and liabilities of a committee of the Chief Pleas named in column 1 of the Schedule and of its Chairman arising under or by virtue of any relevant enactment are transferred to and vested in, respectively, the committee named in relation to that committee in column 2 of the Schedule and its Chairman.

Amendment of statutory references.

2. For any reference in any relevant enactment to a committee named in column 1 of the Schedule or its Chairman, however expressed, there is substituted a reference to the committee named in relation to that committee in column 2 of the Schedule or (as the case may be) its Chairman.

Savings and transitional provisions.

3. Anything done before the date of the commencement of this Ordinance or in the process of being done on that date by or in relation to a committee named in column 1 of the Schedule or its Chairman, under or by virtue of any relevant enactment, shall have effect as if done or (as the case may be) may be

^a Ordres en Conseil Vol. XXXIII, p. 478; amended by Ordinance No. XXXIII of 2003; No. IX of 2016.

continued by or in relation to the committee named in relation to that committee in column 2 of the Schedule or (as the case may be) its Chairman.

Subordinate legislation.

4. The provisions of sections 1, 2 and 3 also apply in relation to any subordinate legislation made or having effect as if made under a relevant enactment as they apply to a relevant enactment; and the provisions of the relevant enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

Interpretation.

5. (1) In this Ordinance –

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**relevant enactment**" means–

- (a) any Law, and any Act of Parliament extended to the Bailiwick, other than one applicable only in Sark,
- (b) any Ordinance of the States of Deliberation of Guernsey, and
- (c) any subordinate legislation made by any committee, department or council (however called) of the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument (including any provision or portion of any such regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument) made under any relevant enactment and having legislative effect.

(2) Any reference in this Ordinance to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

Citation.

6. This Ordinance may be cited as the Sark Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2018.

Commencement.

7. This Ordinance shall come into force on the 11th January, 2019.

SCHEDULE

Section 1 and 2

| COMMITTEE FROM WHICH FUNCTIONS ARE TRANSFERRED | COMMITTEE TO WHICH FUNCTIONS ARE TRANSFERRED |
|---|---|
| Policy & Performance Committee | Policy & Finance Committee |
| Finance & Resources Committee | Policy & Finance Committee |
| Road Traffic Committee | Douzaine |

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE DIRECTOR OF INCOME TAX (TRANSFER OF FUNCTIONS) (GUERNSEY)
ORDINANCE, 2018

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018", and to direct that the same shall have effect as an Ordinance of the States.

This proposition has 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.

EXPLANATORY MEMORANDUM

This Ordinance substitutes any reference to the Director of Income Tax or the Deputy Director of Income Tax, however expressed, for a reference to the Director of the Revenue Service or (as the case may be) the Deputy Director of the Revenue Service.

The Ordinance is to come into force on 1st November, 2018.

The Director of Income Tax

(Transfer of Functions)

(Guernsey) Ordinance, 2018

THE STATES, in pursuance of their Resolution of the 18th April, 2018^a, and in exercise of the powers conferred on them by sections 2 and 3 of the Public Functions (Transfer and Performance) (Bailiwick of Guernsey) Law, 1991^b, sections 203A and 208C of the Income Tax (Guernsey) Law, 1975, as amended^c, and all other powers enabling them in that behalf, hereby order:-

Amendment of statutory references to Director of Income Tax.

1. For any reference in a relevant enactment to the Director of Income Tax or the Deputy Director of Income Tax, however expressed, there is substituted a reference to the Director of the Revenue Service or (as the case may be) the Deputy Director of the Revenue Service.

Savings and transitional provisions.

2. Anything done before the date of commencement of this Ordinance or in the process of being done on that date by or in relation to the Director of Income Tax or the Deputy Director of Income Tax under or by virtue of a relevant enactment shall have effect as if done or (as the case may be) may be continued by or in relation

^a Article 3 of Billet d'État No. XI of 2018.

^b Ordres en Conseil Vol. XXXIII, p. 479.

^c Ordres en Conseil Vol. XXV, p. 124; section 203A was inserted by Order in Council No. XVII of 2005 and section 208C was inserted by Order in Council No. V of 2011.

to the Director of the Revenue Service or (as the case may be) the Deputy Director of the Revenue Service.

Subordinate legislation.

3. The provisions of sections 1 and 2 also apply in relation to any subordinate legislation made or having effect as if made under a relevant enactment as they apply to a relevant enactment; and the provisions of the relevant enactment under which the subordinate legislation was made are varied insofar as is necessary to give effect to this section.

Interpretation.

4. In this Ordinance -

"Director of Income Tax" means the Director of Income Tax referred to in section 205 of the Income Tax (Guernsey) Law, 1975^d,

"Deputy Director of Income Tax" means the Deputy Director of Income Tax referred to in section 205 of the Income Tax (Guernsey) Law, 1975,

"relevant enactment" means -

- (a) any Law,
- (b) any Act of Parliament extended to the Bailiwick, and

^d Ordres en Conseil Vol. XXV, p. 124; section 205 was amended by Order in Council No. XVII of 2005; Ordinance No. VII of 2009; Ordinance No. XVI of 2012; and Ordinance No. IX of 2016.

(c) any Ordinance of the States,

as amended, repealed and re-enacted (with or without modification), extended or applied,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any statutory, customary or inherent power and having legislative effect, but does not include an Ordinance.

Citation.

5. This Ordinance may be cited as the Director of Income Tax (Transfer of Functions) (Guernsey) Ordinance, 2018.

Commencement.

6. This Ordinance shall come into force on the 1st November, 2018.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2019

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Contributory Benefit and Contribution Rates for 2019', dated 10 September 2018, they are of the opinion:

1. To set the contributions limits and rates as set out in Table 4 of that Policy Letter, from 1st January 2019.
2. To set the standard rates of contributory social insurance benefits as set out in Table 7 of that Policy Letter, from 1st January 2019.
3. To set the prescription charge per item of pharmaceutical benefit at £4.00, from 1st January 2019.
4. To set the contribution (co-payment) required to be made by the claimant of care benefit, under the Long-term care Insurance Scheme, at £205.45 per week, from 1st January 2019.
5. To set the maximum weekly long-term care benefit at the rates set out below, from 1st January 2019:
 - a) £455.21 per week residential care benefit for persons resident in a residential home;
 - b) £599.83 per week elderly mentally infirm (EMI) benefit for qualifying persons in a residential home; and
 - c) £849.94 per week nursing care benefit for persons resident in a nursing home or the Guernsey Cheshire Home.
6. To set the maximum weekly respite care benefit at the rates set out below, from 1st January 2019:
 - a) £660.66 per week for persons receiving respite care in a residential home;

- b) £805.28 per week for the elderly mentally infirm (EMI) rate for persons receiving respite care in a residential home; and
 - c) £1,055.39 per week for persons receiving respite care in a nursing home or the Guernsey Cheshire Home.
7. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2019

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

10 September 2018

Dear Sir

1. Executive Summary

- 1.1. This year the Committee *for* Employment & Social Security has decided to present its annual benefit and contributions Policy Letter in a new form. In the past contributory matters were considered in a single Policy Letter alongside non-contributory matters. This year they will be presented in separate Policy Letters, intended to be debated at the same meeting but as different items. It is hoped that this will provide greater transparency over the source of funds. This is a response to the Resolution to investigate integration of the budget proposals and non-contributory benefit uprating proposals¹. It is intended that there will be further incremental steps in the years to come.
- 1.2. This Policy Letter therefore considers contributions to and benefits funded from, the Guernsey Insurance Fund, Guernsey Health Service Fund and Long Term Care Insurance Fund. These are the three funds supported by social security contributions.
- 1.3. Social insurance benefits are paid based on contribution records; in order to receive them you must have paid or been credited a certain number of weekly social security contributions. In some cases the amount of benefit payable varies depending on the completeness of the individual's contribution record. The most well-known of these benefits is the old age pension, but there are many other benefits provided through this fund.

¹ Resolution 22 on Billet d'État no XX of 2017.

- 1.4. Eligibility for health and long term care benefit is determined by a residency test rather than a contribution test. In the case of health benefits you must generally be resident in Guernsey or Alderney, and to receive long term care benefits you must have been a resident on one of the islands for at least 5 years. Health benefits fund secondary medical care, a grant for primary medical care and prescription drugs. Long term care benefit helps to fund the cost of residential and nursing care.
- 1.5. The Committee *for* Employment & Social Security has undertaken its annual review of the social security, health, and long-term care benefits paid under the various schemes for which it is responsible. The Committee is recommending that the rates of contributory benefits be increased in 2019 by 2.4%, being the annual rate of 'core' inflation (RPIX) for the year to June 2018. The agreed policy is to uprate by RPIX plus one third of the difference between RPIX and the annual increase in median earnings; however this year RPIX is higher than the increase in median earnings (1.9%). The same situation occurred last year and it was decided that a 'double lock' approach should be taken, where RPIX is adopted if it is greater than the previously agreed policy.

PART I: INCOME

2. Contributions

Proposed contribution rates for 2019

- 2.1. As with last year's report, the Committee is recommending no change for 2019. Contribution rates will therefore remain as follows in Tables 1-3 below.

Table 1 – Contribution rates for 2019, and the proportions of income split between the funds for employed persons (Class 1)

| Employed persons (Class 1) | 2019 |
|-----------------------------------|--------------|
| Employer | 6.6% |
| Guernsey Insurance Fund | 5.0% |
| Guernsey Health Service Fund | 1.6% |
| Long-term Care Insurance Fund | - |
| Employee | 6.6% |
| Guernsey Insurance Fund | 3.5% |
| Guernsey Health Service Fund | 1.3% |
| Long-term Care Insurance Fund | 1.8% |
| Combined | 13.2% |
| Guernsey Insurance Fund | 8.5% |
| Guernsey Health Service Fund | 2.9% |
| Long-term Care Insurance Fund | 1.8% |

Table 2 – Contribution rates for 2019, and the proportions of income split between the funds for self-employed persons (Class 2).

| Self-employed persons (Class 2) | 2019 |
|--|--------------|
| Totals | 11.0% |
| Guernsey Insurance Fund | 6.5% |
| Guernsey Health Service Fund | 2.7% |
| Long-term Care Insurance Fund | 1.8% |

Table 3 – Contribution rates for 2019, and the proportions of income split between the funds for non-employed persons (Class 3).

| Non-employed persons (Class 3) | 2019 |
|---------------------------------------|--------------|
| Under pension age | 10.4% |
| Guernsey Insurance Fund | 5.7% |
| Guernsey Health Service Fund | 2.8% |
| Long-term Care Insurance Fund | 1.9% |
| Over pension age | 3.4% |
| Guernsey Insurance Fund | - |
| Guernsey Health Service Fund | 1.3% |
| Long-term Care Insurance Fund | 2.1% |

- 2.2. The Committee is mindful that contributions to all three funds will not meet the financial requirements of maintaining the same services in years to come. This is being addressed by a review of the provision of Long-term care, through the Supporting Living and Ageing Well Strategy (SLAWS), and through a review of Health & Social Care funding being jointly undertaken with the Policy & Resources Committee. More information about this is contained in part III of this Policy Letter.

Proposed contribution limits and rates for 2019

- 2.3. The Committee is recommending that all contribution earnings and income limits are increased by the June 2018 RPIX figure of 2.4%.
- 2.4. Table 4 overleaf shows the effects of the 2.4% rate for the 2019 uprating on the limits for all contributor classes. This includes the upper and lower earnings limits for employers, employees, and self-employed people, and the upper and lower income limits for non-employed people. It also shows the minimum and maximum weekly contribution rates payable for each class of contributor, including voluntary, overseas, and special rate contributions. These proposed rates are shown alongside the rates which applied in 2018.

Table 4 – Contribution limits and rates for 2019

| | | 2019 | 2018 |
|---|---------|--------------------|--------------------|
| Class 1 – Employer/Employee | | 6.6% / 6.6% | 6.6% / 6.6% |
| Upper Earnings Limit: | Weekly | £2,814.00 | £2,748.00 |
| | Monthly | £12,194.00 | £11,908.00 |
| Lower Earnings Limit: | Weekly | £141.00 | £138.00 |
| | Monthly | £611.00 | £598.00 |
| Weekly full rate: | Maximum | £185.72 | £181.37 |
| | Minimum | £9.31 | £9.11 |
| Class 2 – Self-employed people | | 11% | 11% |
| Annual Earnings Limit: | Maximum | £146,328.00 | £142,896.00 |
| | Minimum | £7,332.00 | £7,176.00 |
| Weekly full rate: | Maximum | £309.54 | £302.28 |
| | Minimum | £15.51 | £15.18 |
| Voluntary overseas contribution | | £106.31 | £103.82 |
| Class 3 – Non-employed people²: | | | |
| Under pension age | | 10.4% | 10.4% |
| Over pension age | | 3.4% | 3.4% |
| Annual Income Limit: | Maximum | £146,328.00 | £142,896.00 |
| | Minimum | £18,330.00 | £17,940.00 |
| Allowance (both under & over pension age) | | £8,285.00 | £8,110.00 |
| Weekly full rate: (under pension age) | Maximum | £276.09 | £269.57 |
| | Minimum | £20.09 | £19.66 |
| Weekly full rate: (over pension age) | Maximum | £90.26 | £88.13 |
| | Minimum | £6.57 | £6.43 |
| Overseas contributor (per week) | | £96.16 | £93.91 |
| Voluntary contribution (per week) | | £20.09 | £19.66 |
| Special rate non-employed (per week) | | £20.09 | £19.66 |

- 2.5. Employers, employees, and self-employed persons whose earnings are at or above the lower earnings limit, will be liable to pay contributions on all of their earnings (unless the allowance applies) up to the relevant upper earnings limit, at the percentage rates set out in Tables 1 and 2.
- 2.6. As with self-employed persons, non-employed contributors are liable to pay non-employed, Class 3, contributions at the maximum rate, unless an application is made to the Committee, and authorisation given, for the release of the relevant information by the Director of Income Tax. This allows an income-related contribution to be calculated. People with income at some point between the upper and lower income limits will pay pro-rata.

² In addition to these rates there is also a rate of 5.7% for special classes of voluntary contributors although in practice people do not often opt to pay at this rate.

- 2.7. There are two categories of non-employed contributions:
- Full percentage rate contributions to cover social insurance, health service and long-term care insurance liabilities are the rate of contribution that non-employed adults under pension age are liable to pay, based on their personal income.
 - Specialist health insurance and long-term care insurance contributions, which are payable by people over pension age, go towards funding the specialist health insurance scheme and the long-term care insurance scheme.
- 2.8. Where a non-employed person's annual income is below the lower income limit, that person will be exempt from the payment of contributions. However, this could affect old age pension entitlement. A voluntary contribution, which counts towards old age pension, can be paid by, or on behalf of, non-employed people resident in Guernsey and under pension age with personal income below the lower income limit. The rate is calculated by applying the social insurance element of the non-employed contribution rate, being 5.7% of the total 10.4%, to the lower income limit.
- 2.9. Self-employed and non-employed people living outside of Guernsey and Alderney are able to pay overseas voluntary contributions in order to maintain their entitlement to old age pension.
- 2.10. A special rate non-employed contribution is payable by insured people who would normally rely upon their employee contribution record for their entitlements to benefit, but have a small gap in their record where they were neither employed nor receiving an unemployment contribution credit. The rate of this contribution is aligned with the voluntary contribution rate.

Number of contributors paying at the upper limits

- 2.11. The four quarter average, from Q2 2017 to Q1 2018 inclusive, of the number of contributors paying at the upper limits and the corresponding percentages shown in Table 5 overleaf.

Table 5 – Average number of contributors paying at the upper limits – Q2 2017 to Q1 2018

| | No. contributors paying at upper limits ³ | Proportion of total for each classification |
|----------------------|--|---|
| Employee | 620 | 2.15% |
| Self-employed | 306 | 11.66% |
| Non-employed | 341 | 6.03% |

3. States Grants to Contributory Funds

- 3.1. The Guernsey Insurance Fund currently receives a grant from General Revenue equal to 14.7% of the total amount collected in contributions.
- 3.2. In 2017 and 2018 the States grant to the health fund was suspended. The grant had previously amounted to 12% of contribution income. The removal of this grant resulted in a deficit during those years. The Medium Term Financial Plan⁴ assumed that the grant was to be reinstated from 2018 onwards. This reduction in funding must be addressed as part of the wider review of health and social care funding.
- 3.3. The estimated costs to General Revenue of the States grant to the Guernsey Insurance Fund and Guernsey Health Service Fund in 2018 and 2019 are shown in Table 6 below. The grant for 2018 would have been £4.9m, and in 2019 would have been £5.1m.

Table 6 – Estimated costs to General Revenue of the States grants in 2018 and 2019

| Fund | Estimated cost of States grant for 2019 | Estimated cost of States grant for 2018 | Percentage of contribution income |
|------------------------------|---|---|-----------------------------------|
| Guernsey Insurance Fund | £16.6m | £16.1m | 14.7% |
| Guernsey Health Service Fund | £0 | £0 | 12.0% (prior to removal) |
| Total | £16.6m | £16.1m | |

4. Funding Health and Long Term Care

- 4.1. As set out in the 2018 Budget Report, the Policy & Resources Committee and the Committee *for* Employment & Social Security, in consultation with the

³ Figures rounded to the nearest whole number

⁴ Billet d'État XII of 2017, article I, appendix 1, section 5.43.

Committee *for* Health & Social Care, are examining options for reforming the funding of health and long term care. The review was originally focussed solely on funding of health care services. However, when the two Committees met initially to discuss this matter consideration was given to the fact that the same issues regarding 'distributional equity' which had been identified in respect of the current health service contributions collected through the social security system applied to the contributions collected in respect of long term care. Therefore the Committees decided to incorporate long term care contributions within the scope of the review.

- 4.2. The original driver for consideration of this project was that the public funding of health and social care services (including those that are directly commissioned by the States, and those, such as prescriptions or primary care, that are subsidised) currently has multiple sources. In effect, this means that multiple bodies make decisions about the allocation of funding to health services, and shape health policy making by doing so. The multiple sources of funding and decision making present barriers and disincentives to the full transformation of health and social care.
- 4.3. Therefore, the Committees have decided to adopt a two phase approach to enable this issue to be addressed as soon as possible with the second phase being to consider the most appropriate contribution model.
- 4.4. As the first stage, the three Committees anticipate submitting a Policy Letter in late 2018 which will seek approval for the transfer of policy and operational control for the £43million of services currently provided through the Guernsey Health Service Fund from the Committee *for* Employment & Social Security to the Committee *for* Health & Social Care. The Committee *for* Employment & Social Security will retain responsibility for the collection of contributions to the Health Service Fund.
- 4.5. This stage of work will provide a clearer division between the mandates of the two Committees by consolidating governance of all health services under a single Committee. In the short-term, managing services and policy development within a single mandate and with a single budget should improve both political transparency and financial control. In the longer-term, the transfer of responsibilities will enable the Committee *for* Health & Social Care to fully integrate these services within its transformation plans, ensuring that future service developments are fully co-ordinated to deliver the best social and financial outcomes.
- 4.6. The second phase will concentrate on the way in which the States raise revenues to fund health and long term care services, with extensive and detailed analysis to design a new model and undertake consultation thereon. There will be particular focus on the distributional impact given that the

Committees are aiming to deliver a more progressive system in line with the direction approved by the States as part of the Medium Term Financial Plan *“to seek a greater contribution from those most able to pay”*. This is a complex piece of work which will impact on the whole tax system and this two phase approach will allow for greater integration between this project and the Revenue Service Programme.

PART II: EXPENDITURE – CONTRIBUTORY BENEFITS

5. Social Insurance Benefits

- 5.1. It has been brought to the Committee's attention through several recent cases, that the way in which contributions are counted for the purposes of determining eligibility, can disadvantage those who have generally good contribution records. In some cases this can affect those who have a break in their contribution record many months prior to their claim.
- 5.2. For example, consider a person who has been in continuous employment from 1st August 2016, prior to that date the person had taken a sabbatical to go travelling from December 2015. If this person wished to make a claim for parental benefits in the first half of 2018, they would be assessed on their 2016 contribution record. As they have made fewer than 26 weekly contributions in that year, they would not have been eligible to receive benefit. If this person had made their claim in the second half of 2018 they would be assessed on their 2017 record with 52 weeks of contributions, therefore they would be eligible to receive benefit at the full rate.
- 5.3. This delay in considering contributions was historically due to the time it took to process contribution records. Processing time is now much reduced and the current calculation could be re-considered. The Committee will address this before the debate of the uprating reports in 2019.

Proposed benefit rates for 2019

- 5.4. As explained in section 1.5, the Committee is recommending benefit rates for pension and other contributory benefits are increased by 2.4%, representing June 2018 RPIX.
- 5.5. The proposed new weekly rates of benefit, effective from 1st January 2019, are set out in Table 7 overleaf. These rates of weekly benefit and grants apply to persons who have fully satisfied the contribution conditions. Reduced rates of benefit are payable on incomplete contribution records, down to threshold levels, after which, no benefit is payable.

Table 7 – Proposed rates of contributory social insurance benefits for 2019

| Weekly paid benefits | 2019 | 2018 (actual) |
|---|------------------|----------------------|
| <u>Old Age Pension</u> | | |
| Insured person | £217.36 | £212.27 |
| Increase for dependant wife ⁵ | £108.88 | £106.33 |
| Total | £326.24 | £318.60 |
| <u>Survivor's Benefits</u> | | |
| Widowed Parent's Allowance | £228.58 | £223.22 |
| Bereavement Allowance ⁶ | £196.55 | £191.94 |
| Maternal Health Allowance, Newborn Care Allowance, and Parental Allowance | £217.77 | £212.66 |
| Unemployment Benefit, Sickness Benefit, and Industrial Injury Benefit | £159.95 | £156.17 |
| Incapacity Benefit | £192.22 | £187.74 |
| Industrial Disablement Benefit (100%) ⁷ | £175.17 | £171.06 |
| One off grants: | | |
| Maternity Grant and Adoption Grant | £400.00 | £391.00 |
| Death Grant | £625.00 | £610.00 |
| Bereavement Payment | £1,974.00 | £1,928.00 |

Summary of social insurance expenditure financed by the Guernsey Insurance Fund

- 5.6. If the above proposals for benefit rates are approved, the 2019 Budget estimates that social insurance benefit expenditure will increase by 3.6% to £149.5m (2018 Forecast: +5.2% to £144.4m), as shown in Table 8 overleaf. This includes the proposed 2.4% increase in the general rate of benefit (2018: +2.8%), and a further 1.2% increase due to changes in the number of people claiming benefit, particularly old age pensions. In addition, administration costs in 2019 are estimated to be £5.1m (2018 Revised: £4.8m).
- 5.7. Social insurance benefits are almost wholly statutory entitlements based on contributions paid. Pension expenditure accounts for over 85% of the total benefit expenditure of the Fund. Expenditure is estimated to increase by 4.0% to £127.9m in 2019 (2018 Forecast: +4.7% to £123.0m). As of 1 July 2018, there were 18,199 people in receipt of a pension from Guernsey. Pension expenditure is increasing due to larger numbers of people reaching pension age, but it is also affected by improved (lower) mortality rates, meaning that

⁵ For people whose marriages took place before 1st January 2004, and who reached pension age before 1st January 2014.

⁶ Widow's pension is also payable at this rate, new applications cannot be made but there are still historic cases continuing.

⁷ Lower rates are payable based on degree of disability.

people are enjoying longer retirements, with many more people living into and beyond their 80's.

Table 8 – Summary of expenditure for the Guernsey Insurance Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|----------------------------------|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Pension | 127.9 | 123.0 | 117.5 | 115.4 | 110.7 |
| Incapacity | 8.6 | 8.5 | 8.0 | 8.1 | 8.1 |
| Sickness | 4.3 | 4.3 | 3.9 | 3.8 | 3.6 |
| Parental | 2.4 | 2.3 | 2.1 | 1.2 | 1.2 |
| Travelling Allowance Grant | 2.5 | 2.5 | 2.1 | 2.1 | 2.1 |
| Bereavement | 2.0 | 2.0 | 1.9 | 1.9 | 1.8 |
| Unemployment | 1.0 | 1.0 | 1.0 | 1.4 | 1.4 |
| Industrial | 0.8 | 0.8 | 0.8 | 0.8 | 0.9 |
| Total benefit expenditure | 149.5 | 144.4 | 137.3 | 134.7 | 129.8 |
| Administration | 5.1 | 4.9 | 4.5 | 4.8 | 4.7 |
| Total expenditure | 154.6 | 149.3 | 141.8 | 139.5 | 134.5 |

6. Health Service Benefits

Medical Benefit Grants

- 6.1. The total benefit expenditure on consultation grants in 2017 was £3.3m. This represented a decrease of around 1.8% on the 2016 cost. The consultation grants remained unchanged at £12 towards a consultation with a doctor and £6 towards a consultation with a nurse.
- 6.2. The Committee is not recommending any change in the level of the consultation grants for 2019. However, the Committee is mindful of Resolution 24 following the April 2015 debate on the Personal Tax, Pensions and Benefits Review (Billet d'État IV of 2015, Article I), which was:

‘To note that in the opinion of the Treasury & Resources Department and the Social Security Department, the Health Benefit grant for primary care appointments should be phased out by 2025.’
- 6.3. At this stage the Committee considers that it would be most appropriate for the reduction or complete removal of the grant to be aligned with the ongoing reforms of the Committee *for* Health & Social Care. This would ensure that the funds would be allocated to appropriate alternative health and social care expenditure. The two Committees meet regularly to discuss, among other things, the ongoing transformation of health and social care services.

Pharmaceutical Service

- 6.4. Drugs, medicines and appliances, cost a total of £18.05m in 2017 before netting off the prescription charges of £2.19m paid by patients. This was a decrease of 0.5% on 2016. The number of items prescribed under the pharmaceutical service decreased by 1% in 2017 to approximately 1.5 million items.
- 6.5. The year saw a slight fall in the number of items dispensed for the second year in a row and a fall in the total annual cost of the service. This was despite the approval of several new specialist drugs and fluctuations in the cost of many generics. There were reductions in the prescribing of opioid analgesics, antibiotics and hypnotics and large savings achieved from a reduction in the prescribing of high cost and low value products. In addition, significant costs were avoided by the controlled entry of new drugs onto the prescribing list.
- 6.6. The reduction in these costs was primarily due to the work of the Prescribing Support Unit (PSU) and its close co-operation with medical professionals. Careful monitoring of the drugs prescribed and the market availability of generic drugs allows the PSU to recommend the approval of cheaper, but similarly effective drugs to the 'white list'. The pragmatic use of generic drugs keeps overall costs down and allows the budget to be better allocated for the limited prescription of expensive specialist drugs which are either new to market or have no equivalent alternative.
- 6.7. In 2018, the structure of the bodies that advise the States on prescription matters has changed. To date, separate bodies have existed for the recommendation of drugs for hospital and community prescribing. These bodies have been brought together and it is expected that this will result in a consistent approach.

Prescription charge

- 6.8. The prescription charge has traditionally been uprated by 10p each year. The current standard prescription charge for persons who are not exempt is set at £3.90. The Committee is proposing for 2019 that the prescription charge be increased to £4.00. This is an increase of 2.6% on the 2018 charge, which is slightly higher than RPIX for June 2018.
- 6.9. The Committee notes that the total cost of prescriptions in 2017, including the drug costs and dispensing fees, was £18.05m. £2.19m was recovered through the payment of prescription charges, set at £3.90 per item in 2016. Although only 12% of the total cost is recovered in prescription charges, the fundamental importance of the pharmaceutical service is that patients can obtain drugs, some of which cost hundreds or thousands of pounds, for the standard prescription charge, or are exempt from paying altogether. In fact,

nearly two-thirds of all items dispensed are to people who are exempt from paying the prescription charge.

- 6.10. Despite the ongoing work of the PSU, the cost of providing these drugs is likely to increase in the coming years due to the aging demographic. Rising life expectancy and an aging population will lead to greater per capita demand for drugs. Factors such as a no-deal Brexit and the expansion of the list of approved drugs could result in even greater increases.

Specialist Medical Benefit

- 6.11. Under the Health Service (Benefit) (Guernsey) Law, 1990, and the Health Service (Specialist Medical Benefit) Ordinance, 1995, Specialist Medical Benefit is predominantly the secondary healthcare services provided through the contract with the Medical Specialist Group. The benefit also includes treatment by visiting medical specialists. A 15 year contract with the Medical Specialist Group ended on 31st December 2017. A new contract with the Medical Specialist Group has been in place since 1st January 2018. The contract is designed to support the ongoing transformation of health and social care.
- 6.12. Responsibility for managing the contract lies with the Committee *for* Health & Social Care. As the contract is financed through Social Security contributions, the role of the Committee *for* Employment & Social Security is focused primarily on the collection of funds and ensuring that sufficient funds are collected to meet current and future demands.
- 6.13. The Medical Specialist Group contract amounted to £18.1m in 2017. The forecast for 2018 expenditure is £18.1m. The MSG contract includes an annual savings target for the first 3 years of the contract of 3%, 2% and 1% respectively. In July 2018 the recruitment of an additional oncologist and an additional gastroenterologist was approved. The appointment of these additional specialists was recommended by a review of adult medical services produced by the Royal College of Physicians of Edinburgh earlier this year.

Physiotherapy benefit

- 6.14. Under the Health Service (Benefit) (Guernsey) Law, 1990 and the Health Service (Physiotherapy Benefit) Ordinance, 1997, physiotherapy services are provided through a contract with the Guernsey Therapy Group. The contract was due to expire on 31st December 2017 but has been extended while the Committee *for* Health & Social Care reviews the existing model of service delivery. As with the MSG contract, this contract is managed by the Committee *for* Health & Social Care and the role of the Committee *for*

Employment & Social Security is focused primarily on the collection of contributions to fund the service.

- 6.15. The contract with the Guernsey Therapy Group cost £2.2m in 2017, and expenditure for 2018 is forecast to be £2.3m.

Provision of contraception for people under 21 years old

- 6.16. In December 2017 the Committee *for* Health & Social Care and the Committee *for* Employment and Social Security established a pilot scheme to provide free contraceptive options to young people available through all GP practices as well as the sexual health clinics. It is hoped that this pilot will lead to a significant reduction in the number of under 18 pregnancies. While it is too early to comment in detail, initial results are very encouraging.

Summary of expenditure financed by the Guernsey Health Service Fund

- 6.17. Table 9 below summarises the impact of the proposed benefit rates on projected expenditure from the Guernsey Health Service Fund for 2019, and the 2018 revised forecast at the time of writing. This is compared with the actual expenditure figures for 2015-2017.

Table 9 – Summary of expenditure for the Guernsey Health Service Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|--|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Specialist Health Insurance | 21.4 | 20.7 | 20.5 | 20.1 | 19.3 |
| Pharmaceutical | 16.3 | 16.1 | 16.2 | 16.3 | 16.0 |
| Consultation grants | 3.3 | 3.4 | 3.3 | 3.4 | 3.4 |
| Visiting Medical Consultants | 0.8 | 0.8 | 0.8 | 0.7 | 0.7 |
| Primary Care Psychological Therapies | 0.5 | 0.4 | 0.4 | 0.3 | 0.3 |
| Free Contraception for the under 21s (pilot) | 0.1 | 0.1 | - | - | - |
| TOTAL BENEFIT EXPENDITURE | 42.4 | 41.5 | 41.2 | 40.8 | 39.7 |
| Administration | 1.7 | 1.6 | 1.3 | 1.6 | 1.6 |
| Total expenditure | 44.1 | 43.1 | 42.5 | 42.4 | 41.3 |

7. Long-term Care Benefits

- 7.1. The Long-term care Insurance Scheme pays benefits to assist with fees in private residential and nursing homes including the Guernsey Cheshire Home and States-run homes and long-stay wards.

Co-payment (Personal contribution) by person in care

- 7.2. Under the long-term care insurance scheme, it is a condition of entitlement to benefit that the person in care should make a co-payment. The 2018 personal contribution is £200.62 per week. The Committee recommends a personal contribution of £205.45 per week from 1st January 2019.
- 7.3. It should be noted that the personal contribution to the long-term care insurance scheme also sets the level of fees to be charged for accommodation in States-run homes and long-stay wards. This includes the Duchess of Kent, the Corbinerie (or Lighthouse) Wards, and the long-stay beds at the Mignot Memorial Hospital in Alderney.
- 7.4. In addition to the long-term care benefit payment and the personal contribution by the individual, many people in care will be required to pay additional fees set by the homes. These ‘top-up fees’ are paid by approximately two thirds of those in care. Table 10 below explains the breakdown of funding.

Table 10 – Overview of weekly long-term care benefit and fees (2018 values)

| Element of funding | | Cost | Paid by |
|---|----------------------|---------------|--|
| Type of care | Residential | £444.57 | Long-term Care Fund |
| | Residential-dementia | £585.76 | |
| | Private nursing home | £829.99 | |
| Personal contribution | | £200.62 | Resident (income support may provide assistance) |
| Top-up fees – these can be charged by the homes, in some cases there are no top-up fees | | Discretionary | Resident |

- 7.5. The cost and overall structure of Long-term Care is being investigated as part of the work to progress the Resolutions following the Supported Living and Ageing Well (SLAWS) Policy Letter (Billet d’État III of 2016, Volume II, Article XIV), which will be reported back to the States in the near future. It is intended that when this Policy Letter is presented to the States it will include multiple options for the States to consider.

Long-term care benefit rates

- 7.6. The Committee recommends that the rates of long-term care benefit be increased by 2.4%, with effect from 1st January 2019, as set out in Table 11 below.

Table 11 – Weekly rates of long-term care benefit

| | 2019 | 2018 |
|---|----------------|-------------|
| Residential care benefit | £455.21 | £444.57 |
| Residential – dementia⁸ | £599.83 | £585.76 |
| Nursing care benefit | £849.94 | £829.99 |

Respite care benefit

- 7.7. People needing respite care in the private sector residential or nursing homes are not required to pay a co-payment. The Long-term Care Insurance Fund pays instead. This is to acknowledge the value of occasional investment in respite care in order to allow the person concerned to remain in their own home for as long as practicable. It also acknowledges that people having respite care continue to bear the majority of their own household expenditure. The respite care benefits therefore, are the sum of the co-payment and the residential care benefit with or without Residential-dementia care, or nursing care benefit, as appropriate.
- 7.8. The Committee recommends that the rates of respite care benefit are set as shown in Table 12 below, with effect from 1st January 2019.

Table 12 – Weekly rates of respite care benefit

| | 2019 | 2018 |
|--|------------------|-------------|
| Residential care respite benefit | £660.66 | £645.19 |
| Residential- dementia respite benefit | £805.28 | £786.38 |
| Nursing care respite benefit | £1,055.39 | £1,030.61 |

Summary of expenditure financed by the Long-term Care Insurance Fund

- 7.9. Table 13 overleaf summarises the impact of the proposed benefit rates on projected expenditure from the Long-term Care Insurance Fund for 2019, along with the 2018 revised forecast at the time of writing, compared with the actual expenditure figures for 2015-2017.

⁸ Otherwise known as Elderly Mentally Infirm (EMI) Benefit, the term 'Residential-dementia' is used here as it is a simpler way to describe those who are eligible.

Table 13 – Summary of expenditure for the Long-term Care Insurance Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|------------------|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Residential care | 10.7 | 10.6 | 9.8 | 8.6 | 8.6 |
| Nursing care | 9.9 | 9.4 | 9.6 | 9.8 | 9.3 |
| | 20.6 | 20.0 | 19.4 | 18.4 | 17.9 |
| Administration | 0.4 | 0.3 | 0.3 | 0.3 | 0.3 |
| | 21.0 | 20.3 | 19.7 | 18.7 | 18.2 |

PART III: FINANCIAL POSITION

8. Financial position of the Contributory Funds

- 8.1. This section of the Policy Letter explains the financial position of the three funds, including reference to the actuarial reviews for the 2010-2014 period, undertaken by the UK Government Actuary's Department.

Guernsey Insurance Fund: Summary of the financial position

- 8.2. The financial performance of the Guernsey Insurance Fund is shown in Table 14 below. The 2019 budget estimates that the operating deficit will increase to £24.7m (2018 forecast: £23.4m deficit). The Fund has now been in deficit, before investment returns are taken into account, since 2009.
- 8.3. The operating deficit arises when benefit and administration expenditure exceeds contribution income and States grants. This shortfall is met by drawing down the Fund's reserves, and although planned, this causes the number of years expenditure cover to reduce.

Table 14 – Financial performance of the Guernsey Insurance Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|---|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Income | 129.9 | 125.9 | 122.3 | 117.3 | 115.1 |
| Expenditure | (154.6) | (149.3) | (141.8) | (139.4) | (134.5) |
| Operating deficit | (24.7) | (23.4) | (19.5) | (22.1) | (19.4) |
| Investment returns | 33.9 | 18.3 | 56.0 | 76.5 | (5.9) |
| Net surplus/(deficit) for the year | 9.2 | (5.1) | 36.5 | 54.4 | (25.3) |
| Net assets at 1 January | 762.6 | 767.7 | 731.2 | 676.8 | 702.1 |
| Net assets at 31 December | 771.8 | 762.6 | 767.7 | 731.2 | 676.8 |
| Expenditure cover in number of years | 5.0 | 5.1 | 5.4 | 5.2 | 5.0 |

- 8.4. The 2010-2014 actuarial review indicated that, if the assumptions were correct for the Guernsey Insurance Fund, and there are no further increases in contribution rates beyond those that were implemented in 2017, then the reserves will run out completely by 2046.

Guernsey Health Service Fund: Summary of the financial position

- 8.5. The financial performance of the Guernsey Health Service Fund is shown in Table 15. The 2019 budget estimates that the operating deficit will be £1.9m (2018 forecast: £2.1m deficit), with the States grant not being reinstated.

Table 15 – Financial performance of the Guernsey Health Service Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|---|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Income | 42.3 | 41.0 | 39.5 | 43.6 | 42.7 |
| Expenditure | (44.1) | (43.1) | (42.5) | (42.3) | (41.3) |
| Operating surplus/(deficit) | (1.8) | (2.1) | (3.0) | 1.3 | 1.4 |
| Investment returns | 6.2 | 3.2 | 8.9 | 12.0 | (0.9) |
| Net surplus/(deficit) for the year | 4.4 | 1.1 | 5.9 | 13.3 | 0.5 |
| Net assets at 1 January | 123.4 | 122.3 | 116.4 | 103.1 | 102.6 |
| Net assets at 31 December | 127.8 | 123.4 | 122.3 | 116.4 | 103.1 |
| Expenditure cover in number of years | 2.9 | 2.9 | 2.9 | 2.8 | 2.5 |

- 8.6. The actuarial review for the 2010-2014 period showed the Fund to be in a favourable position over the 15 year projection period, out to 2030. It is expected that the Fund balance will increase through re-invested returns, from 2.7 to 3.3 times annual expenditure. However, future health costs are notoriously hard to predict, and the sustainability of the Fund is affected mostly by movements in the prices of prescription drugs. The assumption for the 15 year projection is that unit costs will increase by RPIX.

Long-term Care Insurance Fund: Summary of the financial position

- 8.7. The financial performance of the Long-term Care Insurance Fund is shown in Table 16 overleaf. The 2019 budget estimates that the operating surplus will increase to £8.0m (2018 forecast: £7.9m surplus). The significant increase in income between 2016 and 2017 was a result of the 0.5% increase in contribution rates to the Fund, which applied from 1st January 2017.

Table 16 – Financial performance of the Long-term Care Insurance Fund

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|---|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Income | 29.0 | 28.2 | 26.6 | 19.4 | 18.5 |
| Expenditure | (21.0) | (20.3) | (19.7) | (18.7) | (18.2) |
| Operating surplus | 8.0 | 7.9 | 6.9 | 0.7 | 0.7 |
| Investing activities | 4.0 | 1.9 | 5.0 | 6.4 | (0.5) |
| Net surplus/(deficit) for the year | 12.0 | 9.8 | 11.9 | 7.1 | 0.2 |
| Net assets at 1 January | 84.6 | 74.8 | 62.9 | 55.8 | 55.6 |
| Net assets at 31 December | 96.6 | 84.6 | 74.8 | 62.9 | 55.8 |
| Expenditure cover in number of years | 4.6 | 4.2 | 3.8 | 3.4 | 3.1 |

- 8.8. The actuarial review for the 2010-2014 period showed that an increase in contribution rates of 0.5% to the Fund, would extend the life of the Fund by 16 years to 2047. This increase took place in January 2017. However, further measures will be required in the coming years to ensure the sustainability of the Fund. Particularly because the States has resolved to expand the scheme, and therefore increase expenditure, via the work of the Supported Living and Aging Scheme (SLAWS).

Investment returns

- 8.9. The reserves of the three funds are invested jointly in a portfolio supervised by a sub-committee. There is a standing invitation for a political member of the Policy & Resources Committee to join all meetings of the sub-committee. Given the nature of the funds they are invested with a conservative approach to risk. Over the past 18 months there have been significant changes to the composition of the fund, which were aimed at reducing risk while maintaining the target return, this restructuring is reaching its conclusion. The target and expected return of the portfolio is Libor +3.5%.

PART IV: CONCLUSIONS

9. Resource and Implementation Plan

- 9.1. Table 17 shows how the Committee has considered the resources required to implement the propositions set out in this Policy Letter.

Table 17 – Resource and Implementation Plan

| Details considered | Committee comment |
|---------------------------|--|
| Cost | This Policy Letter recommends that benefit rates are uprated by the June 2018 RPIX figure of 2.4% for 2019, and that contribution rates are unchanged. Detailed financial information is provided in part III of this document. |
| Timescale | The timescales for the implementation of the proposals set out in this Policy Letter are commented on within the text, but will mostly take effect from January 2019. |
| Resource requirements | Consideration of the financial position has been given throughout this Policy Letter, as well as the results of the 2010-2014 actuarial reviews. The drafting of the necessary legislation has limited resource impact for the Law Officers. |
| Funding | Funding will come from contribution income, the States grants and the planned draw-down of the Funds. |
| Staffing implications | The Committee does not envisage that the proposals contained within this Policy Letter would result in a request for additional staffing resources. |
| Transitional arrangements | There are no transitional arrangements required. |
| Communications plan | The Law Officers and the Policy & Resources Committee have been consulted with. |

10. Compliance with Rule 4 of the Rules of Procedure

- 10.1. Through the drafting of this Policy Letter, the Committee has consulted with the Policy & Resources Committee at joint meetings.
- 10.2. The Committee has consulted with the Law Officers regarding the legal implications and legislative drafting requirements resulting from the propositions set out in this Policy Letter.

- 10.3. The Committee has set out its proposals for the benefit and contribution rates for 2019 throughout this Policy Letter, and seeks the States support for the propositions, which are based on the Committee's purpose:

"To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation."

- 10.4. In particular, the propositions are aligned with the priorities and policies set out in the Committee's Policy Plan, which was approved by the States in June 2017 (Billet d'État XII, Article I). The Committee's Policy Plan is aligned with the States objectives and policy plans.
- 10.5. 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 have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

M J Fallaize
J A B Gollop
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2019
AND
NON-CONTRIBUTORY BENEFIT RATES FOR 2019

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

10th September 2018

Dear Sir

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security requests that 'Contributory Benefit and Contribution Rates for 2019' and 'Non-Contributory Benefit Rates for 2019' be considered at the States' meeting to be held on 24th October 2018.

It would be helpful for the Policy Letter to be considered at the earliest opportunity for two reasons. Firstly, the timing of processes within Social Security's systems requires administrative actions on the Resolutions from the debate of the Policy Letter to take place as early as possible following their approval. Secondly, there are a number of legislation requirements which will follow the debate, and these need to be completed before the end of the year, to ensure that the benefit and contribution rates for 2019 can be applied from 1st January 2019.

Yours faithfully



Michelle Le Clerc
President

Shane Langlois
Vice President

Matthew Fallaize, John Gollop, Emilie Yerby

Mike Brown, Andrew Le Lievre
Non-States Members

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR EMPLOYMENT & SOCIAL SECURITY

NON-CONTRIBUTORY BENEFIT RATES FOR 2019

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Non-contributory Benefit Rates for 2019', dated 10 September 2018, they are of the opinion:

1. To set the income support requirement rates at the rates set out in Table 1 of that Policy Letter, from 4th January 2019.
2. To set the benefit limitation for a person living in the community at £750 per week and the other benefit limitation rates at the rates set out in Table 2 of that Policy Letter, from 4th January 2019.
3. To note that the Committee for Employment & Social Security will return to the States with a Policy Letter addressing the future of the benefit limitation, earnings disregard and personal allowances by March 2019.
4. To set the maximum rent allowances at the amounts set out in Table 4 of that Policy Letter, from 4th January, 2019.
5. To set the amount of the personal allowance payable to persons in Guernsey and Alderney residential or nursing homes who are in receipt of income support at £32.16 per week, from 4th January 2019.
6. To set the amount of the personal allowance payable to persons in United Kingdom hospitals or care homes who are in receipt of income support at £54.18 per week, from 4th January 2019.
7. To set the supplementary fuel allowance paid to income support householders at £29.54 per week, from 26th October 2018 to 26th April 2019.
8. To set the rate of family allowance at £14.20 per week, from 1st January 2019.

9. To set the rates and annual income limit for severe disability benefit and carer's allowance at the rates and limit set out in Table 6 of that Policy Letter, from 1st January 2019.
10. That the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984, as amended, shall be further amended to allow a carer's allowance to be received under that Law at the same time as any benefit under the Social Insurance Law.
11. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

NON-CONTRIBUTORY BENEFIT RATES FOR 2019

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

10 September 2018

Dear Sir

1. Executive Summary

- 1.1. This year the Committee *for* Employment & Social Security has decided to present its annual benefit and contributions Policy Letter in a new form. In the past contributory matters were considered in a single Policy Letter alongside non-contributory matters. This year they will be presented in separate Policy Letters, intended to be debated at the same meeting but as different items. It is hoped that this will provide greater transparency over the source of funds. This is a response to the Resolution to investigate integration of the budget proposals and non-contributory benefit uprating proposals¹. It is intended that there will be further incremental steps in the years to come.
- 1.2. The Committee *for* Employment & Social Security has undertaken its annual review of the non-contributory benefits it is responsible for. The Committee is recommending that non-contributory benefits be increased in 2019 by 2.4%, being the annual rate of 'core' inflation (RPIX) for the year to June 2018. This is in line with the usual uprating policy.

¹ Resolution 22 on Billet d'État no XX of 2017.

PART I: EXPENDITURE – NON-CONTRIBUTORY BENEFITS

2. Summary of non-contributory benefits

- 2.1. Non-contributory benefits are those funded entirely through General Revenue, which comes from tax income and not from social security contributions. These benefits include income support, family allowance, severe disability benefit and carer's allowance. In addition, the Community and Environmental Projects Scheme, school uniform allowance, education grant and the free TV licence scheme for over 75's² are administered by the Committee and funded through General Revenue.
- 2.2. For 2019, the Committee recommends general increases in the rates of family allowance, severe disability benefit and carer's allowance by 2.4% in line with the published RPIX figure for June 2018. The Committee will be recommending an above inflation increase to the income support rates in order to take account of the forthcoming household waste charges.

3. Income Support

- 3.1. Income support was introduced in July 2018 as the replacement for supplementary benefit and rent rebate. At section 7 this Policy Letter includes a brief summary of the experience to date, both with regard to claim numbers and the actual expenditure compared to the projected expenditure.

Income support requirement rates

- 3.2. Income Support is payable at either long-term rates or short-term rates. Both of these rates were calculated by the Social Welfare Benefits Investigation Committee (SWBIC) based on a basket of goods. The short term rates are significantly lower than the long-term rates because they are based on a reduced basket of goods. Expenses which could reasonably be deferred for a short period of time were not included, this included things such as the replacement of clothing.
- 3.3. Most claims will begin at short-term rates. Long-term rates are payable when a claim reaches six months in duration, or from the outset for pensioners and those with severe disabilities. Individuals, who have income that falls between their short term and long term requirement rate, are also eligible to receive payment at long term rates after the expiration of 6 months. A rent allowance, on top of the short-term or long-term rates, applies to householders living in rented accommodation.

²

The scheme is now closed to new entrants and free TV licences for over 75's are expected to be offered by the BBC from 2021.

- 3.4. The Committee recommends that income support requirement rates be increased by 2.4%, in line with RPIX for June 2018 and include an additional uplift for the introduction of new household waste charges. Depending on the personal requirement rate onto which the charge is added the respective rates increase by a percentage between 2.9% and 4.1%.
- 3.5. In April 2018, the States approved a model of household waste disposal charges (Billet d'État XI of 2018, Article V) which will see a charge of £2.50 per black bag used and an additional £85 per annum standing charge. The Policy Letter examined the affordability of waste charges and built on the previous proposal, in the December, 2017 waste charging Policy Letter³, that the income support system would absorb the cost of fixed charges applied by the parishes and the WDA for households claiming benefits. The April, 2018 Policy Letter also gave estimates of additional costs to income support if the cost of one waste bag per week were covered. An indicative policy of providing an allowance of one black bag per household per week and funding the cost of any annual charge for income support recipients, was then used by the Committee for Employment & Social Security to produce a rough estimate of costs. Through a table circulated to States Members prior to the debate, the Committee stated that the estimated cost to deliver the indicative policy based on the option agreed by the States would be approximately £540k per annum.
- 3.6. Having had time to develop the policy further and create more detailed models, the Committee is proposing to incorporate the bag allowance into the requirement rates and the standing charge should be met through an addition to the rent allowance (see paragraph 3.38). The advantages of this approach are that the bag allowance will scale to the size of the household and that due to the high number of 1 or 2 person households receiving income support, there is potential to reduce the cost compared to the previous indicative policy. At the rates proposed by the Committee it is estimated that the costs will be roughly £100k lower than the indicative policy, at a cost of £445k per annum. The Committee believes that it is appropriate to account for the waste charges by a cash benefit, rather than by directly supplying bag stickers because there should be a financial incentive to reduce waste, just as there will be for other members of the public.
- 3.7. The Committee has determined that the correct allowance of bags should be half a bag per week for the householder and an additional quarter of a bag per week for every additional member of the household. These allowances are in effect added to the basket of goods used to calculate income support. In addition to inflation, the single person's rate is increased by a further £1.25 per week, the co-habiting rate by £1.88 per week, and all other rates by £0.63

³

Article XIII of Billet d'État XXIV of 2017.

per week. There are no relevant local statistics on waste production with reference to household size and it may be that these allowances will need to be revisited once there is more experience of the scheme.

- 3.8. In May 2018, the Committee wrote to the Presidents of the Policy & Resources Committee, the States Trading Supervisory Board and the Committee *for the* Environment & Infrastructure, outlining this policy and inviting comments or questions. No concerns have been raised.

Table 1 – Proposed short-term and long-term Income Support requirement rates for 2019 (2018 in brackets)

| Income support requirement rates for 2019 | Short-term rates (Up to 6 months) | Long-term rates (Over 6 months) |
|--|--|--|
| Householders: | | |
| Cohabiting/married couple | £186.39 (£180.19) | £305.84 (£296.84) |
| Single householder | £106.68 (£102.96) | £184.72 (£179.17) |
| Non-householder: | | |
| 18 or over | £81.36 (£78.84) | £138.89 (£135.02) |
| Rent Allowance | £75.00 (£75.00) | £75.00 (£75.00) |
| Member of a household: | | |
| 11 and over | £75.99 (£73.59) | £108.29 (£105.14) |
| 5 – 10 | £57.14 (£55.19) | £81.37 (£78.85) |
| Under 5 | £38.31 (£36.80) | £54.46 (£53.57) |

Basket of goods

- 3.9. Income support rates were originally calculated based on the cost of a defined basket of goods, the contents of which were the necessities of day to day living to avoid intolerable levels of poverty. This basket of goods has been uprated by RPIX for a number of years but, there has been no analysis of how the cost of the individual items has changed over that period or whether those items are still appropriate.
- 3.10. The Committee considers that it is important that it sets in motion a repricing exercise before the end of this term of government, to ensure that income support prevents people from living in intolerable levels of poverty. As income support has only just been introduced, the Committee is of the opinion that

this work should take place in 2020. The Committee will be seeking appropriate resources to carry out this work through next year's uprating report and budget.

Parents returning to work

- 3.11. Work requirements are part of the eligibility criteria for Income Support. A work requirement is a measure to enable a person to be engaged in full time work, i.e. those persons are required to be working, actively seeking full time work, or carrying out work-related activities. Claimants of working age, and anyone who lives with them of working age, will have a work requirement unless exempted or deemed to have met the requirements. Some people are in effect exempted from a work requirement, for instance if they have a severe disability or if they have substantial care responsibilities. In some cases people will in effect be given a reduced work requirement if they are deemed able to undertake some work but not full time work, such as a parent of a young child who needs to be cared for outside of school hours.
- 3.12. In 2009 the Committee's predecessor established that a single parent could only claim benefit if their youngest child was under the age of 12. In 2013 this was further revised down to the age of 7. With the introduction of work requirements in 2014, it has effectively become a requirement for a single parent (or both parents of a couple) to seek work as a condition of benefit once their child is 7 years old. This work is not full time and begins at 20 hours per week and scales up relative to the age of that child, until the child is 14 and the parent is expected to seek full time work. Provisions are flexible so that the requirement can be waived in appropriate circumstances.
- 3.13. In the UK a similar provision applies but the age limit is 3-4 for universal credit recipients. In Jersey a parent must seek work when their child is old enough to attend the free nursery place offered to children the year before beginning primary school, i.e. 3-4 years old.
- 3.14. Having regard for changing social norms, the Committee is persuaded that it is usually reasonable to expect a single parent or both parents of a couple to seek appropriate work by the time their youngest child begins school. As such the Committee intends to amend this policy. There will be a transitional period and the Committee does not intend for the policy change to take full effect until at least January 2020, during which time the job centre will engage with those affected.
- 3.15. At present there are approximately 80 claims which are likely to be affected by this policy change. It is difficult to accurately predict any savings that this policy change may bring, but the Committee is satisfied that it is justified on social policy grounds rather than any financial benefit.

- 3.16. The power to make adjustments to the work requirement is a power devolved to the Committee and the Administrator. The intended policy change is mentioned in this Policy Letter to inform the States.

Benefit limitations

- 3.17. The amount of benefit paid, together with any earnings, in the majority of cases is equal to a household's total personal and family requirements including rent. However, in some cases a household's income, the combination of earnings and benefits, is capped by the benefit limitation. The current benefit limitation is £670 per week.
- 3.18. The benefit limitation was originally created in 1971 and was linked to the greenhouse workers wage. Its purpose was to prevent a person receiving more in benefit than they would if they were in employment. Since then there have been many significant changes to benefit rules, not least of which being that Income Support is an in-work benefit.
- 3.19. Only two adjustments can be made to make the benefit limitation more flexible for those who reach the cap. The first adjustment is to disregard family allowance, so that it can be paid over and above the cap. The other adjustment is to apply the normal disregard of £35 of earnings per week on top of the cap. This allows the cap to be exceeded by £35 in the case of one wage earner, or £70 per week if there are two earners. While of value, these two adjustments are not the proper solution for families significantly affected by the benefit limitation.
- 3.20. There is sometimes a misconception that a family can receive up to £670 in benefit above their earnings. This is certainly not the case. Ignoring the effect of the adjustments described above, a household with an income of £670 per week will not receive any financial assistance through income support, irrespective of how much their income falls short of their identified requirements. The term benefit limitation is perhaps misleading; in reality it is an income cap, an amount at which the States have determined that there should be no further means tested financial support, no matter whether that amount is reached via personal income, benefit received, or a mixture of the two.
- 3.21. In 2003, 2008, 2012, 2015 and 2017 the cap was increased by significant amounts to mitigate the levels of poverty being created as a result of the benefit limitation. In other years, the benefit limitation has been increased by RPIX, often rounded to the nearest £5. Significant progress has been made over the past 15 years, but the removal of rent rebate means that much of this work will be undone unless the benefit limitation is substantially

increased. Modestly sized households are now impacted by the benefit limitation.

- 3.22. The States has committed to address the truth that some families are not able to enjoy an acceptable standard of living. Last year the Committee stated in its Policy plan that "... the Committee will need to follow its predecessors and recommend that between now and 2020 the supplementary benefit 'benefit limitation' rises at a faster rate than inflation".
- 3.23. The introduction of Income Support resulted in a more equitable system and improved the finances of 75% of those affected. The disadvantaged are predominantly medium to large sized families. This is due to the impact of the benefit limitation. As the transitional stage of rent rebate closes over the coming two and a half years, such families will be increasingly disadvantaged unless the benefit limitation is raised substantially.
- 3.24. Under the rent rebate scheme a 2 parent family with 5 children, in social housing, would have had an income, supplemented by benefits, which was not artificially reduced from their identified need by the benefit limitation. Some families that were larger than this would have also received an unreduced benefit, depending on the age of the children. They escaped the effects of the benefit limitation because of the heavily discounted rent.
- 3.25. With the ending of the rent rebate system it is now possible that a couple with 1 teenage child, living in social housing and of course being required to pay full rent, could have a weekly total requirement of £662.12. This means that they are only just inside the current benefit limitation. Couples with 2 children will often be affected by the benefit limitation and couples with 3 or more children almost always will be. The requirement rates, which together with rent make up the total requirement, were based on a basket of goods which was calculated to meet the minimum needs of that family to avoid intolerable levels of poverty. The bar was by that definition set very low indeed. The result is that, after paying their rent, families with 3 or more children who are reliant on the States for financial assistance are bound to be constrained to an income that holds them in an intolerable level of poverty by the States' own basket of goods measure.
- 3.26. A consequence of there being so many families impacted by the benefit limitation is that social housing rents cannot reasonably be increased without a real terms increase to the benefit limitation. Families are already paying their rent from money which should be allocated on food, clothing and the day to day essentials.
- 3.27. At the time of writing 224 families and 721 children are impacted by the benefit limitation. Many of these are working families with 2 or 3 children, which is in no way out of the ordinary as far as demographics are concerned.

This is a large increase from the 12 families and 56 children that were affected by the benefit limitation under the supplementary benefit scheme, prior to income support being introduced. The increase is completely explicable, resulting from the withdrawal of the rent rebate scheme and the charging of social housing rents at the full rates. But although the reasons are understood, and although some of the effects are being temporarily moderated through transitional arrangement for social housing tenants, knowingly having over 200 families and 700 children living in intolerable levels of poverty is not a situation that the Committee will accept. The Committee trusts that the States, likewise, will find this situation unacceptable.

- 3.28. The Committee believes that a long term solution needs to be found, and found quickly. The Committee intends to bring to the States, by March 2019, a separate Policy Letter on the future of the benefit limitation, with propositions. In the same report, the Committee will take the opportunity to address a small number of additional issues warranting attention once the Income support Scheme has fully bedded-in. These include the earnings disregard and the personal allowances for people living in residential and nursing home on-island and in the UK.
- 3.29. Pending the further Policy Letter referred to above, the Committee is proposing a significant real terms increase to the benefit limitation for 2019, as an interim measure to mitigate the effect on families. Increasing the benefit limitation to £750 would mean that families with 2 children would no longer be affected by the benefit limitation and the number of affected families would decrease from 224 to 109 and the number of affected children would reduce from 721 to 428. This would be a significant step in what the Committee believes can only be the right direction.
- 3.30. Increasing the benefit limitation to £750 is expected to increase income support expenditure by £670,000 per annum. However, some of those affected by the benefit limitation are receiving a transitional rent rebate. An increase in the benefit limitation would reduce or remove their need for a transitional entitlement, which amounts to £140,000. The net expected expenditure increase for 2019 as a result of the proposed increase in the benefit limitation is £530,000. The cost of maintaining the benefit limitation at the same real terms value and accounting for the waste charge increase would be in the region of £200,000. Therefore the Committee's proposal represents a real terms increase of £330,000 per annum.
- 3.31. Information about families currently outside of income support or social housing is not available to the Committee, so the Committee cannot say definitively how many people may be entitled to begin a new claim as a result of the proposed increase. However, it is believed that the vast majority of those who would be impacted have been factored into the estimated costs.

This is because relatively few families with sufficiently low income are likely to be supporting themselves without the assistance of social housing and the rent rebate scheme. Those receiving a transitional rent rebate were factored into the calculation.

- 3.32. Table 2 below shows the weekly benefit limitations which currently apply and the proposed limitations from 4th January 2019.

Table 2 – Weekly income support limitations

| Benefit limitation | 2019 | 2018 |
|--|----------------|-------------|
| Community | £750.00 | £670.00 |
| Residential homes ⁴ | £562.00 | £549.00 |
| Nursing homes, EMI residents and Guernsey Cheshire Home ⁵ | £806.00 | £787.00 |

Personal allowances

- 3.33. The Committee pays a personal allowance to residents of residential or nursing homes who qualify for income support. The personal allowance is intended to allow modest purchases of, say, newspapers, confectionery, toiletries, small family presents and so on.
- 3.34. The Committee *for* Health & Social Care (HSC) pays for Guernsey and Alderney residents to be placed in UK hospitals and specialised institutions if their mental or physical health needs cannot be met on-Island. While HSC meets the cost of accommodation and care, residents are expected to pay for items of personal expenditure from their own resources. Residents who cannot afford these things can apply to Social Security for a personal allowance.
- 3.35. It is believed that there is a need for this particular personal allowance to be higher than the rate which applies to Guernsey residential and nursing homes. This is because the people living temporarily off-Island tend to be more active, part of a much younger age group, and have more opportunities for using a personal allowance in the course of their supervised activities and outings. At the time of writing there are 13 people claiming this allowance.

⁴ This limitation applies to a person residing in a residential home who does not satisfy the residence requirements for long-term care benefit and may, therefore, need to rely on financial support from supplementary benefit.

⁵ This limitation applies to a person residing in a nursing home or a residential home with EMI care needs, or the Guernsey Cheshire Home, who does not satisfy the residence requirements for long-term care benefit and may, therefore, need to rely on financial support from supplementary benefit.

- 3.36. The Committee is concerned that these allowances have not been subject to the same review as the standard rates of Income Support and that they have not been evaluated based on the real needs of the recipients. The Committee wishes to note its intention to review these figures in a Policy Letter that it will bring to the States by March 2019.
- 3.37. Table 3 below sets out the weekly personal allowances which currently apply and the proposed allowances to apply from 4th January 2019. The proposed allowances are in line with the general uprating policy for non-contributory benefits for 2019, which is set at 2.4%.

Table 3 – Weekly personal allowances

| Personal allowance | 2019 | 2018 |
|--|---------------|-------------|
| Residents of local residential and nursing homes | £32.16 | £31.41 |
| Guernsey people in UK hospitals and care homes | £54.18 | £52.91 |

Maximum rent allowances⁶

- 3.38. The maximum rent allowances for 2018 and the proposed allowances for 2019 are set out in Table 4 overleaf. The rates correspond with the highest rent charged for a social housing unit of appropriate size. This year, social housing rent increases took account of the Waste Disposal Authority standing charge element of the household waste charges. This will be paid directly and recovered through the rent increase. It was determined that this was preferable for all parties and reduced administration.
- 3.39. The calculation of rent also takes into account taxes and charges associated with occupying the property. This means that those in the private rented sector will be able to claim a small weekly uplift (£1.63) to offset the WDA standing charge, provided that their landlord does pay the charge and recover it either through the rent or directly.

⁶

The increases to a person's requirements to allow for rental payments are known as a rent allowance in paragraph 6 of the First Schedule to the Income Support (Implementation) Ordinance, 1971.

Table 4 – Maximum rent allowances for 2018

| Tenancy Group | Description | 2019 | 2018 |
|----------------------|-----------------------------------|---------------|-------------|
| Group 1 | Single with no children | 227.00 | £217.50 |
| Group 2 | Couple with no children | 227.00 | £217.50 |
| Group 2 | Single or couple with 1 child | 264.63 | £260.14 |
| Group 3 | Single or couple with 2 children | 337.48 | £332.40 |
| Group 4 | Single or couple with 3+ children | 413.00 | £407.17 |
| Group 5 | Living in shared accommodation | 176.71 | £174.97 |

Supplementary fuel allowance

- 3.40. A supplementary fuel allowance is paid from General Revenue, to all householders in receipt of income support, for 26 weeks from the last week in October until the last week in April of the year following. The fuel allowance was £27.20 per week for the winter of October 2017 to April 2018. The rate of the fuel allowance for the period was increased by 4.5% on the previous year and reflected the inflation adjusted cost of fuel, light and power in the year to June 2017⁷.
- 3.41. The Committee is recommending an increase of 8.6% in the fuel allowance, taking it to £29.54 per week for the period from 26th October 2018 to 26th April 2019. This is in line with the change in the cost of fuel, light, and power in the year to June 2018⁸.
- 3.42. The fuel allowance will cost in the region of £1.59m over the 26 week payment period for October 2018 to April 2019. This reflects inflation plus an increase of £530k generated by the expected increase in claimant numbers due to the introduction of Income Support in July 2018.
- 3.43. The Committee notes that work is in progress to convert existing social housing to be more energy efficient. In the past the Committee has noted that it intended to review fuel allowance and the possibility of making payments proportionate to the energy efficiency of a property. While the Committee maintains that this would be beneficial, the resource to undertake this work is not available. The Committee will be considering what alternative funds might be available, such as the change and transformation fund.

⁷ Source: Guernsey Quarterly Inflation Bulletin – 20th July 2017.

⁸ Source: Guernsey Quarterly Inflation Bulletin – 20th July 2017.

Medical Support

- 3.44. In 2014 the Committee's predecessor established a legal framework to provide financial support for the medical expenses of those who receive what is now called income support. This support had previously been provided through liberal application of a discretionary power. The vast majority of households receiving income support are entitled to have the costs of their medical care funded through income support. This can include GP appointments, prescriptions, dental care, accident and emergency charges and other costs. Income Support recipients may only be paid medical expenses if their capital resources are below the relevant threshold.
- 3.45. As a matter of policy, a capital restriction has been imposed for many years. These capital limits are lower than the capital limits for general income support⁹, meaning that a person who is eligible to receive Income Support may not be entitled to medical support. The Committee is aware that this matter has not been brought to the States before and therefore the States have not had an opportunity to consider these limits.
- 3.46. As of April 2018, there were 164 households receiving Income Support but not entitled to medical care. There were 185 people in these households, indicating that it is predominantly single people who exceed the capital threshold. Current medical expenditure averages at around £500 per claimant per year, therefore it can be estimated that the cost of removing the medical support capital limits would be in the region of £100k per annum.

Table 5 – Capital Limits for Medical Support

| Description | Capital Limit |
|--|---------------|
| Single person who has not attained pensionable age | £3,000 |
| Couple, neither of whom have attained pensionable age | £5,000 |
| Single person or couple with one or more children | £5,000 |
| Single person who has attained pensionable age | £5,000 |
| Couple, one or both of whom has attained pensionable age | £7,000 |

Extra Needs Allowance

- 3.47. The extra needs allowances are a small payment of between £10-£20 per week for claimants who could demonstrate an additional expense which arises from a medical condition or disability, such as a need for a special diet. These payments were established as part of the Income Support changes in July 2018. As this is an entirely new element of benefit, the Committee has

⁹ Income Support capital limits range from £13k - £23k depending on household composition.

not had time to review the appropriateness or effectiveness of the payment, and so the Committee does not intend to propose an increase to the rates this year.

Community and Environmental Projects Scheme

- 3.48. The Committee administers the Community and Environmental Projects Scheme (CEPS), which offers short-term employment and training opportunities for unemployed people. The Committee contracts with States Works for the necessary supervision of the work teams and also for the provision of transport, equipment, and tools.
- 3.49. The hourly wage rates for the CEPS employees are set by the Committee and do not require a Resolution of the States. From 1st October 2010, the rates payable were brought into line with minimum wage rates. From 1st January 2019, the rates payable will continue to mirror the minimum wage rates agreed by the States.

4. School Uniform Allowance & Educational Maintenance Grant

- 4.1. Since 2016 the Committee *for* Employment & Social Security has operated the school uniform allowance. This was previously managed by the Committee *for* Education Sport & Culture and its predecessors.
- 4.2. The threshold for eligibility is linked to the income support requirement rates. Approximately 800 pupils are expected to receive the allowance this year. The amount received is dependent on household income. The maximum available is £308 for a secondary school pupil and £204 for a primary school pupil.
- 4.3. Educational maintenance grants are provided to low income families to encourage young people to remain in education. It is paid in respect of students who are 16 or 17 at the start of the academic year. The grant is made on a termly basis subject to a good attendance. Financial eligibility is determined on the same basis as the uniform allowance. The full grant is £1,347 per annum but the grant is also payable at reduced rates. There were 11 applications for the 2017/18 academic year, of which 10 were approved.
- 4.4. The combined budget for providing these services is £152k for 2019, which is the same as the 2018 budget.

5. Family Allowance

- 5.1. Family allowance is a universal benefit that is paid to all families with qualifying children, irrespective of the level of their household income. The weekly rate of family allowance was £13.90 per child for 2018.

- 5.2. Expenditure on family allowance amounted to £8.19m in 2017. It is estimated that expenditure on family allowance in 2018 will be £8.54m.
- 5.3. A resolution following a successful amendment from Deputy Dorey, to the former Social Security Department's report on benefit and contribution rates (Billet d'État XVIII of 2015, Article VIII) resolved:

“To agree that, after consultation with other relevant committees of the States, the Committee for Employment & Social Security shall report to the States by no later than October, 2017 setting out their opinion on whether the universal payment of family allowances should be altered, reduced or ceased and the costs thereof redirected to allow the States to provide additional financial support for some or all of the following children's services: medical and paramedical, including but not limited to primary care, dental, optical and physiotherapy provided either by States-employed clinicians or contracted private practitioners; and breakfast clubs, after school homework clubs, school meals and holiday clubs at States' schools.”

- 5.4. The Committee still intends to consider options for the reallocation of family allowance funds toward the funding of universal services for children. This will have to be done in consultation with the Committee *for* Health & Social Care and the Committee *for* Education, Sport & Culture. It is hoped that this work can be progressed quickly and that proposals can be brought to the States via a joint Policy Letter during 2019.
- 5.5. Last year the Committee re-established the policy of applying an annual increase to family allowance. As such the Committee are proposing that family allowance should be uprated by RPIX for June 2018 (2.4%), in line with all other benefits from 1st January 2019. This takes the weekly rate of family allowance from £13.90 per child to £14.23. Normally, the rate of family allowance is rounded to the nearest ten pence, so the Committee is proposing that the rate for 2019 is £14.20.

6. Severe Disability Benefit and Carer's Allowance

Overlapping claims to carer's allowance and sickness benefit etc.

- 6.1. Carer's allowance is a benefit available to a person who is caring for a person in receipt of severe disability benefit. The Severe Disability Benefit and Carer's Allowance Law, 1984 provides that a person is not entitled to receive a carer's allowance for any period in respect of which they receive any periodic payment under the Social Insurance Law. The exceptions to this rule are old

age pension, widowed parent's allowance, bereavement allowance or industrial disablement benefit, alongside which carer's allowance may be received.

- 6.2. This 'overlapping benefit' rule applies mainly in cases where a person receiving carer's allowance makes a claim for sickness benefit under the Social Insurance Law.
- 6.3. Until 2014, it was very rare for a person to be potentially entitled to a carer's allowance and sickness benefit. This is because, prior to 2014, carer's allowance was not payable to a person who was gainfully employed. In practice, this meant that carer's allowance was only paid to carers with no earnings, or earnings below the lower earnings limit for social security contributions. It followed that, as people receiving carer's allowance could not be earning and paying employed persons' social security contributions, they could not be entitled to sickness benefit, which relies on contribution conditions.
- 6.4. From 2014, and in recognition that there were carers who were combining employment, albeit perhaps part-time, with caring for someone for at least the minimum required 35 hours per week, the law was changed. A carer may now receive a carer's allowance even if they are gainfully employed. There is no limit on the amount that they can earn, apart from the general limitation for both severe disability benefit and carer's allowance that the benefits are not payable if family income exceeds an income limit.
- 6.5. The change in the Law in 2014 has led to a significantly higher take-up of carer's allowance. There were 341 claims in payment at the end of 2013. There were 493 claims at the end of 2017. Although some of the growth in numbers will be a general trend in the underlying severe disability cases, the majority of the 150 or so extra claims will be from carers in gainful employment.
- 6.6. An unforeseen effect of the positive change in the Law has been that the once rare event of a carer being potentially entitled to both carer's allowance and sickness benefit is now quite common. As the two benefits cannot be paid together, the individual has to choose which benefit to receive and which to reject. Sickness benefit, at £156.17 per week, is higher than carer's allowance at £84.06 per week. However, in cases where the employer pays sick pay, any sickness benefit is usually required to be paid across to the employer as partial compensation. Clearly, this is not the case with carer's allowance, so it could be to a carer's financial advantage to reject the higher sickness benefit and to retain the carer's allowance. This gives rise to confusing and unhelpful decisions.

- 6.7. The Committee has been reminded by carers that, although they may be unfit for their paid employment, unless they are very unwell indeed they will still be required to provide the care for the person they are looking after. The Committee accepts that point. The Committee also considers that if it is acceptable for a person to receive earnings from employment at the same time as carer's allowance, which is now the case, it should be equally acceptable to receive sickness benefit at the same time as carer's allowance. The Committee believes that the same argument applies to incapacity benefit, unemployment benefit and parental benefits.
- 6.8. Presuming that currently people opt mainly for sickness benefit instead of carer's allowance, there will be a cost to General Revenue from allowing both benefits to be claimed. If each of the approximate 150 people in employment and receiving care's allowance were sick for, say, one week per year, the additional cost to General Revenue from allowing both benefits to be claimed would be just £12,600 (150 x £84.06). However, in time there will be people who are on long-term sickness benefit and also claiming carer's allowance. This would be more costly. If, say, 5 of the 150 claims involved long-term sickness and the remaining 145 had, say, one week of sickness per year, the additional cost to General revenue would be approximately £34,000 per annum ((5 x 52 x £84.06) + 145 x £84.06). This would represent an increase of 0.5% on the £5.8m overall 2018 budget for severe disability benefit and carer's allowances.
- 6.9. The propositions associated with this Policy Letter include a proposition to amend the Severe Disability Benefit and Carer's Allowance Law to allow carer's allowance to be received at the same time as sickness, incapacity, unemployment and parental benefits under the Social Insurance Law. Unlike most proposals in this policy letter this will not take effect from January 2019 due to the legislative changes required.

Rates and annual income limit

- 6.10. The Committee recommends that the rates of severe disability benefit and carer's allowance be increased by 2.4%, with effect from 1st January 2019, as shown in Table 6 overleaf.

Table 6 – Current and proposed annual income limit and weekly rates of severe disability benefit and carer's allowance

| | 2019 | 2018 |
|---|----------------|-------------|
| Severe disability benefit - weekly rate | £106.40 | £103.88 |
| Carer's allowance - weekly rate | £86.08 | £84.06 |
| Annual income limit for both allowances | £99,300 | £97,000 |

- 6.11. Actual benefit expenditure on severe disability benefit and carer's allowance for 2015-2017 is shown in Table 7 overleaf. The expected outturn for these benefits for 2018 and the budget figure for 2019 is also shown in Table 7. The increase in expenditure is in part due to the continuation of an increasing number of claims following legislative changes, promotion of the benefit, and an ageing population.

Table 7 – Expenditure on severe disability benefit and carer's allowance

| Severe Disability Benefit and Carer's Allowance | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|--|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Expenditure | 6.6 | 6.2 | 5.6 | 5.4 | 5.1 |

PART IV: FINANCIAL POSITION

7. Non-Contributory Services funded from General Revenue

Summary of the financial position

- 7.1. As this Policy Letter is about the benefit and contribution rates for 2019, it only considers those Non-Contributory Services and benefits funded from General Revenue, delivered by Social Security, and not the additional services that come under the Committee's mandate, which are also funded from General Revenue.

Summary of non-contributory Social Security expenditure financed by General Revenue

- 7.2. Table 8 summarises the impact of the proposed benefit rates on expenditure for 2019. This also includes the 2018 revised forecast at the time of writing, and the actual expenditure figures for 2015-2017.

Table 8 – Summary of non-contributory Social Security expenditure financed by General Revenue

| | 2019 Budget £m | 2018 Forecast £m | 2017 Actual £m | 2016 Actual £m | 2015 Actual £m |
|--|-------------------------------|---------------------------------|-------------------------------|-------------------------------|-------------------------------|
| Income Support/ Supplementary Benefit | 41.0 | 31.1 ¹⁰ | 21.7 | 20.9 | 20.9 |
| Family allowance | 8.5 | 8.4 | 8.2 | 9.6 | 9.8 |
| Severe disability benefit & carer's allowance | 6.6 | 6.2 | 5.6 | 5.4 | 5.1 |
| Concessionary TV licence | 0.3 | 0.5 | 0.6 | 0.6 | 0.6 |
| Contributory Fund States grants (GIF & GHSE) | 16.6 | 16.1 | 15.7 | 19.7 | 19.6 |
| Sub-total formula led expenditure | 73.0 | 62.3 | 51.8 | 56.2 | 56.0 |
| School Uniform Allowance & Educational Maintenance Grant | 0.2 | 0.2 | 0.1 | 0.1 | N/A |
| Administration | 2.6 | 2.4 | 2.4 | 2.4 | 2.4 |
| Others ¹¹ | 0.3 | 0.3 | 0.3 | 0.3 | 0.3 |
| Sub-total non-formula led expenditure | 3.1 | 2.9 | 2.8 | 2.8 | 2.7 |
| Total expenditure | 76.1 | 65.2 | 54.6 | 59.0 | 58.7 |

The increase in income support expenditure between 2017 and 2019, shown in the table above, does not account for the increased revenue to the States through the ending of the rent rebate scheme and all social housing rents being charged at the full rate. Income from rents will appear in the budget report for 2019 and is expected to total around £18m.

Income support and Supplementary Benefit expenditure and claim data

- 7.3. Supplementary benefit expenditure amounted to £21.7m in 2017. The expected outturn for 2018 is £31.1m. As income support replaced supplementary benefit on 6th July 2018, this year's expenditure will include 6

¹⁰ The above table includes the 2018 forecast costs of 6 months of Supplementary Benefit and 6 months of Income Support, because Income Support launched on July 6th 2018. The budget for 2019 reflects the cost of Income Support for the full year.

¹¹ Others include Community & Environmental Projects Scheme (CEPS), Charitable Grants, and miscellaneous expenditure.

months of supplementary benefit and 6 months of income support expenditure, 2019 expenditure will represent a full year of Income Support.

- 7.4. As at 4th August 2018, there were 3,001 active income support claims, as set out in Table 9 overleaf. These claims also support 2,260 dependants, thereby giving a total income support population of 5,261. The reason for the significant increase over the previous year's statistics is due to the introduction of income support.
- 7.5. Income support claimants have been, in recent years, split into ten classifications by which they can be identified and managed in practice. An amendment to income support legislation in 2014 removed these classifications, however, in practice, claims are still split into those categories for the purposes of claims management and financial analysis. The classifications are referred to in the analysis of claims and expenditure shown in Table 9.

Table 9 – Income support claims and expenditure

| Classification | Claims at 4th August 2018 | Claims at 2nd September 2017 | 2019 Budget (£m) | 2018 Forecast (£m) | 2017 Actual (£m) |
|---|---|--|-------------------------|---------------------------|-------------------------|
| Pensioner | 894 | 715 | 6.0 | 4.5 | 2.9 |
| Incapacitated | 508 | 497 | 7.8 | 5.8 | 4.4 |
| Jobseeker or low earner | 692 | 535 | 9.6 | 7.2 | 5.0 |
| Single parent | 323 | 286 | 7.3 | 5.5 | 3.6 |
| Disabled | 204 | 205 | 3.8 | 2.8 | 2.2 |
| Work requirement met | 353 ¹² | 73 | 2.4 | 1.8 | 0.8 |
| Other ¹³ | 27 | 31 | 0.4 | 0.3 | 0.3 |
| Total (number of claims excludes dependants) | 3,001 | 2,342 | 37.3 | 27.9 | 19.2 |
| Special Grants ¹⁴ | | | 3.1 | 2.7 | 2.5 |
| Rent Rebate Transition | | | 0.6 | 0.5 | - |
| Grant Total | | | 41.0 | 31.1 | 21.7 |

- 7.6. There are individuals in all of these categories who undertake work, some of whom may have no requirement to work as a condition of benefit. For instance around 40% of those categorised as single parents are in work. It should be remembered that income support is a benefit designed to ensure a minimum acceptable standard of living, many of its recipients are in full or part time work. However this work on its own does not produce sufficient income for their household to enjoy a reasonable standard of living, which is why they receive a ‘top-up’ from income support.

¹² This figure is artificially high as the category has been used as a placeholder for new Income Support claimants who are yet to be categorised. Most of these will be re-categorised in the coming months.

¹³ Includes the following classifications: Carer, Pregnant, Prisoner’s spouse, and Partner in hospital, and a small number of claimants whose classification is unknown

¹⁴ Includes special grants in respect of medical expenses, disability, funeral expenses and other miscellaneous expenses

Income Support Launch

- 7.7. In the two months since income support launched there has been a review of the expenditure in comparison to the original projected costs. If current trends continue, it is expected that expenditure will be in the region of £570,000 less than originally forecast for the half year to the end of 2018 and would be in the region of £1.2m in 2019, but this is offset by the introduction of household waste charges, which is estimated to cost £445,000. Therefore the latest forecast for 2019 is approximately £700,000 less than the original forecast.
- 7.8. The projected savings are primarily due to a lower than expected number of claims. There were approximately 300 fewer claims than were expected. In some cases people chose not to claim, many of whom were entitled to relatively small amounts. In other cases it transpired that people thought to be eligible turned out not to be once updated information had been provided.
- 7.9. This projection comes with the caveat that if a significant number of those who opted not to claim were to change their minds, then the projected expenditure would increase and the gap between the original and revised projections would close. If a very large number of these were to claim, then the cost could exceed the original projected cost.

PART VI: CONCLUSIONS

8. Resource and Implementation Plan

- 8.1. Table 10 shows how the Committee has considered the resources required to implement the propositions set out in this Policy Letter.

Table 10 – Resource and Implementation Plan

| Details considered | Committee comment |
|---------------------------|--|
| Cost | This Policy Letter recommends that most non-contributory benefit rates are uprated by the June 2018 RPIX figure of 2.4% for 2019. The Policy Letter also proposes that Income Support rates receive an appropriate uplift for the forthcoming household waste charges and that the benefit limitation receives a significant increase. |
| Timescale | Most of the proposals set out in this Policy Letter will take effect from January 2019. |
| Resource requirements | Consideration of the financial position has been given throughout this Policy Letter, as well as the results of the 2010-2014 actuarial reviews, and staff availability to undertake project work. The drafting of the necessary legislation has limited resource impact for the Law Officers. |
| Funding | Funding will come from General Revenue. |
| Staffing implications | The Committee does not envisage that the proposals contained within this Policy Letter would result in a request for additional staffing resources. |
| Transitional arrangements | There are no transitional arrangements required for the proposals to take effect from January, 2019. |
| Communications plan | The Law Officers and the Policy & Resources Committee have been consulted with. |

9. Compliance with Rule 4 of the Rules of Procedure

- 9.1. Throughout the drafting of this Policy Letter, the Committee has consulted with the Policy & Resources Committee at joint meetings.
- 9.2. The Committee has consulted with the Law Officers regarding the legal implications and legislative drafting requirements resulting from the propositions set out in this Policy Letter.

- 9.3. The Committee has set out its proposals for the benefit and contribution rates for 2019 throughout this Policy Letter, and seeks the States support for the propositions, which are based on the Committee’s purpose:

“To foster a compassionate, cohesive and aspirational society in which responsibility is encouraged and individuals and families are supported through schemes of social protection relating to pensions, other contributory and non-contributory benefits, social housing, employment, re-employment and labour market legislation.”

- 9.4. In particular, the propositions are aligned with the priorities and policies set out in the Committee’s Policy Plan, which was approved by the States in June 2017 (Billet d’État XII, Article I). The Committee’s Policy Plan is aligned with the States objectives and policy plans.
- 9.5. 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 have the unanimous support of the Committee.

Yours faithfully

M K Le Clerc
President

S L Langlois
Vice-President

M J Fallaize
J A B Gollop
E A Yerby

M J Brown
Non-States Member

A R Le Lièvre
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2019
AND
NON-CONTRIBUTORY BENEFIT RATES FOR 2019

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

10th September 2018

Dear Sir

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Employment & Social Security requests that 'Contributory Benefit and Contribution Rates for 2019' and 'Non-Contributory Benefit Rates for 2019' be considered at the States' meeting to be held on 24th October 2018.

It would be helpful for the Policy Letter to be considered at the earliest opportunity for two reasons. Firstly, the timing of processes within Social Security's systems requires administrative actions on the Resolutions from the debate of the Policy Letter to take place as early as possible following their approval. Secondly, there are a number of legislation requirements which will follow the debate, and these need to be completed before the end of the year, to ensure that the benefit and contribution rates for 2019 can be applied from 1st January 2019.

Yours faithfully



Michelle Le Clerc
President

Shane Langlois
Vice President

Matthew Fallaize, John Gollop, Emilie Yerby

Mike Brown, Andrew Le Lievre
Non-States Members

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

TRANSFRONTIER SHIPMENT OF WASTE- SUPPLEMENTARY POLICY LETTER

The States are asked to decide whether, after consideration of the Policy Letter entitled "Transfrontier Shipment of Waste- Supplementary Policy Letter", dated 7th September 2018, they are of the opinion:-

1. To approve the inclusion in the transfrontier shipment of waste legislation of more detailed and clearer enforcement powers, including powers to seize waste and to enter land and carry out inspections and tests, in relation to enforcing the requirements of the 2006 EU Waste Shipment Regulation and the Guernsey legislation as set out in the Policy Letter.
2. To approve the amendment of the transfrontier shipment of waste legislation to remove the reference, in the provisions relating to the preparation of a management plan for the importation and exportation of waste, to the EU Waste Framework Directive and to add a requirement for the Committee *for the* Environment & Infrastructure to have regard to-
 - a) the Basel Convention on the control of transboundary movements of hazardous waste and their disposal, and
 - b) the Organisation for Economic Co-operation and Development (OECD) Decision on the control of transboundary movements of waste destined for recovery operations,in preparing that plan.
3. To approve the amendment of the transfrontier shipment of waste legislation to include the grounds on which the Director may object to waste shipments into, out of and in transit through Guernsey by adopting certain grounds, with appropriate modifications, set out in the 2006 EU Waste Shipment Regulation.
4. To remove the current exemption, for certain shipments of waste by the States of Guernsey from Alderney to Guernsey, from the requirement for a financial

guarantee or equivalent insurance to be in force in respect of the shipment as further outlined in paragraphs 7.1 – 7.6 of the Policy Letter.

5. To approve the draft Ordinance entitled “The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 and to direct the same shall have effect as an Ordinance of the States, as set out in Appendix 1.
6. Only if proposition 5 shall have been approved, to approve the proposed States of Guernsey Management Plan for the Importation and Exportation of Waste as set out in Appendix 2 to the Policy letter to take effect on 31st October 2018.

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.

EXPLANATORY MEMORANDUM

This Ordinance repeals and replaces the current Transfrontier Shipment of Waste Ordinance, 2002. The new and current Ordinance give effect in Guernsey, with appropriate modifications, to European Union waste shipment legislation. The European Union legislation provides for a system of controlling waste shipments which differs depending on the nature of the waste (how hazardous), the process it is undergoing (whether for disposal or recovery) and the country to which it is being sent. Giving effect to the European Union legislation is also the means through which Guernsey (and the other islands in the Bailiwick under their own similar Ordinances) meet the requirements of international agreements relating to waste shipments which apply to the Bailiwick.

Prior informed notification and consent of the competent authorities of destination (import), dispatch (export) and transit is needed for all shipments for disposal of waste and for recovery of hazardous and semi-hazardous waste. Shipments of green listed waste for recycling etc. generally have to meet less onerous requirements relating to the information to accompany the shipment and environmentally sound management.

The main difference from the 2002 Ordinance is that the new Ordinance clearly gives effect in Guernsey to the current 2006 EU Waste Shipment Regulation rather than referring on its face to the previous 1993 EU Regulation.

This has resulted in changes to the detailed procedure in the main body of the Ordinance to reflect differences in the 2006 EU Regulation from the previous EU Regulation in particular in relation to financial guarantees or equivalent insurance required to be in place when waste is shipped. These are required to cover the cost of taking-back or otherwise dealing appropriately with waste when a shipment is illegal or otherwise does not meet relevant requirements. The financial guarantee etc. is now required to be approved by the competent authority of dispatch/export whereas the current Guernsey Ordinance provides for a certificate to be issued by the Guernsey competent authority for all shipments into or out of Guernsey; under the new system the competent authority of import does, however, have a power to review the cover approved by the exporting authority.

The current exception from the requirement for a financial guarantee or equivalent insurance for shipments from Alderney to Guernsey, by certain States of Guernsey Committees, in the course of transferred services is not included in the Ordinance as with the new system it would have been included in the mirror Alderney Ordinance; also it was considered inappropriate for only the States to have an exemption.

The Ordinance also provides for consents for waste shipments and other regulatory functions to be carried out by the Director of Environmental Health and Pollution Regulation and for the waste import and export plan for Guernsey to be prepared by the Committee *for the* Environment & Infrastructure instead of, in both cases, the Committee for Health and Social Care.

The prohibition against export of waste for disposal to Jersey has been removed as the UK's ratification of the Basel Convention is now extended to Jersey. More modern and comprehensive enforcement provisions are included in relation to non-compliant waste shipments.

Amendments have been made in relation to the matters to be taken into account on the preparation of the waste import and export plan and new powers are added for the Director to object to shipments into, out of and in transit through Guernsey or certain grounds set out in the 2006 EU Regulation.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

TRANSFRONTIER SHIPMENT OF WASTE- SUPPLEMENTARY POLICY LETTER

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

7th September 2018

Dear Sir

1 Executive Summary

1.1 This supplementary Policy Letter to seek approval for further amendments to the proposals agreed in September 2013, when the States of Deliberation agreed to implement the current EU Waste Shipment Regulation¹ in relation to the regulation of waste shipments into, out of and in transit through Guernsey. The amendments recommended provide for –

- more detailed enforcement powers than in the current Guernsey transfrontier shipment Ordinance,
- amendments to the provisions relating to the management plan for imports and exports of waste,
- additional powers for the Director of Environmental Health and Pollution Regulation to object to shipments into, out of or in transit through Guernsey based on grounds in the EU Regulation, and
- removing the current exemption for waste shipments shipped by the States of Guernsey from Alderney to Guernsey from the requirement to provide a

¹ Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14th June 2006 on shipments of waste

financial guarantee or equivalent insurance covering the costs of the shipment and its disposal or recovery.

- 1.2 As the principle of the transfrontier shipment legislation was approved and the drafting directed in 2013, approval of the additional amendment and of the Ordinance are being sought at the same time as set out in Paragraph 5.1 of the Directive² relating to submission of propositions to the States. The proposed draft Ordinance is attached to the Policy Letter at Appendix 1.
- 1.3 Subject to the States approval of the ordinance, approval is also sought for the draft statutory States of Guernsey Management Plan for the Importation and exportation of Waste which is required to be made under the Ordinance and attached as Appendix 2. The draft sets out the proposed States of Guernsey policies in relation to the import and export of waste for recovery or disposal.
- 1.4 This Policy Letter is being brought to the Assembly by the Committee *for the* Environment & Infrastructure (CfE&I). Although the Committee *for* Health & Social Care (CfHSC) currently has policy responsibility for transfrontier shipment of waste under transfrontier shipment of waste legislation, CfE&I has the responsibility for advising the States on matters related to its purpose including on waste. In addition, the 2013 resolutions referred to below approved the transfer of policy functions under the transfrontier shipment legislation to CfE&I. Also, the subject matter of this policy letter is relevant to other policy responsibilities of CfE&I under the Environmental Pollution Law and is more aligned with the purpose of CfE&I than that of CfHSC.

2 Background

- 2.1 The 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their disposal (the “Basel Convention”) provides a framework for a global system of environmental controls on the shipment of hazardous and certain other types of waste with the overarching objective of protecting human health and the environment in particular against the adverse effects of hazardous wastes³.
- 2.2 The Organisation for Economic Co-operation and Development Decision on

² Directive No. 1 of 2018.

³ <http://www.basel.int/TheConvention/Overview/History/Overview/tabid/3405/Default.aspx>

transboundary movements of waste destined for recovery operations ("the OECD Decision") applies to movements of waste for recovery between OECD countries. The OECD Decision sets out differing levels of control for different categories of waste and facilitates transboundary movements of recoverable wastes between OECD countries where carried out in an environmentally sound and economically efficient manner.

- 2.3 The UK's ratification of the Basel Convention is extended to the Bailiick of Guernsey and Guernsey is an OECD country for the purposes of the OECD decision so that obligations under both these international agreements apply to Guernsey. Also, in order to ensure the continued ability to ship hazardous waste (such as batteries) and non-hazardous waste (such as plastics) for disposal and recovery, the States of Guernsey must satisfy the United Kingdom and / or European Union that Guernsey meets the requirements of the Basel Convention and the OECD Decision.
- 2.4 Consistent with these international obligations, in September 2013 the States resolved to take such action as necessary to clearly implement the current 2006 EU Waste Shipment Regulation as amended and replaced from time to time and to direct the drafting of the necessary legislation (Article IX of Billet XVIII of 2013). This was necessary to avoid confusion as the current Transfrontier Shipment of Waste Ordinance, 2002 ("the 2002 Ordinance") which implements the EU Waste Shipment legislation as amended and replaced from time to time still refers to the previous 1993 EU Regulation which differs in a number of regards from the 2006 EU Regulation which replaced it.
- 2.5 At the same time the States also approved the transfer of the regulatory, operational and administrative functions under the 2002 Ordinance from CfHSC to the Director of Environmental Health and Pollution Regulation (the Director) and for the transfer of the policy functions from CfHSC to CfE&I.
- 2.6 Work was accordingly commenced on a new Ordinance with amended provisions to reflect the procedures for waste shipments in the 2006 EU Regulation subject to any necessary modifications to apply the Regulation in Guernsey. The proposed Ordinance also updates the provisions by amending certain outdated references in the current Ordinance and replacing standard provisions concerning offences by bodies corporate and partnerships, a general offence of obstruction and provision of false information and service of documents with those using the current standard wording.

- 2.7 The offence provisions have also been reworded to make it an offence to contravene a requirement of the EU Regulation or Ordinance, a condition of a consent to a waste shipment issued under the Ordinance or a requirement of a notice served by the Director under the Ordinance. This is to ensure the wording of the offence provisions will remain clear if further amendments are made to the EU Regulation significantly changing the numbering and ordering of the provisions. Similarly, the necessary modifications to adapt the EU Regulation to Guernsey are presented differently than in the 2002 Ordinance to reduce the need for further amendments to the Ordinance when parts of the EU Regulation are amended to update for technical progress etc.

3 Recommended further amendments to transfrontier shipment legislation etc.

- 3.1 During the course of drafting work on the new Ordinance, it has become clear it would benefit from including certain substantive provisions which do not arise directly from the amended procedures in the 2006 EU Regulation and which are not specifically mentioned in the 2013 States report (albeit are within its resolutions' spirit) in particular –
- a. more detailed and clearer enforcement powers in relation to illegal waste shipments or those which cannot be completed in accordance with the EU Regulation,
 - b. removing the reference to the EU Waste Framework Directive in the current provision relating to the preparation of a management plan for the import or export of waste and including a requirement that CfE&I, in preparing the plan, takes into account relevant international obligations of Guernsey in relation to waste shipments,
 - c. giving the Director power to object to waste shipments into, out of or in transit through Guernsey on various grounds set out in the 2006 EU Regulation, and
 - d. removing the current exemption, for waste shipments shipped by the States of Guernsey from Alderney to Guernsey in the course of undertaking transferred services (health, education etc.), from the prohibition against shipment of waste unless a certificate has been issued certifying that a

financial guarantee or equivalent insurance is in force covering the costs of the shipment and its disposal or recovery.

4 Enforcement

4.1 The 2002 Ordinance includes powers for CjHSC to serve notices to ensure the disposal or recovery of illegal waste shipments in an environmentally sound manner; it is recommended that these are replaced with wider powers, consistent with those in place in the UK, for the Director to seize waste, require it be sent to a specified place, prohibit or restrict its movement and ensure its recovery or disposal where he reasonably suspects a breach of the EU Regulation or Ordinance or that a waste shipment cannot be completed in accordance with the EU Regulation. The powers would include appropriate safeguards for the owner of the waste to claim that the relevant waste was not liable to seizure with provision for the Director to apply to the Royal Court for an order to allow the Director to recover or dispose of waste if such a claim were made.

4.2 It is also recommended that the Ordinance contain standard powers of entry to land, to carry out inspections and tests and to require information in relation to the enforcement of the provisions of the EU Regulation and Ordinance with the usual safeguards to ensure a fair process and compliance with human rights. It is proposed that the current powers of Guernsey Border Agency officers to detain waste imported into or to be exported from Guernsey are extended from three to five working days in relation to any waste brought into, or which is to be dispatched from, Guernsey. This would include waste in transit through Guernsey. This is consistent with similar powers in UK legislation.

5 Amendments to provisions relating to the Management Plan for the Importation and Exportation of Waste

5.1 The 2002 Ordinance provides for the preparation of a management plan by CjHSC, for States approval, for the import and export of waste (import and export plan) in accordance with a provision of the former EU Waste Framework Directive. Since the 2002 Ordinance was drafted the EU Waste Framework Directive has been repealed and replaced. The replacement provision in the current 2008 Waste Framework Directive (2008/98/EC) refers to a plan to achieve waste management objectives of a much wider scope than policy on waste imports or exports, some of which are not relevant in a Guernsey

context. It is therefore considered that it would be confusing to cross-refer to that provision; therefore, it is recommended that the reference is removed but the obligation on CfE&I to prepare the plan is otherwise retained.

- 5.2 It is also recommended that the section is amended to include a requirement that in preparing the Plan CfE&I takes into account any obligations of Guernsey under the Basel Convention on the control of transboundary movements of hazardous wastes and their disposal and the OECD Decision on the control of transboundary movements of wastes destined for recovery operations as the Plan would have to reflect these in any event.

6 Grounds for objection to waste shipments

- 6.1 The 2002 Ordinance provides a power for CfHSC to object to waste shipments imported into, exported from or in transit through Guernsey and a duty to object in specified circumstances where shipments would be contrary to the import or export plan. There are, however, no specified grounds for objection where it has a power to object. To give transparency and clarity on the grounds for objection it is recommended that the provisions are amended to provide for specific grounds, set out in the 2006 EU Regulation, on which the Director has a power to object to shipments, in addition to the duty to object in relation to shipments not in accordance with the provisions of the import or export plan. Such grounds will include that specified persons have been convicted for relevant offences or have failed to comply with certain requirements of the EU waste shipment regulation or that the planned shipment or its subsequent disposal or recovery is inconsistent with Guernsey environmental protection legislation or international conventions extended to Guernsey.

7 Removal of current exemption in relation to financial guarantees/equivalent insurance

- 7.1 The 2002 Ordinance, reflecting requirements under the EU waste shipment legislation and the Basel Convention, prohibits shipment of waste unless a certificate has been issued by CfHSC certifying that there is a financial guarantee or equivalent insurance in place in respect of the shipment. This is subject to an exemption for shipments shipped by the States of Guernsey from Alderney to Guernsey in the course of undertaking transferred services (for example health or education).

- 7.2 The exemption was put in place to avoid the States of Guernsey having to give a financial guarantee to itself. However, as the consent functions under the Transfrontier Shipment legislation in both Guernsey and Alderney are to be transferred to the independent Director, it is difficult to justify retaining the exemption as it would mean the Director treating the States of Guernsey differently from private companies, which would be required to have a financial guarantee/equivalent insurance in place for all shipments.
- 7.3 The provisions on financial guarantees and equivalent insurance will be restructured in the new Ordinance to reflect the detailed procedures in the 2006 EU Regulation. In particular, the 2006 EU Regulation generally requires approval of the same to be made by the competent authority of dispatch which will be the Director under future proposed amendments to the Alderney Transfrontier Shipment legislation for the shipments in question. However, as the removal of the exemption will affect States of Guernsey Committees and is a change from the current provisions this point is being brought to the attention of the States of Guernsey.
- 7.4 It is considered that the removal of the exemption should not result in additional expenditure for the affected Committees (the Committee *for* Education, Sport & Culture (CfESC) and the Committee *for* Health & Social Care). Dependant on the arrangements that the Committees make for waste disposal and based on relevant shipments which have already taken place to date, it is anticipated that the cost should not vary from existing arrangements. Consultation has been carried out with both Committees and the States of Alderney and they are content with the proposal to remove the exemption.
- 7.5 The financial guarantee / equivalent insurance must cover a “worst case scenario” of the cost of disposal or recovery should the waste operator go out of business when a shipment is in transit, if waste is not described properly or contain contaminants which the consignee (person receiving the waste) cannot deal with in an environmentally sound manner or other scenarios that could require the Competent Authority to intervene. The amount of cover of any particular financial provision arrangement is determined by a calculation considering the cost of the shipment / transport costs (A), the cost of recovery / disposal (B) and the cost of storage for 90 days (C). The United Kingdom charge an administration fee of £595 (D) which is not applied to shipments within the Bailiwick but it is to shipments to the UK.

7.6 The following examples are provided as an illustration of the scale of financial provision that is required;

- Financial Guarantee (FG) = A + B + C (+D)
- Example (i) – Hazardous waste being exported to the UK for recovery
 $FG = A (£618) + B (£1,147) + C (£472) = £2,237$ if there is only 1 active shipment at a time.
This is multiplied if there are multiple shipments at a time e.g. if there are 5 active shipments it would be £11,185 (£2,237 x 5).
- Example (ii) – Asbestos import to Guernsey from Alderney
 $FG = A (£250) + B (£600) + C (£200) = £1,050$
Generally there is only one active shipment at a time for these types of movements but this would also be multiplied depending on the number of simultaneous shipments.

8. Statutory Management Plan for the Importation and Exportation of Waste

- 8.1 As explained in paragraph 7, the transfrontier shipment of waste legislation provides for a management plan for the import and export of waste, containing the States policies on the import and export of waste for disposal or recovery, to be submitted to the States for approval.
- 8.2 Under the legislation the Director must object to any shipment of waste which the plan states should not be imported into or exported from Guernsey. This is to ensure, consistent with Guernsey's international obligations referred to above, the environmentally sound management of waste.
- 8.3 Therefore, the Committee is proposing to the States a draft "Management Plan for the Importation and Exportation of Waste" which is attached at Appendix 2. The policies in the Plan reflect the statutory prohibitions relating to the import and export of waste as set out in the current and proposed Ordinance. In particular, both the legislation and the policy only allow imports of waste for disposal from other Channel Islands in view of Guernsey's limited capacity to deal with waste on island.
- 8.4. Exports of waste for disposal are only allowed to developed countries which have the capacity to deal with such waste (i.e. Jersey, European Union Member States and European Free Trade Association Countries all of which are also parties to the Basel Convention). Exports of waste for disposal will continue to

be allowed to the United Kingdom following its exit from the European Union. It is proposed that any necessary amendments are made to the Ordinance by Regulations under the European Union (Brexit) (Bailiwick of Guernsey) Law, 2018 at the same time as other global amendments necessary as a result of Brexit. This will ensure that it is clear on the face of the Ordinance that exports of waste can continue to be made to the UK following Brexit.

- 8.5 Imports of waste for recovery into Guernsey are prohibited except from other Channel Islands or OECD countries and export of waste for recovery is permitted to OECD countries, who have to comply with the OECD Decision, subject to meeting certain requirements set out in the legislation.
- 8.6 The main policies are set out in the proposed statutory plan at page 8; they are not new as they reflect the statutory provisions under the current 2002 Transfrontier Shipment legislation. The remainder of the plan in Appendix 2 provides introduction, background and guidance explaining the statutory plan set out at page 8.
- 8.7 Subject to the States approving the proposed Ordinance, the statutory plan is submitted to the States for approval as set out in section 14 of the Ordinance. It is proposed to come into effect on 31st October, 2018.

9 Consultation

- 9.1 Mirror Ordinances to the 2002 Ordinance are in place in Alderney and Sark. To ensure uniform implementation of the Basel Convention and the OECD Decision throughout the Bailiwick, the Alderney and Sark governments have been consulted on the further recommended amendments to the Transfrontier Shipment Legislation and have indicated that they are content for their Ordinances to be amended as recommended in this policy letter.

10 Committee Support for Proposition(s)

- 10.1 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.

11 Compliance with Rule 4(5)

- 11.1 In accordance with Rule 4(5), it is confirmed that the propositions relate to the

purpose and policy responsibilities of CfE&I.

- 11.2 In accordance with Rule 4(5) the preparation and agreement of the propositions and content of the Policy Letter has involved joint working between CfE&I and CfHSC.

Yours faithfully,

B L Brehaut
President, CfE&I

M H Dorey
Vice-President, CfE&I

S L Langlois
H L de Sausmarez
S T Hansmann Rouxel
Members, CfE&I

Appendix 1 – Draft Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018

The Ordinance follows on the next page.

The Transfrontier Shipment of Waste (Guernsey)

Ordinance, 2018

ARRANGEMENT OF SECTIONS

PART I

MODIFIED EU REGULATION EFFECTIVE IN GUERNSEY ETC.

1. Modified EU Regulation to have effect in Guernsey.
2. Legislation relating to transboundary shipments of waste.
3. Competent authorities of dispatch and destination.
4. Competent authority of transit.

PART II

APPLICATION FOR A FINANCIAL GUARANTEE OR EQUIVALENT INSURANCE

5. Financial guarantees or equivalent insurance.

PART III

ENFORCEMENT POWERS

6. Take-back etc. of waste.
7. Powers to seize waste.
8. Seizure procedures.
9. Powers of entry.
10. Warrant to enter premises.
11. Supplementary functions.
12. Powers to require information.
13. Powers of officers of customs and excise.

PART IV

MISCELLANEOUS PROVISIONS

14. Objections to shipments under waste import and export plan.
15. Registration of dealers and brokers.

PART V

OFFENCES AND PENALTIES

16. Offences: contravention of modified EU Regulation or Ordinance.
17. Offences: obstruction and false information etc.
18. Offences due to default of another.
19. Criminal liability of directors etc.
20. Criminal proceedings against unincorporated bodies.
21. Defences.
22. Penalties.

PART VI GENERAL PROVISIONS

23. Form and method of service of documents.
24. Interpretation.
25. Repeal, transitional provisions and savings.
26. Extent.
27. Citation.
28. Commencement.

SCHEDULE: Modifications, exceptions and adaptations to the EU Regulation.

The Transfrontier Shipment of Waste (Guernsey)

Ordinance, 2018

THE STATES, in pursuance of their Resolutions of the 26th September, 2013^a and the ** October, 2018^b and in exercise of the powers conferred on them by sections 1 and 4 of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994^c, hereby order:-

PART I

MODIFIED EU REGULATION EFFECTIVE IN GUERNSEY ETC.

Modified EU Regulation to have effect in Guernsey.

1. Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 14th June, 2006 on shipments of waste^d shall have full force and effect in

^a Article IX of Billet d'État No. XVIII of 2013.

^b Article ** of Billet d'État No. ** of 2018.

^c Ordres en Conseil Vol. XXXV(1), p. 65; as amended by Ordinance No. IX of 2016.

^d OJ L 190, 12.7.2006, p.1 as amended by Commission Regulation (EC) No. 1379/2007 of 26th November 2007, Commission Regulation (EC) No. 669/2008 of 15th July 2008, Regulation (EC) No. 219/2009 of the European Parliament and of the Council of 11th March 2009, Commission Regulation (EC) No. 308/2009 of 15th April 2009, Directive 2009/31/EC of the European Parliament and of the Council of 23rd April 2009, Commission Regulation (EU) No. 413/2010 of 12th May 2010, Commission Regulation (EU) No. 664/2011 of 11th July 2011, Commission Regulation (EU) No. 135/2012 of 16th February 2012, Commission Regulation (EU) No. 255/2013 of 20th March 2013, Commission Regulation (EU) No. 1257/2013 of the European Parliament and of the Council of 20th November, 2013, Regulation (EC) No. 660/2014 of the

Guernsey subject to the adaptations, exceptions and modifications set out in the Schedule^e ("**modified EU Regulation**").

Legislation relating to transboundary shipments of waste.

2. (1) For the avoidance of doubt, the modified EU Regulation provides only for –

- (a) the functions of the competent authorities in relation to Guernsey, and
- (b) the obligations on persons in relation to exports from, imports into and transits through Guernsey,

and implements the requirements of the Basel Convention and the OECD Decision in relation to Guernsey which provide for international, standard, control procedures for transboundary shipments of waste; it does not confer functions on other competent authorities whose functions are conferred under the legislation referred to in subsection (2).

(2) For the avoidance of doubt, exports from, imports into and transits through Guernsey are also subject to the provisions of any relevant national

European Parliament and of the Council of 15th May, 2014, Commission Regulation (EU) No. 1234 of 18th November, 2014 and Commission Regulation EU 2015/2002 of 10th November, 2015.

^e To assist the reader, an informal document has been produced showing how the EU Regulation will apply in Guernsey; it is marked up to show the modifications made by this Ordinance as at the date the Ordinance comes into force and is available from the Office of the Director of Environmental Health and Pollution Regulation.

legislation, including functions conferred on competent authorities, relating to transfrontier shipments of waste of the other countries of dispatch, destination and transit from, to or through which a shipment of waste is planned or takes place including, without limitation –

- (a) in relation to shipments from, to or through Alderney or Sark, the provisions of any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 ,
- (b) in relation to shipments from, to or through the European Union, the EU Regulation which implements the Basel Convention and the OECD Decision in the European Union,
- (c) in relation to shipments, from, to or through a country which is a party to the Basel Convention other than those set out in paragraph (a) or (b), national legislation which implements the requirements set out in the Basel Convention for a system of prior written notification and consent to shipments, and
- (d) in relation to shipments of waste for recovery, from, to or through a country to whom the OECD Decision applies, other than those set out in paragraph (a) or (b), national legislation which implements the OECD

Decision.

Competent authorities of dispatch and destination.

3. The Director is the –
- (a) competent authority of dispatch^f, and
 - (b) competent authority of destination^g,

in relation to Guernsey for the purposes of the modified EU Regulation.

Competent authority of transit.

4. The Director, acting on behalf of the Environment Agency, is the competent authority of transit^h in relation to Guernsey for the purposes of the modified EU Regulation.

PART II

APPLICATION FOR A FINANCIAL GUARANTEE OR EQUIVALENT
INSURANCE

Financial guarantees or equivalent insurance.

5. (1) The following procedure applies to an application for an approval of a financial guarantee or equivalent insurance, in relation to the export of waste from Guernsey, for the purposes of the modified EU Regulation -

^f For exports from Guernsey.

^g For imports into Guernsey.

^h For transits through Guernsey.

- (a) the notifier must apply to the Director (as the competent authority of dispatch) for approval of a financial guarantee or equivalent insurance, and
- (b) the Director must issue a decision within 60 working days after the receipt of the application.

(2) The following procedure applies to an application for a review of the amount of cover of a financial guarantee or equivalent insurance and the approval of the additional financial guarantee or equivalent insurance, in relation to the import of waste into Guernsey, in accordance with the modified EU Regulation –

- (a) the notifier or the consignee, if authorised in writing by the notifier, may apply to the Director (as the competent authority of destination) for a review of the amount of cover and approval of a financial guarantee or equivalent insurance, and
- (b) the Director must issue a decision within 60 working days after the receipt of an application.

(3) For the purposes of the modified EU Regulation, the notifier must supply–

- (a) the financial guarantee or equivalent insurance, or
- (b) evidence of that guarantee or insurance or a declaration certifying its existence,

as part of the notification document at the time of notification or, with the consent of the competent authority of dispatch (the Director in the case of exports from Guernsey) at any time before the waste is shipped.

PART III ENFORCEMENT POWERS

Take-back etc. of waste.

6. (1) Where the Director is the competent authority of dispatch and receives notification from another competent authority that a shipment cannot be completed as intended, the Director may serve a notice on the notifier of the shipment requiring the notifier to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of such shipments, within a specified time.

(2) Where the Director is the competent authority of dispatch and receives notification from another competent authority of an illegal shipment the Director may serve a notice on the notifier of the shipment (or if it is not notifiable waste, the person who arranged the shipment) requiring that person to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of such shipments, within a specified time.

(3) Where the Director is the competent authority of destination and receives notification from another competent authority of an illegal shipment, the Director may serve a notice on the consignee of the shipment requiring the consignee to act in accordance with the relevant requirements of the modified EU Regulation, relating to take-back of illegal shipments which are the responsibility of

the consignee, within a specified time.

(4) Where the Director, acting under the modified EU Regulation, brings back waste into Guernsey, the Director may recover or dispose of the waste as the Director sees fit at the notifier's expense.

Powers to seize waste.

7. (1) This section applies if the Director has reasonable grounds to suspect that–

- (a) the provisions of the modified EU Regulation or this Ordinance are not being, have not been or are not likely to be complied with in respect of any waste, or
- (b) the shipment, recovery or disposal of any waste cannot be completed in accordance with the notification and movement documents or the contract between the notifier and consignee.

(2) The Director may do any of the following –

- (a) seize that waste,
- (b) serve a notice on any person who appears to the Director to be in control of such waste –
 - (i) requiring that person to send the waste to any place specified in the notice, or

- (ii) prohibiting or restricting the movement of that waste.

Seizure procedures.

8. (1) If the Director seizes any waste under section 7, the Director must give to the person in control of it a notice (a "**seizure notice**") –

- (a) giving the grounds for seizing it, and
- (b) setting out the rights under this section to make a claim and the address for the service of the claim.

(2) If the Director is not immediately able to remove any waste seized under section 7, the Director may mark it in any way the Director sees fit and serve a notice on the person in control of it, identifying it and prohibiting its removal from the premises until it is collected by, or under the direction of, the Director.

(3) If it appears that the waste seized is –

- (a) waste from a shipment that cannot be completed as intended, as referred to in the modified EU Regulation, or
- (b) an illegal shipment, as referred to in the modified EU Regulation,

and the Director is not the competent authority with responsibility for take-back under the modified EU Regulation, the Director must store it pending action by the competent authority with such responsibility.

(4) If the owner of the waste claims that the waste was not liable to seizure, the owner may, within 28 days of the seizure, notify the owner's claim to the Director at the address specified in the seizure notice, setting out the grounds in full.

(5) If a notification of a claim is not received within 28 days, the Director must take such steps as the Director considers appropriate to ensure the recovery or disposal of the waste and for these purposes may serve a notice on the notifier requiring the notifier to recover or dispose of the waste in the manner, and within the time period, specified in the notice.

(6) If a notification of a claim is received within 28 days, the Director must either return the waste or apply to the Royal Court for an order for the confirmation of the notice and the recovery or disposal of the waste and, if the Court confirms the notice, the Court must order its recovery or disposal.

Powers of entry.

9. (1) The Director may, subject to subsection (2), enter any premises at any reasonable time –

- (a) to determine whether any provision of the modified EU Regulation, this Ordinance or a notice served under the modified EU Regulation or this Ordinance is being, or has been, complied with,

- (b) to exercise or perform one or more of the Director's functions under the modified EU Regulation or this Ordinance,
- (c) to determine whether and, if so, how such a function should be exercised or performed, or
- (d) where the Director has reasonable grounds to suspect that an offence under this Ordinance has been committed, for the purpose of investigating that offence.

(2) The power of entry under subsection (1) shall not be exercisable (other than in a case of emergency) -

- (a) unless the Director gives to the owner or occupier of the premises concerned at least 24 hours' notice of the Director's intention to enter the premises, and
- (b) in the case of any premises, or any part of premises, used as a dwelling except under and in accordance with the authority of a warrant issued by the Bailiff under and in accordance with section 10.

(3) The power of entry under subsection (1) includes a power -

- (a) for the Director to take onto the premises such persons, equipment and materials as the Director

reasonably considers necessary for the purpose for which the power of entry is being exercised, and

- (b) for such persons to exercise any power that may be exercised by the Director, for the purpose for which the Director entered, provided that any such person is in the company, and under the supervision, of the Director.

Warrant to enter premises.

10. (1) If the Bailiff is satisfied by information on oath supplied by the Director, that there are reasonable grounds for entering any premises for any purpose for which the Director has a right to enter premises under this Part, the Bailiff may grant a warrant to the Director.

(2) A warrant granted under subsection (1) shall authorise the Director at any time within one month of the date of the grant -

- (a) to enter the premises, and
- (b) to exercise in respect of the premises (and any waste, equipment, substance or other thing found in or on the premises), all such powers as the Director may exercise under this Part,

for the purposes indicated in subsection (1).

- (3) The Bailiff shall not issue a warrant under subsection (1)

unless the Bailiff is satisfied that any of the following four conditions is met.

(4) The first condition is that the whole of the premises is used as a dwelling and the occupier has been informed of the decision to apply for a warrant.

(5) The second condition is that any part of the premises is not used as a dwelling and that each of the following applies to the occupier of the premises -

- (a) the occupier has been informed of the decision to seek entry to the premises and of the reasons for that decision,
- (b) the occupier has failed to allow entry to the premises on being requested to do so by the Director, and
- (c) the occupier has been informed of the decision to apply for a warrant.

(6) The third condition is that -

- (a) the premises are unoccupied or the occupier is absent, and
- (b) notice of intention to apply for a warrant has been left in a conspicuous place on the premises.

(7) The fourth condition is that it is inappropriate to inform the occupier of the decision to apply for a warrant because -

- (a) it would defeat the object of entering the premises, or
- (b) entry is required as a matter of urgency.

(8) The Director executing a warrant issued under this section may use such reasonable force as may be necessary.

(9) Sections 10 (search warrants - safeguards) and 11 (execution of warrants) of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003ⁱ ("**PPACE**") shall apply in relation to the issue of a warrant under this section to the Director as they apply in relation to the issue of a warrant to a police officer.

(10) The following additional requirements shall apply in relation to a warrant, or application for a warrant, issued or made under this section -

- (a) an application for a warrant under this section and a warrant issued under this section must identify, in so far as is practicable, any waste sought, and
- (b) the endorsement required to be made on a warrant under section 11(9) of PPACE must state whether any

ⁱ Order in Council No. XXIII of 2003; as amended by Order in Council No. XVI of 2009; No. XV of 2011; Ordinance No. XXXIII of 2003; No. XXIX of 2011; No. XXXIX of 2015; and No. IX of 2016.

waste sought was found and whether any waste, other than that sought, was seized.

Supplementary functions.

11. (1) This section applies where the Director is exercising a power of entry under section 9 or under a warrant issued under section 10.

(2) The Director exercising a power to which this section applies may, where it is reasonably necessary for the purpose for which the Director has exercised the power -

- (a) inspect any waste, equipment, substance or other thing (including a document or record in any form),
- (b) carry out a measurement or test on any waste, equipment, substance or other thing,
- (c) take a sample from any waste, equipment, substance or other thing,
- (d) use a mark, microchip or other method to identify any waste, equipment, substance or other thing,
- (e) take copies of a document or record (in whichever form it is held),
- (f) take a photograph of anything, or

- (g) subject to subsections (5) and (6), seize and take into possession or detain any waste, equipment, substance or other thing which the Director reasonably believes to be evidence of the commission of an offence under this Ordinance relevant to the purpose for which the power is exercised.

(3) Section 16(1) and (2) (record of thing seized) of PPACE shall apply in relation to the seizure and taking into possession by the Director of anything under subsection (2)(g) as it applies in relation to the exercise of a power of seizure by a police officer.

(4) Anything which has been seized or taken into possession or detained in the exercise of a power under subsection (2)(g) may, subject to the following provisions of this Ordinance, be retained so long as is necessary in all the circumstances and in particular -

- (a) for use as evidence at a trial for a relevant offence,
- (b) for forensic examination or for investigation in connection with an offence, or
- (c) for use in connection with the enforcement of the requirements of a notice served under this Ordinance,

except that nothing may be retained for such a purpose where a photograph or a copy would be sufficient.

(5) Subsection (2)(g) does not include power to seize anything which the person exercising the power has reasonable grounds for believing to be an item subject to legal professional privilege within the meaning of section 24 of PPACE.

(6) For the avoidance of doubt, the seizure of anything which is waste for the purposes of the powers in sections 7 and 8 is also subject to the provisions of those sections.

Powers to require information.

12. (1) Where the Director reasonably suspects that an offence under this Ordinance has been, or is being, committed in relation to any waste the Director may require the notifier, consignee or any other person who appears to the Director to be in control of such waste to comply with any of the requirements indicated in subsection (2).

(2) The requirements for the purpose of subsection (1) are -

- (a) to furnish the Director with such information, including records and other documents, relating to the waste as the Director may reasonably require, and
- (b) to answer such questions relating to the waste as the Director may reasonably ask.

(3) A statement made by a person in response to a requirement imposed under this section or otherwise under this Ordinance or the modified EU Regulation –

- (a) may be used in evidence against that person in proceedings other than criminal proceedings, and
- (b) may not be used in evidence against that person in criminal proceedings except -
 - (i) where evidence relating to it is adduced, or a question relating to it is asked, in the proceedings by or on behalf of that person, or
 - (ii) in proceedings for –
 - (A) an offence under section 17(2) or (3),
 - (B) some other offence where, in giving evidence, the person makes a statement inconsistent with it, but the statement is only admissible to the extent necessary to establish the inconsistency,
 - (C) perjury, or
 - (D) perverting the course of justice.

Powers of officers of customs and excise.

13. (1) On a request made to an officer of customs and excise by the Director for the purpose of facilitating the exercise of any function conferred on the

Director by the modified EU Regulation or this Ordinance, an officer of customs and excise may detain, for not more than 5 working days, any waste specified in the request which has been brought into Guernsey or is to be dispatched from Guernsey.

(2) Anything detained under this section shall be dealt with during the period of its detention in such manner as the States Committee for Home Affairs may direct.

(3) Without prejudice to the provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972^j, the master of every ship and the commander of every aircraft which arrives in Guernsey from a port or place outside Guernsey must declare to an officer of customs and excise -

- (a) any waste carried in that ship or aircraft, and
- (b) all waste which is to be unloaded from that ship or aircraft in Guernsey,

and such an officer may, for the purpose of enabling the officer to determine whether or not any such waste is being carried and, if so, any fact or circumstance in connection with the waste and the carriage of the waste, require the master or commander -

- (i) to answer any question put to the master or

^j Ordres en Conseil Vol. XXIII, p. 573; as amended by Ordres en Conseil Vol. XXXIII, p. 217; and Ordinance No. IX of 2016. There are other amendments not relevant to this Ordinance.

commander by the officer, and

- (ii) to produce any document or information in the master or commander's custody, possession or power as the officer may reasonably require.

(4) Expressions used in subsection (3) shall, to the extent that a meaning is not assigned to them by this Ordinance, have the meanings given by the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972.

PART IV

MISCELLANEOUS PROVISIONS

Objections to shipments under waste import and export plan.

14. (1) The Committee for the Environment & Infrastructure must prepare and submit to the States for approval a management plan for the importation and exportation of waste ("**the plan**") which must contain the States policies in relation to the import and export of waste for recovery or disposal.

(2) For the purpose of ensuring environmentally sound management of waste and preventing movements of waste which are not in accordance with the plan, the Director must, within the applicable time limit specified in the modified EU Regulation object to any shipment of waste notified under the modified EU Regulation which the plan indicates should not be imported into or exported from Guernsey.

(3) The Committee for the Environment & Infrastructure must take into account relevant obligations under the Basel Convention and the OECD

Decision in preparing the plan.

(4) This section is without prejudice to the provisions of the modified EU Regulation which provide that the Director may raise reasoned objections to waste shipments on one or more of the additional grounds set out in that Regulation.

Registration of dealers and brokers.

15. (1) The Director must establish and maintain a register of establishments and undertakings in Guernsey which arrange as dealer or broker for the disposal or recovery of waste.

(2) The register must be available for public inspection during ordinary office hours.

(3) The register must contain the following information in relation to each such establishment or undertaking registering with the Director under this section -

- (a) the name of the establishment or undertaking,
- (b) the address of its principal place of business, and
- (c) the address of any place at or from which it carries on business.

(4) No establishment or undertaking may register with the Director under this section unless it conforms to such standards and complies with

such terms and conditions as the Director may, in the Director's absolute discretion, think fit.

(5) An establishment or undertaking not registered with the Director under this section is not a registered dealer or registered broker, in relation to Guernsey, for the purposes of the modified EU Regulation.

PART V

OFFENCES AND PENALTIES

Offences: contravention of modified EU Regulation or Ordinance.

16. (1) A person who contravenes a provision of the modified EU Regulation or of this Ordinance is guilty of an offence.

(2) A person who contravenes a condition of a consent laid down by the Director or other requirement imposed by the Director under the modified EU Regulation is guilty of an offence.

(3) Any person (other than the Director or a person acting under the direction of the Director) who removes waste referred to in section 8(2) from the premises is guilty of an offence.

(4) A person who contravenes a prohibition, restriction or other requirement of a notice served by the Director on that person under section 6, 7 or 8(5) is guilty of an offence.

Offences: obstruction and false information etc.

17. (1) A person who without reasonable excuse, proof of which lies

on that person, obstructs or fails to give all reasonable assistance to -

- (a) the Director, a person acting under the direction of the Director under section 8 or taken onto premises by the Director under section 9(3) in the exercise or purported exercise of that person's functions under this Ordinance, or
- (b) an officer of customs and excise in the exercise or purported exercise of that officer's functions under section 13,

is guilty of an offence.

(2) A person who in purported compliance with any provision of, or requirement under, this Ordinance or the modified EU Regulation -

- (a) makes a statement which that person knows or has reasonable cause to believe to be false, deceptive or misleading in a material particular,
- (b) recklessly makes a statement, dishonestly or otherwise, which is false, deceptive or misleading in a material particular,
- (c) produces or furnishes or causes or permits to be produced or furnished any information or document which that person knows or has reasonable cause to

believe to be false, deceptive or misleading in a material particular, or

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

is guilty of an offence.

(3) A person who, without reasonable excuse, proof of which lies on that person, fails to comply with –

- (a) a requirement imposed by the Director under section 12, or
- (b) a requirement imposed by an officer of customs and excise under section 13(3)(i) or (ii),

is guilty of an offence.

Offences due to default of another.

18. Where the commission by any person of an offence under this Ordinance is due to the act or default of another person, the latter is guilty of the offence and may be proceeded against and punished accordingly, whether or not proceedings are taken against the former.

Criminal liability of directors etc.

19. (1) Where an offence under this Ordinance is committed by a body corporate, limited partnership with legal personality or foundation and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of—

- (a) in the case of a body corporate, any director, controller, manager, secretary or other similar officer,
- (b) in the case of a limited partnership with legal personality, any general partner,
- (c) in the case of a foundation, any foundation official, or
- (d) any person purporting to act in any capacity described in paragraph (a) to (c),

that person as well as the body corporate, limited partnership or foundation is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where the affairs of a body corporate are managed by its members, subsection (1) applies to a member in connection with the member's functions of management as if the member were a director.

(3) In this section –

"body corporate" means a body of persons, of whatever description, incorporated with or without limited liability in any part of the world,

"foundation" means –

- (a) a foundation created under the Foundations (Guernsey) Law, 2012^k, or
- (b) an equivalent or similar body created or established under the law of another jurisdiction (however named), and

"foundation official" means –

- (a) in relation to a foundation created under the Foundations (Guernsey) Law, 2012, a foundation official within the meaning of that Law, and
- (b) in relation to an equivalent or similar body created or established under the law of another jurisdiction, a person with functions corresponding to those of a foundation official described in paragraph (a) of this definition, and

"general partner" means –

- (a) in relation to a limited partnership falling within paragraph (a) of the definition in this section of

^k Order in Council No. I of 2013; as amended by Order in Council No. VI of 2017; and Ordinance No. IX of 2016.

"**limited partnership**", a general partner within the meaning of the Limited Partnerships (Guernsey) Law, 1995¹, and

- (b) in relation to a limited partnership falling within paragraph (b) of the definition in this section of "**limited partnership**", a person whose liability for, and functions in relation to, the partnership corresponds to that of a general partner described in paragraph (a) of this definition.

(4) In this section and in section 20 "**limited partnership**" means -

- (a) an arrangement which is registered as a limited partnership, and in respect of which there is a valid certificate of registration, under the Limited Partnerships (Guernsey) Law, 1995, or
- (b) an arrangement entered into under the laws of a jurisdiction outside Guernsey between two or more persons, under which -
 - (i) one or more of them is, or are jointly and severally, liable without limitation for all debts

¹ Ordres en Conseil Vol. XXXVI, p. 264 ; as amended by Ordres en Conseil Vol. XXXVI, p.571; Order in Council No. IV of 2001; No. X of 2007; No. VIII of 2008; Ordinance No. XXXIII of 2003; No. IX of 2016; G.S.I. No. 89 of 2008; and G.S.I. No. 51 of 2016.

and obligations to third parties incurred pursuant to the arrangement, and

- (ii) the others have, by whatever means, contributed or agreed to contribute specified amounts pursuant to the arrangement and are not liable for those debts and obligations (unless they participate in controlling the business or are otherwise subjected to a greater liability by those laws in specified circumstances) beyond the amount contributed or agreed to be contributed,

whether with or without legal personality.

Criminal proceedings against unincorporated bodies.

20. (1) Where an offence under this Ordinance is committed by an unincorporated body and is proved to have been committed with the consent or connivance of, or to be attributable to any neglect on the part of –

- (a) in the case of a partnership (not being a limited partnership with legal personality or a limited liability partnership), any partner,
- (b) in the case of any other unincorporated body, any officer of that body who is bound to fulfil any duty of which the offence is a breach or, if there is no such officer, any member of the committee or other similar

governing body, or

- (c) any person purporting to act in any capacity described in paragraph (a) or (b),

that person as well as the unincorporated body is guilty of the offence and may be proceeded against and punished accordingly.

(2) Where an offence under this Ordinance is alleged to have been committed by an unincorporated body, proceedings for the offence must, without prejudice to subsection (1), be brought in the name of the body and not in the name of any of its members.

(3) A fine imposed on an unincorporated body on its conviction for an offence under this Ordinance must be paid from the funds of the body.

(4) In this section "**limited liability partnership**" means -

- (a) a limited liability partnership formed in Guernsey under the Limited Liability Partnerships (Guernsey) Law, 2013^m, or
- (b) an entity formed under the laws of a jurisdiction outside Guernsey, being an entity corresponding to a

^m Order in Council No. VI of 2014; as amended by Order in Council No. VI of 2017; Ordinance No. XII of 2015 and No. IX of 2016.

limited liability partnership described in paragraph (a).

Defences.

21. (1) In proceedings against a person for an offence under this Ordinance it is a defence for that person to show that the person took all reasonable steps and exercised all due diligence to avoid committing the offence.

(2) In proceedings against a person for an offence under section 16(2), in respect of the contravention of a condition of a consent laid down by the Director under the modified EU Regulation, it is a defence for that person to show that they were not reasonably able to comply with the condition concerned by reason of an emergency.

Penalties.

22. A person guilty of an offence under this Ordinance is liable -

- (a) on summary conviction, to a fine not exceeding level 5 on the uniform scale, to imprisonment for a term not exceeding 3 months, or to both, or
- (b) on conviction on indictment, to a fine, to imprisonment for a term not exceeding 2 years or to both.

PART VI

GENERAL PROVISIONS

Form and method of service of documents.

23. (1) The forms and methods of service provided for below are

subject to the provisions of the modified EU Regulation in relation to –

- (a) the forms and methods for submitting information and documents which are required to be submitted under that Regulation, and
- (b) standard forms provided for certain documents, including notification and movement documents, under that Regulation.

(2) Where a document is to be given or served under, or for the purposes, of the modified EU Regulation or this Ordinance, it may be given or served on –

- (a) an individual, by being delivered to that individual, or by being left at, or sent by post or transmitted to, the individual's usual or last known place of abode,
- (b) a company, by being left at, or sent by post or transmitted to, its registered office,
- (c) an overseas company, by being left at, or sent by post or transmitted to, its principal or last known principal place of business in Guernsey or, if there is no such place, its registered or principal office or last known registered or principal office elsewhere,

- (d) an unincorporated body, by being given to or served on any partner, member, manager or officer of the body in accordance with paragraph (a), or by being left at, or sent by post or transmitted to, the body's principal or last known principal place of business in Guernsey or, if there is no such place, its principal or last known principal place of business elsewhere, or
- (e) the Director, by being left at, or sent by post or transmitted to, the principal offices of the Director in Guernsey.

(3) In subsection (2) –

- (a) the expression "**by post**" means by Special Delivery post, recorded delivery service or ordinary letter post, and
- (b) the expression "**transmitted**" means transmitted by electronic communication, facsimile transmission or other similar means which produce or enable the production of a document containing the text of the communication; in which event the document is regarded as served when it is received.

(4) If a person notifies the Director of an address for service within Guernsey for the purposes of this Ordinance, any document to be given to or served on that person may be given or served by being left at, or sent by post or

transmitted to, that address.

(5) If service of a document cannot, after reasonable enquiry, be effected in accordance with this section, the document may be served –

- (a) by being published by the Director in such manner and for such period as the Director thinks fit, or
- (b) by being published in La Gazette Officielle on two occasions falling in successive weeks,

and a document served under this subsection is sufficient if addressed to the person for whom it is intended.

(6) Subsections (2) to (5) are without prejudice to any other lawful method of service.

(7) Notwithstanding the provisions of subsections (2) to (6) and (9) and any other enactment or rule of law in relation to the service of documents, no document to be given to or served on the Director under or for the purposes of this Ordinance is deemed to have been given or served until it is received.

(8) If a person upon whom a document is to be served under this Ordinance is a minor or person under legal disability, the document must be served on that person's guardian; and if there is no guardian, the party wishing to effect service may apply to the Royal Court for the appointment of a person to act as guardian for the purposes of this Ordinance.

(9) A document sent by post is, unless the contrary is shown, deemed for the purposes of this Ordinance to have been received –

(a) in the case of a document sent to an address in the United Kingdom, the Channel Islands or the Isle of Man, on the fourth day after the day of posting, or

(b) in the case of a document sent elsewhere, on the seventh day after the day of posting,

excluding in each case any day which is not a working day.

(10) Service of a document sent by post is proved by showing the date of posting, the address thereon and the fact of prepayment.

(11) The provisions of this section are subject to any contrary provision under this Ordinance.

Interpretation.

24. (1) In this Ordinance, unless the context requires otherwise -

"**Basel Convention**" means the Basel Convention of 22 March 1989 on the control of transboundary movements of hazardous wastes and their disposalⁿ,

ⁿ 1673 U.N.T.S. 126.

"**Bailiff**" means the Bailiff, Deputy Bailiff, Judge of the Royal Court, Lieutenant-Bailiff or Juge Délégué,

"**Committee for the Environment & Infrastructure**" means the States of Guernsey Committee for the Environment & Infrastructure,

"**contravention**" includes failure to comply and related expressions are construed accordingly,

"**country**" means a country or territory,

"**Director**" means the person appointed as Director of Environmental Health and Pollution Regulation under section 4 of the Environmental Pollution (Guernsey) Law, 2004^o,

"**enactment**" includes a Law, an Ordinance and any subordinate legislation and includes any provision or portion of a Law, an Ordinance or any subordinate legislation,

"**Environment Agency**" means the body established by section 1 of the Environment Act 1995^P,

"**the EU Regulation**" means the Regulation (EC) No. 1013/2006 of the

^o Order in Council No. XIII of 2004; as amended by Orders in Council No. XIII of 2010; No. XVI of 2015; Ordinance No. XXXIII of 2003; Nos. XXXVIII and XLIX of 2006; No. XIII of 2007; No. XVIII of 2010; No. V of 2011; and No. IX of 2016.

^P An Act of Parliament (1990 c.25).

European Parliament and of the Council of 14th June, 2006 on shipments of waste,

"Guernsey" includes Herm and Jethou and all other islands, islets and rocks around the coast of Guernsey, whether or not attached at low water and the territorial waters adjacent to Guernsey,

"the modified EU Regulation" means the EU Regulation as modified by section 1,

"notifiable waste" means waste that is subject to the prior written notification and consent procedures of Title II of the modified EU Regulation under any provision of that Regulation,

"notice" means notice in writing,

"OECD Decision" means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations,

"officer of customs and excise" means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972,

"the plan": see section 14(1),

"police officer" means a member of the salaried police force of the Island of Guernsey and, within the limits of that member's jurisdiction, a

member of the special constabulary of the Island of Guernsey,

"**PPACE**" means the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003,

"**premises**" includes –

- (a) any land, vehicle or aircraft,
- (b) any ship within the meaning of section 294 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002[¶], and
- (c) any other place (whether enclosed or not),

"**Royal Court**" means the Royal Court sitting as an Ordinary Court which, for the purposes of this Ordinance, may be validly constituted by the Bailiff sitting alone,

"**seizure notice**": see section 8(1),

"**States**" means the States of Guernsey,

"**subordinate legislation**" means any regulation, rule, order, rule of court, resolution, scheme, byelaw or other instrument made under any

[¶] Order in Council No. VIII of 2004 to which there are amendments not relevant to this Ordinance.

statutory, customary or inherent power and having legislative effect but does not include an Ordinance,

"uniform scale" means the uniform scale of fines for the time being in force under the Uniform Scale of Fines (Bailiwick of Guernsey) Law, 1989^r,

"waste" has the meaning given by the modified EU Regulation except that for the purposes of the powers in sections 7, 8, 12(1) and (2) and 13(1) it includes –

- (a) anything which the Director has reasonable grounds to suspect is waste, and
- (b) the container in which the waste or thing is carried,

"working day" is any day other than a Saturday, a Sunday and a non-business day within the meaning of section 1(1) of the Bills of Exchange (Guernsey) Law, 1958^s,

and other expressions used in this Ordinance have the meanings in the modified EU Regulation.

^r Ordres en Conseil Vol. XXXI, p. 278; for the current scale of fines see Recueil d'Ordonnances Tome XXXI, p. 542.

^s Ordres en Conseil Vol. XVII, p. 384; as amended by Ordres en Conseil Vol. XXIV, p. 84; Vol. XXXIV, p. 504; Vol. XXXV(1), p. 367; Ordinance No. XXXIII of 2003; No. IX of 2016; Ordinance No. XXIV of 2017; Alderney Ordinance No. VII of 2017; and Sark Ordinance No. XII of 2017.

(2) Any reference in this Ordinance to an enactment, subordinate legislation or Community provision (within the meaning of section 3(1) of the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994) or to the OECD Decision is a reference thereto as from time to time amended, replaced or re-enacted (in either case, with or without modification), extended or applied.

Repeal, transitional provisions and savings.

25. (1) The Transfrontier Shipment of Waste Ordinance, 2002^t is repealed.

(2) Despite subsection (1) –

- (a) this Ordinance does not apply in relation to any shipment of waste that has been notified, and for which the competent authority of destination has given acknowledgement, before 31st October, 2018, and
- (b) the Transfrontier Shipment of Waste Ordinance, 2002, including the Regulation set out in the Schedule to that Ordinance, continues to apply in relation to such a shipment as if it had not been repealed.

Extent.

26. This Ordinance extends to Guernsey.

^t Ordinance No. I of 2002; as amended by Order in Council No. XIII of 2010; Ordinance No. XXXIII of 2003; and No. IX of 2016.

Citation.

27. This Ordinance may be cited as the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018.

Commencement.

28. This Ordinance shall come into force on the 31st October, 2018.

SCHEDULE

Section 1

MODIFICATIONS, EXCEPTIONS AND ADAPTATIONS TO THE EU REGULATION

PART I GENERAL MODIFICATIONS

Application of EU Regulation.

1. (1) The EU Regulation is modified so that it applies only to shipments of waste –

- (a) imported into Guernsey,
- (b) exported from Guernsey, or
- (c) in transit through Guernsey.

(2) In this paragraph and paragraph 2, the terms "imported", "exported" and "transit" are to be construed in accordance with the corresponding definitions of "import", "export" and "transit" in Article 2 of the EU Regulation as modified by this Ordinance.

Functions of competent authorities.

2. (1) The EU Regulation is modified, subject to the following provisions of this Schedule, so that references to -

- (a) the competent authority of destination or the competent authority of destination in the Community (however worded) are to be read as referring to the Director in relation to shipments of waste imported into Guernsey,
- (b) the competent authority of dispatch or the competent authority of dispatch in the Community (however worded) are to be read as referring to the Director in relation to shipments of waste exported from Guernsey,
- (c) the competent authority of transit or the first and last competent authority of transit in the Community (however worded) are to be read as referring to the Director, acting on behalf of the Environment Agency, in relation to shipments of waste in transit through Guernsey,
- (d) the competent authority with jurisdiction over the area where the waste was discovered (however worded) are to be read as referring to the Director in relation to waste discovered in Guernsey, or
- (e) the competent authority concerned or the competent authorities (however worded) are to be read as including the Director.

(2) References to competent authorities, other than the Director, are to be read (subject to the following provisions of this Schedule) as referring to the required procedure in relation to controls on shipments of waste under the EU Regulation, including where relevant the notification and obtaining of the consent of all competent authorities concerned, and not as purporting to confer or impose a function on those other competent authorities under this Ordinance who will act in accordance with relevant national legislation applying to waste shipments, for example the EU Regulation in the European Union.

General modifications.

3. (1) The following general modifications apply throughout the EU Regulation, unless the context requires otherwise, subject to the following provisions of this Schedule –

- (a) references to "the Community", except where referred to in the title to EU legislation, are to be read as references to "Guernsey",
- (b) references to "Community legislation", other than in Article 1(3)(e), are to be read as references to "Guernsey legislation",
- (c) references to "third countries" and to "a third country" are to be read as references to "countries outside Guernsey" and "a country outside Guernsey" respectively,
- (d) except in Article 49(2), references to obligations

imposed on, or to actions of, facilities (however worded) are to be read as being imposed on, or carried out by, operators of facilities and references to the permit of a facility are to be read as a reference to the permit of the operator of a facility,

- (e) references to "the competent authority in the country of the customs office", "the competent authority of the country of the customs office in which the waste is detained" (however worded) are to be read as references to "the Director",
- (f) references to "its area of jurisdiction", "its area of jurisdiction or elsewhere within the country of dispatch", "the area of jurisdiction of the competent authority of dispatch" and "their jurisdiction" are to be read as references to "Guernsey",
- (g) references to shipments of waste originating from or discovered within "a Member State" or "that Member State" (however worded) are construed as references to shipments originating or discovered in Guernsey,
- (h) references to "international conventions concluded by the Member State(s) concerned or the Community" are to be read as references to "international conventions the UK's ratification of which is extended to Guernsey",

- (i) references to "the objecting country" are to be read as references to "Guernsey",
- (j) references to "Community and national provisions concerning liability" are to be read as references to "the provisions of any other enactment concerning liability",
- (k) references to "shipped through Member States" are to be read as references to "shipped through Guernsey",
- (l) references to "the customs office of export and the customs office of exit from the Community", "the customs office of exit from the Community" or "the customs office of entry into the Community" (however worded) are to be read as references to "an officer of customs and excise", and
- (m) references to compliance with or anything being done in accordance with the requirements of an Article of the modified EU Regulation (however worded) are to be read as referring to compliance with the equivalent national legislation where referring to a person involved in carrying on an activity in relation to a shipment of waste outside Guernsey (for example, the EU Regulation where referring to an activity being carried on in an EU country).

(2) References in the modified EU Regulation to persons involved in shipments of waste, or the subsequent recovery or disposal of the same, who are not carrying on an activity in relation to such shipments in Guernsey ("third country persons"), including references to operators of facilities to which shipments of waste from Guernsey may be exported for recovery or disposal, are retained to the extent necessary to clarify the context of functions conferred or imposed on persons carrying on activities in Guernsey under the modified EU Regulation; such references are not to be read as purporting to confer or impose a function on third country persons under this Ordinance who will be subject to relevant national legislation applying to shipments of waste, for example the EU Regulation in the European Union.

General disapplications.

4. The following provisions of the EU Regulation do not apply as it has effect in Guernsey –

- (a) in Title II, Article 21 (public access to notifications), Article 30 (border area agreements) and Chapter 6 (shipments within the Community with transits via third countries),
- (b) Title III (Shipments exclusively within Member States),
- (c) in Title IV, Article 40 (exports to overseas countries or territories),

- (d) in Title V, Article 45 (procedural requirements for imports from a non-OECD Decision country party to the Basel Convention or from other areas during situations of crisis or war) and Chapter 3 (general provisions),
- (e) in Title VII, Article 50 (enforcement in member states) and Articles 53 to 64, and
- (f) Annex IX (additional questionnaire for reports by Member States pursuant to Article 51(2)).

PART II

MODIFICATIONS OF PARTICULAR PROVISIONS

Modifications of particular provisions.

5. In its application to Guernsey the provisions of the EU Regulation are further modified as set out in the following provisions of this Schedule.

Title I: Scope and definitions.

6. In Title I (scope and definitions) –

- (a) Articles 1(2)(a), (3)(g), 1(5), Articles 2(26), (28) and (29) and subparagraphs (b) and (f) of Article 2(34) are omitted,
- (b) in Article 1(3)(e) for "Community legislation" substitute "European Community legislation",

(c) in Article 1(3)(i) for "Member State" substitute "Member State of the European Union",

(d) in the definition of "competent authority" in Article 2(18) –

(i) in subparagraph (a), after the words "Member States" insert "of the European Union" and after the words "in accordance with article 53" insert "of this Regulation as it applies in the European Union", and

(ii) in subparagraph (b), after the words "non-Member State" insert "of the European Union",

(e) after the definition of "country of transit" in Article 2(24) insert –

"24A. 'country' includes a territory;

24B. 'Director' means the Director of Environmental Health and Pollution Regulation appointed under section 4 of the Environmental Pollution (Guernsey) Law, 2004;

24C. 'Guernsey' includes Herm and Jethou and all other islands, islets and rocks around the coast of

Guernsey, whether or not attached at low water and the territorial waters adjacent to Guernsey;

24D. 'licensed' means licensed by the Director under section 15 of the Environmental Pollution (Guernsey) Law, 2004;

24E. 'registered' means registered by the Director under section 15 of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018;"

(f) for Article 2(27) substitute –

"27. 'officer of customs and excise' means an officer within the meaning of section 1(1) of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972;"

and

(g) in the definition of "illegal shipment" in Article 2(35) –

(i) in subparagraph (e), for "Community or international rules" substitute "Guernsey law or any relevant international agreements the UK's ratification of which is extended to Guernsey", and

- (ii) in subparagraph (f), for "and 43" substitute "or 43".

Heading to Title II and Article 3 (overall procedural framework).

- 7. (1) For the heading to Title II substitute –

"WASTE SHIPMENTS -COMMON PROVISIONS".

- (2) In Article 3 (overall procedural framework) –

- (a) in paragraph (1), after the words "provisions of this Title" insert "subject to the adaptations and additions in Articles 35, 38, 42, 44, 47 and 48 in relation to particular categories of shipment", and
- (b) in paragraphs (2)(b) and (3) for "Article 58" substitute "Article 58 as it applies in the European Union".

Articles 6 (financial guarantee).

- 8. In Article 6 (financial guarantee) –

- (a) in paragraph (7), for "The competent authority within the Community which has approved the financial guarantee or equivalent insurance" substitute –

"Where the Director has approved the financial guarantee or equivalent insurance, the Director",

- (b) in the second subparagraph of paragraph (8), for "The financial guarantee or equivalent insurance shall be released when the competent authority concerned" substitute –

"The Director shall release a financial guarantee or equivalent insurance approved by the Director when the Director", and

- (c) paragraph (9) is omitted.

Article 9 (consents by competent authorities etc.).

9. In Article 9(9) (consents by competent authorities etc.) after "transmitted by" insert "the Director by".

Articles 10 (conditions for a shipment), 11 (objections to shipments of waste destined for disposal) and 12 (objections to shipments of waste destined for recovery).

10. (1) In Article 10(5) (conditions for a shipment) after "receives the waste" insert "in Guernsey".

(2) In Article 11 (objections to shipments of waste destined for disposal) –

- (a) subparagraphs (a), (g) and (h) of paragraph (1) and paragraphs (3) and (6) are omitted,

- (b) in paragraph (1) –
 - (i) for "in accordance with the Treaty" substitute "must do so where required under section 14 of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018",
 - (ii) in subparagraph (b), for "national legislation" substitute "Guernsey legislation",
 - (iii) in subparagraph (c) –
 - (A) after "convicted of" insert "an offence in relation to",
 - (B) for "in accordance with national legislation" substitute "and in this paragraph **"offence"** includes an offence under the law of another jurisdiction which would be an offence in Guernsey if the conduct, activity or omission constituting the offence occurred in Guernsey", and
 - (iv) in subparagraph (e), for "the Member State" substitute "Guernsey".

- (3) In Article 12 (objections to shipments of waste destined for

recovery) –

(a) subparagraphs (a) and (c), the whole of the disapplication following subparagraph (c), subparagraphs (i) and (k) of paragraph (1) and paragraphs (5) and (6) are omitted, and

(b) in paragraph (1) –

(i) for "in accordance with the Treaty" substitute "must do so where required under section 14 of the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018",

(ii) in subparagraph (b), for "national legislation" substitute "Guernsey legislation",

(iii) in subparagraph (d) -

(A) after "convicted of" insert "an offence in relation to",

(B) for "in accordance with national legislation" substitute "and in this paragraph **"offence"** includes an offence under the law of another jurisdiction which would be an offence in Guernsey if the conduct,

activity or omission constituting the offence occurred in Guernsey", and

- (iv) in subparagraph (j), the words "(also in cases where temporary derogations are granted)" are omitted.

Article 14 (pre-consented recovery facilities).

11. In Article 14 (pre-consented recovery facilities) –

- (a) in paragraph (3), for "shall inform the Commission and, where appropriate, the OECD Secretariat of" substitute "the Director shall inform, where appropriate, the OECD Secretariat (through one of Her Majesty's Principal Secretaries of State) of", and
- (b) in the last subparagraph of paragraph (5), after "The total time needed" insert "by the Director to receive further information or documentation from the notifier".

Articles 15 (additional provisions etc.) and 16 (requirements following consent to a shipment).

12. (1) In Article 15 (additional provisions regarding interim recovery and disposal operations) –

- (a) at the beginning of subparagraph (c), insert "Where

the interim recovery or disposal operation is carried out in Guernsey,"

(b) in subparagraph (d), after "disposal operation" insert "carried out in Guernsey,"

(c) in subparagraph (e) –

(i) after the first reference to "an interim recovery or disposal operation" insert "in Guernsey", and

(ii) for "it shall obtain" substitute "the operator of the facility in Guernsey shall obtain", and

(d) in subparagraph (f)(i) "or in another Member State" is omitted.

(2) In Article 16 (requirements following consent to shipment) –

(a) in subparagraph (c), for the last sentence substitute "Where waste is received in Guernsey, the movement document shall be retained by the operator of a facility which receives the waste.",

(b) in subparagraph (d), after "within three days of receipt of the waste" insert "in Guernsey", and

- (c) in subparagraph (e) –
 - (i) after "disposal operation" insert "in Guernsey",
and
 - (ii) in the last subparagraph, after "facility" insert
"in Guernsey."

Chapter 2 (general information requirements) and chapter 3 (general requirements).

13. (1) In Article 18 (waste to be accompanied by certain information)–

- (a) in paragraph (1)(a), for "the country of dispatch" substitute "Guernsey" and after "who arranges the shipment" insert ", in the case of an export",
- (b) in paragraph (1)(b), after "shall be signed" insert ", in the case of exports," and after "and the consignee" insert ", in the case of imports",
- (c) paragraph (3) is omitted, and
- (d) in paragraph (4), for "required by Community and national legislation" substitute "required under Guernsey law".

(2) In Article 20 (keeping of documents and information) –

- (a) in paragraph (1), for "by the competent authorities, the notifier, the consignee and the facility which receives the waste" substitute "by the Director, the notifier, the consignee and the operator of the facility in Guernsey which receives the waste", and
- (b) in paragraph (2), after "facility" insert "in Guernsey".

Article 22 (take-back where a shipment cannot be completed etc.).

14. In Article 22 (take-back when a shipment cannot be completed as intended) –

- (a) in paragraph (1), after "recovery or disposal facility" insert "in Guernsey", and
- (b) in paragraph (8) for the references to "the country of dispatch" substitute "Guernsey, where it is the country of dispatch,".

Article 24 (take-back when a shipment is illegal).

15. (1) In Article 24 (take-back when a shipment is illegal) –

- (a) in paragraph (6), after "subsidiary obligation of" insert "Guernsey, where it is", and
- (b) in paragraph (8), after "shipments are returned" insert "from Guernsey".

Chapter 5 (general administrative provisions).

16. (1) In Article 26 (format of the communications), paragraph (4) is omitted.

(2) In Article 28(1) (disagreement on classification issues), for "Community or international law" substitute "international law".

(3) In Article 29 (administrative costs), at the beginning insert "The Director may charge" and the words "may be charged" are omitted.

Title IV, Chapter 1 (exports of waste for disposal).

17. (1) In Article 34 –

(a) for the heading substitute –

**"Export prohibited except to EFTA countries,
Member States of the EU or Jersey",**

(b) in paragraph (2), for "which are also Parties to the Basel Convention" substitute "or Member States of the European Union which are also Parties to the Basel Convention or in Jersey", and

(c) in paragraph (3) –

(i) for "Party to the Basel Convention" substitute
"or a Member State of the European Union"

Party to the Basel Convention or to Jersey",
and

- (ii) in subparagraph (a) after "EFTA country"
insert ", Member State of the European Union
or Jersey".

(2) In Article 35 –

- (a) for the heading substitute –

**"Procedures when exporting to EFTA countries,
Member States of the EU or Jersey",**

- (b) in paragraph (1), for "Parties to the Basel Convention"
substitute "or Member States of the European Union
which are also Parties to the Basel Convention or in
Jersey",
- (c) in paragraph (2), after "adaptations" insert "and
additions",
- (d) in paragraph (2)(a), for "shall have 60 days"
substitute–

"shall have –

- (i) in the case of a competent authority of

a Member State of the European Union, 30 days in accordance with the EU Regulation;

(ii) in the case of a competent authority of Alderney or Sark, 30 days in accordance with any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or

(iii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit,"

(e) in paragraph (2)(b) –

(i) for "not earlier than 61 days" substitute –

"not earlier than -

(i) 30 days, where the country of transit is a Member State of the European

Union, in accordance with the EU Regulation;

- (ii) 30 days, where the country of transit is Alderney or Sark in accordance with any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or
 - (iii) 61 days, where the country of transit is another country, or such other period provided for in accordance with relevant national legislation in the country of transit,".
- (ii) in the last sentence, for "61 day time limit" substitute "relevant time limit",
- (f) in paragraph (3) subparagraphs (a), (b) and (d) are omitted, and
- (g) in paragraph (6), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director.".

Title IV, Chapters 2 (exports of waste for recovery) and 3 (general provisions).

18. (1) In Article 36 (exports prohibition) –

(a) in paragraphs (3) and (5) for references to "Member States" and "the Member State concerned" substitute "the Director", and

(b) in paragraph (5) –

(i) for the second and third sentences substitute –

"The Director shall notify such cases to the United Kingdom before the end of each calendar year for forwarding to the Secretariat of the Basel Convention", and

(ii) the last sentence is omitted.

(2) In Article 37 (procedures when exporting waste listed in Annex III or IIIA) –

(a) for paragraphs (1) to (3) substitute -

"1. Export for recovery of waste listed in Annex III or IIIA, which is not prohibited under Article 36, to countries to which the OECD Decision does not apply shall be governed by the procedures

set out in the Annex to Commission Regulation (EC) No. 1418/2007 of 29th November, 2007 concerning the export for recovery of certain waste listed in Annex III or IIIA to Regulation (EC) No. 1013/2006 of the European Parliament and of the Council to certain countries to which the OECD Decision on the control of transboundary movements of wastes does not apply.

2. Where it is indicated in the Annex to Commission Regulation (EC) No. 1418/2007 that a country, with regard to certain shipments of waste, does not prohibit them or apply the procedure of prior written notification and consent as described in article 35 of this Regulation, article 18 of this Regulation shall apply *mutatis mutandis* to such shipments.
3. The references to the procedures of the EU Regulation in the Annex to Commission Regulation (EC) No. 1418/2007 shall be construed as referring to those procedures as set out in this modified EU Regulation.", and

- (b) in paragraph (5), for "paragraph 1(b) of this Article" substitute "a procedure of prior written notification and consent as described in Article 35".
- (3) In Article 38 (exports of waste listed in Annexes III, IIIA etc.) –
- (a) in paragraph (2) –
 - (i) after "adaptations" insert " and additions", and
 - (ii) in subparagraph (c) for "Article 9" substitute "Title II",
 - (b) in paragraph (3)(a), for "the competent authorities of dispatch and, where appropriate, transit in the Community shall send a stamped copy of their decisions" substitute –

"the Director shall send a stamped copy of the Director's decision",
 - (c) in paragraph (5)(a), for "shall have 60 days" substitute–

"shall have –

 - (i) in the case of a competent authority of a Member State of the European

Union, 30 days in accordance with the
EU Regulation; or

- (ii) in the case of a competent authority of
another country, 60 days, or such
other period provided for in
accordance with relevant national
legislation in the country of transit;"

(d) in paragraph (5)(b) –

- (i) for "not earlier than 61 days" substitute -

"not earlier than -

- (i) in the case of a competent authority of
a Member State of the European
Union, 30 days in accordance with the
EU Regulation; or

- (ii) in the case of a competent authority of
another country, 61 days or such
other period provided for in
accordance with relevant national
legislation in the country of transit",
and

- (ii) in the last sentence, for "61 day time limit"

substitute "relevant time limit",

- (e) in paragraph (6), after "is exported" insert "from Guernsey", and
- (f) in paragraph (7), for all the words from "inform the competent authority in the country" to the end of the paragraph substitute "inform the Director."

Title V, Chapter 1 (imports of waste for disposal).

19. (1) For Article 41 substitute –

"Article 41

Imports prohibited except from Alderney, Sark or Jersey

1. Imports into Guernsey of waste destined for disposal shall be prohibited except those from Alderney, Sark or Jersey."

- (2) In Article 42 –

- (a) for the heading substitute –

**"Procedural requirements for imports from
Alderney, Sark or Jersey",**

- (b) in paragraph (1), for "countries Parties to the Basel Convention" substitute "Alderney, Sark or Jersey",
- (c) in paragraph (2) –

- (i) after "adaptations" insert "and additions",
- (ii) in subparagraph (a), for "shall have 60 days" substitute –

"shall have –

- (i) in the case of a competent authority of a Member State of the European Union, 30 days in accordance with the EU Regulation;
- (ii) in the case of a competent authority of Alderney or Sark, 30 days in accordance with any Ordinance, relating to the transfrontier shipment of waste, from time to time in force in the island in question and made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994; or
- (iii) in the case of a competent authority of another country, 60 days, or such other period provided for in accordance with relevant national legislation in the country of transit", and

(iii) the word "and" is omitted at the end of subparagraph (a) and subparagraph (b) is omitted,

(d) in paragraph (3) subparagraph (a) is omitted, and

(e) in paragraph (5) for subparagraph (a) substitute –

"(a) inform the competent authority of dispatch outside Guernsey; and".

Title V, Chapter 2 (imports of waste for recovery).

20. (1) For Article 43 substitute –

"Article 43

**Imports prohibited except from Alderney, Sark or Jersey or
another OECD Decision country**

1. Imports into Guernsey of waste destined for recovery shall be prohibited except those from Alderney, Sark or Jersey or another OECD Decision country."

(2) In Article 44 –

(a) for the heading substitute -

**"Procedural requirements for imports from
Alderney, Sark or Jersey or another OECD Decision**

country",

(b) in paragraph (2) –

(i) for "in accordance with Article 9" substitute "in accordance with Title II",

(ii) subparagraph (c) is omitted, and

(c) for paragraph (5)(a), substitute –

"(a) inform the competent authority of dispatch outside Guernsey; and "

Title VI, Transit of Waste.

21. (1) In Article 47(a) and 48(2)(a) after "a copy of the acknowledgement" insert "of receipt of notification to the notifier".

(2) In Article 48, for each reference to "Member States" substitute "Guernsey".

Title VII, Other provisions.

22. (1) In Article 49 (protection of the environment) –

(a) in paragraph (1), the last sentence is omitted,

(b) in paragraph (2)(a) and the penultimate subparagraph of paragraph (2), for "third country of destination"

substitute "country of destination", and

- (c) in paragraph (3)(a), for "could harm the environment" to the end of the paragraph substitute "could harm the environment, throughout the period of shipment, including recovery or disposal in the country of destination".

(2) In Article 51 –

- (a) for the Title substitute –

"Reports",

- (b) in paragraph (1), for the words from "which in accordance with Article 13(3) of the Basel Convention" to the end of the paragraph substitute "which the States of Guernsey have drawn up in accordance with Article 13(3) of the Basel Convention.",
- (c) paragraphs (2) and (4) are omitted, and
- (d) in paragraph (3), for the words "paragraphs 1 and 2" substitute "paragraph 1".

(3) In Articles 51 and 52, references to –

- (a) "Member State", "Member States" or "each Member

State" are read as references to "the States of Guernsey", and

- (b) "the Commission" are read as references to "the United Kingdom".

Annexes to the EU Regulation.

23. (1) In paragraph 27 of Part IV of Annex IC (specific instructions for completing the notification and movement documents) for "the European Union" substitute "Guernsey".

(2) In Annex II (information and documentation related to notification) –

- (a) in the last subparagraph of paragraph (5) of Part 1, for "in accordance with Articles 4 and 5 of that Directive" substitute "in accordance with relevant national legislation", and

- (b) for paragraph 2 of Part 3 substitute –

"2. Copy of the permit issued for the recovery or disposal facility in accordance with relevant national legislation."

(3) In Annex IIIB (additional green listed waste etc.) –

- (a) in the heading omit "as referred to in Article 58(1)(b)",

and

(b) paragraph 3 is omitted.

(4) In Annex V (waste subject to the export prohibition in Article 8), paragraph 1 of the introductory notes is omitted.

Appendix 2 – Draft States of Guernsey Management Plan for Importation and
Exportation of Waste



States of Guernsey

MANAGEMENT PLAN FOR IMPORTATION AND EXPORTATION OF WASTE



Committee *for the*
Environment & Infrastructure

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Introduction

The Committee *for the Environment & Infrastructure* (“the Committee”) must prepare and submit to the States a management plan for the importation and exportation of waste in accordance with section 14 of The Transfrontier Shipment of Waste Ordinance (Guernsey) 2018.

The Plan sets out the States policy on the import into and export of waste from Guernsey of waste shipments and it provides for grounds to make objections to, and where necessary, take action to prevent such shipments not approved in the Plan.

For the purposes of the Plan, Guernsey includes Herm and Jethou and other smaller islets around Guernsey and the territorial waters adjacent to Guernsey.

There is separate transfrontier shipment legislation in Alderney and Sark. New transfrontier shipment Ordinances are proposed in Alderney and Sark, subject to approval by the States of Alderney and the Chief Pleas of Sark, which are similar to the 2018 Guernsey Ordinance except that imports of waste into those islands are prohibited. If that legislation is approved, each island is required to produce its own import and export plan. Each of these plans will need to be consistent with the provisions of the Basel Convention that was extended to the whole Bailiwick in 2002.

Guernsey has limited capacity to deal with waste imported from other locations and the Plan, in accordance with the legislation, restricts imports of waste for disposal to those within a Channel Island geographical location, namely Alderney, Sark and Jersey.

Guernsey has international obligations to only export or import types of waste to which the Basel Convention applies⁴ when the receiving/exporting location is a signatory to the Basel Convention⁵. In certain circumstances, where waste is to be recovered, the export or import of such waste can also be to and from a member of the Organization for Economic Co-operation and Development (OECD). Guernsey is an OECD country for these purposes.

This document sets out the plan (page 8), detailing the principal policies regarding waste imports and exports. This is followed by explanatory information on the policies

⁴The Basel Convention applies to hazardous waste and certain other wastes (household waste and incinerator ash as defined in the Convention).

⁵The other islands of the Bailiwick and the Bailiwick of Jersey are also treated as parties to the Basel Convention as the UK's ratification of the Convention has been extended to them.

that apply around the disposal or recovery of waste when exported from or imported into Guernsey.

The explanatory information should be read with the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 and the information reflects the legislation in force at the time the guidance is approved.

Deputy Barry Brehaut
President
Committee *for the* Environment & Infrastructure

Background

The disposal of hazardous⁶ waste when shipped around the world is subject to the international agreement known as the Basel Convention. The convention came into effect on 5th May 1992.

The purpose of the Basel Convention is to control transboundary movements of hazardous waste and their disposal in order to meet the objective of protecting human health and the environment against the adverse effects of such wastes. The UK's ratification of the convention was extended to the Bailiwick of Guernsey with effect from 27 November 2002.

In order to ensure compliance with this convention the States of Deliberation approved The Transfrontier Shipment of Waste Ordinance, 2002⁷. This Ordinance gave effect in Guernsey to the controls set out in the Council Regulation (EEC) No 259/93 of 1 February 1993 on the supervision and control of shipments of waste within, into and out of the European Community subject to appropriate modifications for Guernsey. At that time, this Regulation also implemented the provisions of the Organization for Economic Co-operation and Development, (OECD) Decision applying to movements of waste for recovery between OECD countries which includes provision for the recovery of non-hazardous wastes through a more streamlined, risk-based control system than under the Basel Convention.

In order to bring the local legislation up to date with the current EU Regulation 1013/2006, the States will be asked to approve The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 (the 2018 Ordinance), which gives effect in Guernsey to the current EU regulation (with appropriate modifications). Section 14 of the 2018 Ordinance requires that The Committee *for the* Environment & Infrastructure must prepare and submit to the States for approval a management plan for the importation and exportation of waste which must contain the States policies in relation to the import and export of waste for recovery and disposal. The Plan is set out at page 8 of this document (the Plan).

⁶ Hazardous Waste is referred to as Specially Controlled Waste under Guernsey waste licensing legislation.

⁷ The original OECD Convention and all instruments made under it extend to the Channel Islands and the Isle of Man, unless there is a contrary indication in a particular case, so they are treated as OECD countries for these purposes.

The Plan, should it be approved by the States of Deliberation, will become the States of Guernsey Management Plan for the Importation and Exportation of Waste, as required under section 14. The 2018 Ordinance requires the Guernsey competent authority, the Director of Environmental Health and Pollution Regulation (the Director), to object to and prevent shipments of waste which the Plan indicates should not be imported into, or exported from Guernsey.

The Plan only applies to Guernsey as there are separate provisions with respect to Alderney, (the Transfrontier Shipment of Waste (Alderney) Ordinance, 2018) and Sark, (the Transfrontier Shipment of Waste (Sark) Ordinance, 2019) respectively. Additional plans on the importation and exportation of waste for Alderney and Sark will also be required under these separate Ordinances, subject to approval by the States of Alderney and Chief Pleas.

States of Guernsey Plan for Imports and Exports of Waste

The following page alone, (page 8), represents the Plan for Guernsey. The remaining parts of this document represent supporting information to clarify for those undertaking, or proposing to undertake such waste shipments, the provisions that apply.

States of Guernsey Plan for Imports and Exports of Waste

Shipments of Waste for Disposal

1. Consistent with the previous provisions of The Transfrontier Shipment of Waste Ordinance, 2002 and section 1 of, and paragraphs 17 and 19 of the Schedule to, The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018, imports and exports of waste for disposal shall be prohibited; save for the exceptions below;
2. Imports of waste for disposal from Alderney, Sark or Jersey.
3. Exports of waste for disposal to European Free Trade Association (EFTA) countries, or Member States of the European Union (EU), which in either case are also parties to the Basel Convention or to Jersey⁸. Exports of waste for disposal will continue to be allowed to the United Kingdom following its exit from the EU.

It should be noted that even where these exceptions apply, shipments of waste for disposal to and from Guernsey are subject to the procedure of prior written notification and consent required under The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018. In addition, where waste is exported for disposal to the UK, the UK will apply relevant UK legislation⁹ and the policies in the UK Plan for Shipments of Waste. In these circumstances waste is required to be approved in principle under a Duly Reasoned Request (DRR), prior to seeking written notification and informed consent¹⁰.

Shipments of Waste for Recovery

4. Consistent with the previous provisions of The Transfrontier Shipment of Waste Ordinance, 2002 and section 1 of, and paragraph 20 of the Schedule to, The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 imports of waste for recovery shall be prohibited, save for the exceptions below;
5. Imports from Alderney, Sark, Jersey or OECD Decision countries.
6. Exports of waste for recovery to OECD Decisions countries are permitted subject to meeting the requirements referred to in section 1 of, and paragraph 18 to, the Schedule to The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 and these requirements reflect the procedure applying to waste for recovery under the OECD Decision. A streamlined procedure where prior consent is not required for recovery of non-hazardous “green” list wastes is allowed for under the 2018 Ordinance.

⁸ The UK's ratification of the Basel Convention has also been extended to Jersey so it treated as a party to it.

⁹ The EU Regulation currently applies in the UK and its provisions, as in force at the date the UK exits the EU, will become “retained EU Law” from that date. In essence, this means that the provisions of the EU Regulation will become part of UK national law and continue to apply after the UK's exit; retained EU Law may be modified by the UK government so the provisions of the EU Regulation might in the future differ from equivalent provisions in UK national law.

¹⁰ The wording in italics and the footnote in the Plan are provided for information and are not part of the Plan.

Supporting Information

The remaining pages of this document are given to provide support and clarification to the Plan.

Details on Exports for Disposal

The export of waste for disposal is distinct from waste that is exported for recovery, which is detailed later. Further information of the difference between disposal and recovery can be found in the Glossary.

General Policy

Articles 34 and 35 of the European Waste Shipment Regulation, (WSR) prohibit the export of waste for disposal, without the prior informed consent of the competent authority receiving that waste. The Transfrontier Shipment of Waste Ordinance, 2018 and the Plan seek to remain consistent with this principle.

Bilateral Agreements

Shipments exported from Guernsey will also be subject to legislation and policy relating to waste shipments imported into the country of destination. For EU countries the applicable legislation is the EU Regulation¹¹. The most common EU country of destination, as at the date of approval of the Plan, for EU Guernsey waste shipments for disposal is the UK which is governed separately by a Duly Reasoned Request (DRR) which restricts what waste are permitted to be exported for disposal. Exports of waste for disposal will continue to be allowed to the United Kingdom following its exit from the EU.

In addition, as Guernsey is not a member state of the European Union, (EU), but has had the Basel Convention extended to it, any exports for disposal into the EU may be subject to the requirement of a bilateral agreement. This bilateral agreement can be with the whole of the EU, or with individual member states as set out in Article 41 of the WSR.

Duly Reasoned Requests

The UK has a policy set out in its plan (UK Plan for Shipments of Waste), that waste must not generally be imported for disposal. Under a very limited set of circumstances the UK will permit wastes to be imported for disposal, but in order to do so require parties, other than in emergency type situations, to submit a written submission, a Duly Reasoned Request, to one or more of the UK's competent authorities, depending

¹¹ See footnote 28

on the final geographical destination of the waste (e.g. England or Scotland). Guernsey currently has a DRR with the UK's Environment Agency and this has been previously reviewed by the UK competent authority every few years. The current DRR is due to expire on 26th July 2020. Should the DRR not be acceded to in future the Director would be bound, under the 2018 Ordinance, to prevent waste exports for disposal being sent to the UK.

Any DRR request to an EU Member State from a party to the Basel Convention should be on the basis that the exporting jurisdiction does not have and cannot reasonably acquire the technical capacity and the necessary facilities in order to dispose of the waste in an environmentally sound manner.

The current restrictions from the Environment Agency allow wastes to be exported from Guernsey to the UK for disposal, provided it is sent to a facility not available in Guernsey. In particular, those facilities currently acceptable are disposal by high temperature incineration or specialist hazardous landfill.

States' Trading Supervisory Board, not the Director is responsible for submissions and dealing with queries with the Environment Agency under the DRR. This is consistent with this Committee *for the* Environment & Infrastructure being responsible for waste policy matters.

Shipments for Laboratory Analysis

In accordance with Article 3 of the modified EU regulation, shipments of waste explicitly destined for laboratory analysis to assess either its physical or chemical characteristics or to determine its suitability for recovery or disposal operations shall not be subject to the procedure of prior written notification and consent. Instead, the procedural requirements of Article 18 of the above regulation shall apply. The amount of such waste exempted when explicitly destined for laboratory analysis shall be determined by the minimum quantity reasonably needed to adequately perform the analysis in each particular case, and shall not exceed 25 kg.

Article 18 of the modified EU Regulation requires that written information be provided to accompany the waste for laboratory analysis in question. The minimum information required in these circumstances is set out in Annex VII to the modified EU Regulation. This documentation is available from the Director on request.

Details on Imports for Disposal

General Policy

Consistent with paragraph 19 of the Schedule to the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 and the previous provisions under the amended EU Regulation 259/93 within the Schedule to The Transfrontier Shipment of Waste Ordinance, 2002, the general policy is that all imports into Guernsey of waste for disposal shall be prohibited except those from Alderney, Sark and Jersey.

The main reason for this prohibition is that Guernsey has limited capacity to deal with waste for disposal from other locations. As for all permitted waste shipments, the modified EU Regulation requires that environmentally sound management is ensured for shipments allowed from other Channel Islands.

Provision of Facilities

The Director has a responsibility under The Environmental Pollution (Guernsey) Law, 2004 (2004 Law), as amended, to licence waste management operations which may not be carried on without a licence. The Director issues such licences and ensures compliance with licence conditions. Each licence will automatically include a condition, under the 2004 Law, that requires the holder of the licence to ensure that operations to which it relates are carried on using the best available technique for preventing the introduction of pollutants or, if that is not practical, for reducing to the minimum the introduction of pollutants and resulting environmental pollution. These operations include waste disposal and recovery operations carried on at waste management facilities.

The policy with respect to identifying the waste sites or facilities to be provided or arranged etc. by the Waste Disposal Authority to effectively manage the Island's waste rests with the Committee *for the* Environment & Infrastructure. That Committee, following recommendations from the Waste Disposal Authority, produce a Waste Management Plan for approval by the States.

The facilities currently licensed by the Director for disposal are restricted to landfill and incineration operations. Given these sites have finite operating capacities it is prudent and appropriate to restrict imports to those from the other Bailiwick Islands, or Jersey. There are clear environmental advantages for allowing waste from our sister islands to be permitted to be imported for disposal in Guernsey, in particular those from the

smaller Islands of the Bailiwick to provide for sound environmental management of the waste from those islands.

It is also envisaged that by including Jersey as a potential source of imports for disposal, particularly under circumstances when emergency capacity might be needed, it might permit the potential of a reciprocal capacity from the Jersey competent authority.

However, it must be noted that any competent authority has a right to set its own policy on waste imports or exports. Whilst Alderney currently exports some of its waste to Guernsey it may in future decide to export waste to other locations and it has the ability to detail relevant policy in its own Import and Export Plan.

Details on Exports for Recovery

General Policy

Consistent with Article 36 of the modified EU Regulation, exports of hazardous wastes or mixtures of hazardous and other wastes for recovery shall generally be prohibited other than to OECD Decision countries.

Export of Green List Waste listed in Annex III or IIIA to the modified EU Regulation may be allowed to non-OECD Decision countries where such countries do not prohibit such imports¹².

The control procedure for exports of waste for recovery will vary depending on whether the recoverable waste is regarded as hazardous, with more regulatory control being exercised if that is the case.

Where the competent authority of destination has indicated that it does not wish to receive certain types of waste it will notify the Secretariat of the Basel Convention in pursuant to Article 4(1) of the Convention. This requirement is implemented in the modified EU Regulation under Article 37 which sets out a process where nation States can identify which wastes they wish to prohibit, or accept with prior written approval, or allow with no controls, as specified in Commission Regulation EC 1418/2007. The Director will not permit any export of waste for recovery that has not been notified in accordance with Article 37 of the modified EU Regulation.

Shipments for Laboratory Analysis

The same procedures with regard to sending waste to laboratories as set out on waste for disposal above, also apply to waste imports for recovery, including the 25 kg limit¹³.

Sham Recovery

The process of seeking to dispose of waste under the guise of recovery is described as sham recovery. This could be attempted as less strict controls apply to shipments for recovery than for disposal of waste because of the environmental benefits in recovering waste. Under Article 12 of the modified EU Regulation the Director may

¹² See Article 37 of the modified EU Regulation as modified by paragraph 18(2) of the 2018 Ordinance.

¹³ See Article 3(4) of the modified EU Regulation.

object to a shipment to be exported from Guernsey if the Director determines that sham recovery is occurring. The same ground for objection is available for a receiving competent authority in the EU under the EU Regulation. In particular Article 12(1)(g) of the EU Regulation allows a competent authority in the EU to object to a shipment of waste where the ratio of the recoverable and non-recoverable waste, the estimated value of the materials to be finally recovered or the cost of the recovery and the cost of the disposal of the non-recoverable fraction do not justify the recovery, having regard to economic and / or environmental considerations. In such circumstances the Director may also determine that the operation is not being undertaken in an environmentally sound manner as required under the modified EU Regulation¹⁴.

¹⁴ See Article 49 of the modified EU Regulation.

Details on Imports for Recovery

General Policy

Consistent with paragraph 20 of the Schedule to The Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 and the previous provisions under the amended EU Regulation 259/93 within the Schedule to The Transfrontier Shipment of Waste Ordinance, 2002, the general policy is that all imports into Guernsey of waste for recovery shall be prohibited except those from Alderney, Sark and Jersey, or another OECD Decision country¹⁵.

The main reason for this prohibition is that Guernsey has limited capacity to deal with waste for recovery from other locations. As for all permitted waste shipments, the modified EU Regulation requires that environmentally sound management is ensured for shipments allowed from other Channel Islands or another OECD Decision country.

Available Facilities in Guernsey

The modified EU Regulation provides for reduced regulatory control of so called "green list" waste having negligible hazardous characteristics so as to facilitate the free movement of recoverable wastes. This reflects principles set out in the OECD Decision relating to movements between OECD Decision countries of such waste.

However, whilst movements of "green" list waste, could be imported into Guernsey consistent with international obligations, it has to be borne in mind that there are limited sites that meet the recovery criteria, as detailed within the Waste Framework Directive¹⁶. Sites in Guernsey that store this waste pending recovery currently off-island, are not designated as recovery sites in Guernsey. In practical terms, the Director would seek to raise objections to imports of such wastes as not being able to be managed in an environmentally sound manner. This does not prevent these wastes from passing in transit through the territorial waters, but would prevent them landing in Guernsey unless there was an acceptable licensed facility on the island.

¹⁵ See Article 43 of the modified EU Regulation, as substituted by paragraph 20 of the Schedule to the 2018 Ordinance.

¹⁶ As per the definition of "Recovery" in the Glossary.

Sham Recovery

The principle in assessing sham recovery for exports above shall also apply when dealing with imports so that the Director may object to such imports on this basis under Article 12 of the modified EU Regulation. The Director shall assess any value gained from the recovery of any waste, balanced against any cost of disposing of waste residues arising from that recovery process. Such operations where recoverable values are less than the costs required for disposal may also be deemed as not being managed in an environmentally sound manner, as required under the modified EU Regulation.

The Director of Environmental Health and Pollution Regulation

Designation

Under section 3 and 4 of the 2018 Ordinance, the Director of Environmental Health and Pollution Regulation (“the Director”) is designated, in relation to Guernsey, as the competent authority of dispatch, destination and of transit for waste either, imported, exported or transiting through Guernsey.

Role of the Director with Respect to the Plan

Section 14(2) of the 2018 Ordinance sets out the role of the Director in raising objections under the Plan, as set out below:

“For the purpose of ensuring environmentally sound management of waste and preventing movements of waste which are not in accordance with the plan, the Director must, within the applicable time limit specified in the modified EU Regulation object to any shipment of waste notified under the modified EU Regulation which the plan indicates should not be imported into or exported from Guernsey.”

Should the Director receive prior notification of a proposed waste shipment that is in contravention of the Plan, she/he will object to the shipment and inform the notifier stating the reasons for such an objection.

In addition, and without prejudice to the above, the Director has additional powers to raise other objections, termed reasoned objections, to imports and exports and waste transit shipments in Guernsey, under the modified EU Regulation. These are referred to in section 14(4) of the 2018 Ordinance and set out within the modified EU Regulation. The grounds to raise reasoned objections can occur when waste is destined for disposal but is not listed on any waste classification list, but the Director may also object when;

- the planned shipment would be contrary to national legislation in an objecting country
- the notifier or consignee was previously convicted of illegal shipment
- the consignee repeatedly fails to dispose or recover of waste in a timely manner such that it represents illegal traffic

The Director shall exercise the functions above, as set out in section 6(2) of The

Environmental Pollution (Guernsey) Law, 2004, “with fairness, impartiality and independence and in a manner that is timely, transparent, objective and consistent with States Directions”.

Implementation

Should the States of Deliberation approve the draft Plan it will become the Management Plan for the Importation and Exportation of Waste for Guernsey and shall come into effect in 30 days starting from the date of approval.

The Plan shall remain in force until such time as the Committee *for the* Environment & Infrastructure submit a new draft plan for approval by the States of Deliberation.

Glossary

Advice note; This glossary refers to a number of terms defined in the modified EU Regulation as given effect in Guernsey by the 2018 Ordinance. The modified EU Regulation is given effect as amended, replaced or re-enacted from time to time by other EU legislation. Therefore, this glossary sets out these meanings as at the date of issue of the Plan.

"Basel Convention" means the Basel Convention of 22nd March 1989 on the control of transboundary movements of hazardous wastes and their disposal,

"Disposal" has the meaning in the EU Regulation which is that set out in Article 3(19) of the Waste Framework Directive. This includes any of the operations provided for in Annex I of that Directive;

"EFTA" means a European Free Trade Association member country;

"EU Regulation" or "WSR" means Regulation (EC) No. 1013/2006 of the European Parliament and of the Council of 16th June, 2006 on shipments of waste as amended, replaced or re-enacted;

"Environmentally sound management" has the meaning in the EU Regulation i.e. taking all practicable steps to ensure that waste is managed in a manner that will protect human health and the environment against adverse effects which may result from such waste;

"Hazardous waste" has the meaning in the modified EU Regulation which is that set out in Article 3(2) of the Waste Framework Directive i.e. waste which displays one or more of the hazardous properties listed in Annex III to that Directive; this is equivalent to specially controlled waste in Guernsey as defined under the Waste Control and Disposal (Specially Controlled Waste) Regulations, 2010 (G.S.I. No. 47 of 2010);

"The modified EU Regulation" means the EU Regulation as modified by the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018.

"OECD Decision" means Decision C(2001)107/Final of the OECD Council concerning the revision of Decision C(92)39/Final on control of transboundary movements of wastes destined for recovery operations;

"OECD Decision countries" means those countries specified in Annex D of the OECD Guidance Manual for the Control of Transboundary Movements of Recoverable Waste¹⁷;

"Recovery" has the meaning in the EU Regulation which is that set out in Article 3(15) of the Waste Framework Directive; this includes any of the operations provided for in Annex II of that Directive;

"The 2018 Ordinance" means the Transfrontier Shipment of Waste (Guernsey) Ordinance, 2018 as amended, replaced or re-enacted;

"Waste" has the meaning in the EU Regulation which is that set out in Article 3(1) of Waste Framework Directive; "any substance or object which the holder discards or intends or is required to discard";

"Waste Disposal Authority" means the person or Committee of the States designated as such by an Ordinance under section 29 of the Environmental Pollution (Guernsey) Law, 2004¹⁸;

"Waste Framework Directive" means Directive 2008/98/EC on waste and repealing certain Directives as amended, replaced or re-enacted;

"Waste Management Plan" means the Waste Management Plan approved from time to time under section 31 of the Environmental Pollution (Guernsey) Law, 2004¹⁹;

"WSR" see "EU Regulation".

Other terms used in this document have the same meaning as in the 2018 Ordinance and the modified EU Regulation.

¹⁷ Guernsey, Alderney, Sark, Jersey and the Isle of Man are OECD Decision countries for these purposes.

¹⁸ The Waste Disposal Authority at the date of approval of the Plan is the States' Trading Supervisory Board.

¹⁹ The current Waste Management Plan, at the date of approval of the Plan, was approved by the States on 18th July 2018 (see Billet d'État XIX of 2018) and will remain the current Plan until the States approve a replacement Waste Management Plan.

References

1. Basel Convention website; <http://www.basel.int/>
2. Confirmation of ratification and extension of the Basel Convention to Guernsey, see note 5 on the UK's entry;
<http://www.basel.int/Countries/StatusofRatifications/BanAmendment/tabid/1344/Default.aspx>
3. The Transfrontier Shipment of Waste Ordinance, 2002;
<http://www.guernseylegalresources.gg/CHttpHandler.ashx?id=67654&p=0>
4. Council Regulation EEC 259/93 on the supervision and control of shipments of waste within, into and out of the European Community; <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=CELEX:31993R0259>
5. OECD Decision of the Council concerning the Control of Transboundary Movements of Wastes Destined for Recovery Operations, 14 June 2001 - C(2001)107/FINAL Amended on 25 February 2002 - C(2001)107/ADD1, 9 March 2004 - C(2004)20, 25 November 2005 - C(2005)141, 18 November 2008 - C(2008)156;
<http://acts.oecd.org/Instruments/ShowInstrumentView.aspx?InstrumentID=221&InstrumentPID=217&Lang=en&Book=False>
6. (EC) No 1013/2006 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2006 on shipments of waste
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32006R1013&from=en>
7. UK Plan for Shipments of Waste; May 2012:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/69546/pb13770-waste-shipments.pdf
8. Commission Regulation EC 1418/2007
<http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007R1418&from=en>



Committee *for the*
Environment & Infrastructure

Raymond Falla House
Longue Rue
St Martin
+44 (0) 1481 234567
environmentandinfrastructure@gov.gg
www.gov.gg

Deputy G St Pier
President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

10 September 2018

Dear Sir *Gavin*

**Preferred date for consideration by the States of Deliberation
Transfrontier Shipment of Waste – Supplementary policy Letter**

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for the* Environment & Infrastructure requests that the Transfrontier Shipment of Waste – Supplementary Policy Letter be considered at the States' meeting to be held on 24th October, 2018. This date is requested as updated Transfrontier Shipment of Waste legislation needs to be implemented by Guernsey, Sark and Alderney. Ideally the legislation would be enacted across the islands simultaneously but, as this is not feasible, then the States of Deliberation meeting on 24 October will allow the greatest synchronicity of timings as this matter can then be considered by the States of Alderney in November and at the January Chief Pleas meeting in Sark.

Yours faithfully

Deputy B. Brehaut
President
Committee *for the* Environment & Infrastructure

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

LEGISLATION RELATING TO ELECTRONIC AGENTS

The States are asked to decide: -

Whether, after consideration of the policy letter dated 30th August, 2018, of the Committee *for* Economic Development, they are of the opinion:-

1. To agree to the enactment of an Ordinance under section 14(1) of the Electronic Transactions (Guernsey) Law, 2000 to provide enhanced certainty regarding the legal effect of actions carried out by means of an electronic agent, as set out in paragraph 5 of the policy letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

COMMITTEE FOR ECONOMIC DEVELOPMENT

Legislation Relating to Electronic Agents

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

30th August, 2018

Dear Sirs,

1 Executive Summary

- 1.1 This policy letter contains proposals for the enactment of an Ordinance pursuant to the provisions of section 14(1) of the Electronic Transactions (Guernsey) Law, 2000 to provide enhanced certainty regarding the use of electronic agents in contract formation, execution, performance and termination and the legal status of resulting contracts.
- 1.2 The proposals have been developed in the context of the Economic Development Strategy approved by the States of Guernsey on the 28th June 2018¹. That strategy sets out a vision for Guernsey's economy focussed on maintaining and strengthening Guernsey's status as a high value economy.
- 1.3 In respect of the finance sector, the strategy sets out the Committee for Economic Development's (the "Committee") intention to develop a new policy framework creating an environment to deliver a plan for finance sector growth and diversification, supported by an action plan focused on building on existing strengths. The strategy identifies five action areas in which working groups have been established in order to progress this plan, one of which is Fintech (including blockchain and smart contracts). Guernsey Finance has been tasked with coordinating that work and, in conjunction with the Committee's Finance Sector Development team, established a working group comprising representatives of the local finance and legal sectors, the Guernsey Financial

¹ Billet d'État No. XVIII of 2018, Article III. <https://www.gov.gg/CHttpHandler.ashx?id=113649&p=0>

Services Commission, Guernsey Finance and the States of Guernsey to consider possible initiatives in the area of Fintech.

- 1.4 These proposals have been developed in the context of that work and will (i) enhance the appeal of Guernsey as a jurisdiction for business wishing to use electronic agents and smart contract technology and (ii) may also allow for Guernsey law to be the international law of choice for commercial contracts in respect of the same.

2 Background

- 2.1 In 1999, pursuant to one of the recommendations of a Working Group on IT in Society, established by the Advisory and Finance Committee of the States of Guernsey, the London firm of solicitors Bird & Bird was engaged to engage with local industry and advise the States on the enactment of ecommerce legislation.
- 2.2 Subsequently, the Electronic Transactions (Guernsey) Law, 2000 ("the ETL") was enacted by the States along with equivalent legislation in Alderney and Sark. This legislation covered a wide range of areas including the general facilitation of electronic transactions, contracts, declarations and statements, rules of evidence, legal requirements of form, electronic signatures, electronic documents and messages, liability of intermediaries, certification services and encryption.
- 2.3 The ETL has been well received by the local business community, including the finance sector. It has achieved its objective of facilitating electronic commerce and the use of information and communications technology in business. The legislation sets out a framework which has been able to accommodate the growth in the importance of the internet and the development of new technology over the last eighteen years. In the finance sector, local businesses have been able to launch innovative products and services, relying on the provisions of the ETL to provide certainty as to the legal effect of transactions.
- 2.4 However, the Committee believes that the time is now right for enhancements to be made to the framework under the ETL, to ensure that it continues to provide market leading legal solutions to industry with regards to the use of electronic agents in contract formation, execution, performance and termination.

3 Electronic Agents

- 3.1 One area addressed in the ETL is electronic agents. The policy letter that led to the enactment of the ETL ("Legislation to Facilitate Electronic Commerce", Article V of Billet d'Etat VI of 2000) said at paragraph 2.6:

"2.6 ELECTRONIC AGENTS

An electronic agent is a computer program that performs specified actions on behalf of its user without further reference to that user, such as searching for the lowest priced item and then agreeing to buy it. Whilst the laws of agency and contract formation may well be sufficiently robust to encompass electronic agents, it is recommended that, for the avoidance of doubt, the primary legislation include powers to legislate by subordinate legislation for electronic agents."

That proposal led to section 14(1) of the ETL which gives the States of Guernsey the power, by Ordinance, to make provision for the legal effect of actions carried out by means of an electronic agent.

An electronic agent is defined in section 14(3) of the ETL as:

"a computer program or electronic or other automated means used independently to initiate an action or to respond in whole or in part to information or actions in electronic form or communicated by electronic means, without review or action by a natural person."

- 3.2 In 2000, it was noted in the policy letter that the laws of agency and contract formation may well be sufficiently robust to encompass electronic agents. This is an area that has been subject to academic comment and debate in the legal communities both within, and outside of, Guernsey. There has been particular interest in the issue of contract formation, where the laws of contract and agency, in most common law jurisdictions, are largely non-statutory, having developed over many years. The laws of most jurisdictions do not explicitly address the legal effect of actions carried out by means of an electronic agent. In such jurisdictions, this does not mean that electronic agents cannot be used, but it does mean that there is some scope for doubt as to the legal effect, and enforceability through the Courts, of some contracts entered into by parties using electronic agents, as a matter of common law.

4 Smart Contracts

- 4.1 It is widely acknowledged the term "smart contract" was first defined by Nick Szabo in the mid-1990s as "a set of promises, specified in digital form, including protocols within which the parties perform on these promises"².

² Nick Szabo, Smart Contracts: Building Blocks for Digital Markets, 1996

- 4.2 The term essentially describes computer code, recording promises, entered into by one or more parties, and a computer protocol performing those promises by automated, electronic, means. Recent technological developments have made the use of smart contract technology increasingly commercially viable. Notably, the development of distributed ledger technology ("DLT") and, in particular, blockchain technology has led to an acceleration of interest in the potential of smart contracts, both in the finance and non-finance sectors.
- 4.3 The term "smart contract" is a technological term, rather than a legal one, but there has been much interest in how smart contracts may give rise to legally binding contracts between parties that would be recognised and enforced by the Courts. As a matter of Guernsey Law, it should be possible, in principle, for a smart contract to give rise to a legal contract where such a contract is found to exist, applying the ordinary principles of Guernsey contract law. However, whilst this should be possible, there remains some potential for doubt, in some cases, due to the autonomous nature of smart contract technology.
- 4.4 The Committee believes that smart contracts could be considered to fall within the definition of "electronic agent" in section 14(3) of the ETL, in the context of contract formation. In that regard, given the widely anticipated growth in the use of smart contracts and electronic agents (both in the finance sector and the wider economy) the Committee believes that enacting an Ordinance under section 14(1) of the ETL will ensure that Guernsey continues to have a world leading framework for electronic commerce and continues to be an attractive jurisdiction of choice for innovative business and entrepreneurs.

5 The proposals

- 5.1 It is proposed that an Ordinance should be enacted under section 14(1) of the ETL making provision that, as a matter of Guernsey Law:
- 5.1.1 A contract or other record relating to a transaction shall not be denied legal effect, validity, or enforceability solely because its formation, creation, or delivery involved the action of one or more electronic agents,
- 5.1.2 An action executing, performing or terminating a contract shall not be denied legal effect solely because it involved the action of one or more electronic agents,
- 5.1.3 A contract may be formed by the interaction of electronic agents, acting on behalf of the parties, even where no natural person was aware of, or reviewed, the electronic agents' actions or the resulting terms,

5.1.4 A contract may be formed by the interaction of an electronic agent, acting on behalf of one party, and a natural person, acting on his own behalf, or for another person, even where no natural person was aware of, or reviewed, the electronic agent's actions or the resulting terms,

5.1.5 A contract may be formed by the interaction of an electronic agent, acting on behalf of one, or more, parties to the contract, with information in electronic form, even where no person was aware of, or reviewed, the information, the electronic agent's actions, or the resulting terms,

5.1.6 An electronic agent may act on behalf of one or more parties to the same transaction,

5.1.7 Where a person uses an electronic agent for the purpose of contract formation, there is a rebuttable presumption that that person intended to create a legally binding contract.

5.2 The Ordinance should make such other ancillary and incidental provision as is necessary to give effect to the proposals set out above.

5.3 The parties to a contract are always free to choose the governing law of the contract. In the event of a conflict between the provisions of Guernsey law and the governing law of the contract, the rules of private international law will continue to apply. The legal effect, validity, and enforceability of a contract will continue be determined by the system of law applicable to the contract, under the rules of private international law.

6 Engagement and Consultation

6.1 Guernsey Finance, and the Committee's Finance Sector Development Team, established a working group comprising representatives of the local finance and legal sectors to help develop these proposals.

6.2 The Law Officers have been consulted on the proposals in this policy letter.

7 Resources

7.1 There are no resourcing implications for the States other than staff and Law Officers time in developing the proposals and the necessary legislation.

8 Compliance with Rule 4

8.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

- 8.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 8.3 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.
- 8.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose, including the promotion and development of all sectors of business, the reputation of the Island as a centre for commerce and industry, and competition, innovation, diversification and regulation in the economy.

Yours faithfully

C Parkinson
President

A C Dudley-Owen
Vice-President

J I Mooney
D Tindall
D de Lisle



Committee *for*
Economic Development

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

LEGISLATION RELATING TO ELECTRONIC AGENTS

The President
Policy & Resources Committee
Sir Charles Frossard House
La Charroterie
St Peter Port

30th August, 2018

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Economic Development requests that the policy letter entitled "Legislation Relating to Electronic Agents" be considered at the States' meeting to be held on 24th October 2018.

Yours faithfully,

C Parkinson
President

A C Dudley Owen
Vice-President

J I Mooney
D Tindall
D de Lisle

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

AMENDMENTS TO THE BANKING DEPOSIT COMPENSATION SCHEME (BAILIWICK OF
GUERNSEY) ORDINANCE, 2008

The States are asked to decide: -

Whether, after consideration of the Policy Letter, entitled “Amendments to the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008”, dated 30th August, 2018, of the Committee *for* Economic Development, they are of the opinion to:-

1. Amend the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 to confirm that members of the Guernsey Banking Deposit Compensation Board shall hold and vacate office in accordance with the terms and conditions of appointment which shall be defined by the Committee *for* Economic Development.
2. Amend the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 to specify that a notice period, for members of the Guernsey Banking Deposit Compensation Board, can be stipulated in terms of appointment defined by the Committee *for* Economic Development.
3. Direct the preparation of such legislation as may be necessary to give effect to the above decisions.

The 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

THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT

AMENDMENTS TO THE BANKING DEPOSIT COMPENSATION SCHEME (BAILIWICK OF
GUERNSEY) ORDINANCE, 2008

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

30 August 2018

Dear Sir,

1. Executive Summary

- 1.1 The Guernsey Banking Deposit Compensation Scheme (the “**Scheme**”) is governed by the Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008, as amended (the “**Ordinance**”).
- 1.2 The Guernsey Banking Deposit Compensation Board (the “**Board**”), which can comprise a Chairman and up to four ordinary members (the “**Board Members**”) is responsible for administering the Scheme.¹
- 1.3 Pursuant to the Ordinance, the Committee *for* Economic Development (the “**Committee**”) is responsible for appointment of the Board² and may also dismiss the Board Members in certain circumstances.³
- 1.4 Terms of appointment negotiated between the Committee and the Board Members provide operational details of the appointments.
- 1.5 Areas for amendment of the Ordinance have been identified by the Committee, to ensure that:
 - 1.5.1 there is optimal continuity of skills and resources to benefit the Scheme and the Board;

¹ Section 1(1) of the Ordinance.

² Section 3(1) of the Ordinance.

³ Section 3(5)(d) of the Ordinance.

1.5.2 the mechanism for appointment and dismissal of the Board Members is clear and free from ambiguity; and

1.5.3 if effected correctly, they are robust enough to resist legal challenge.

1.6 This Policy Letter details the proposed amendments which the States of Deliberation (the “**States**”) are asked to approve.

2. Proposals for change

2.1 The first amendment proposed would provide that the Board Members shall hold and vacate office in accordance with the terms and conditions of appointment which shall be defined by the Committee.

2.2 Currently, the terms of appointments negotiated between the Committee and Board Members do not have statutory force. To the extent that there may be any conflict, the Ordinance will take precedence over the terms of appointment.

2.3 This proposed amendment would give the terms of appointment statutory force, which would provide greater clarity and certainty in their application.

2.4 The second amendment proposed would provide that a notice period can be stipulated in the terms of appointment.

2.5 Currently, the Board Members are not bound by statute to serve any period of notice. The Ordinance provides that a Board Member may resign by notice in writing to the Committee at any time.⁴ Whilst the terms of appointment specify the period of notice, as stated above, the terms of appointment do not currently have any statutory force.

2.6 This proposed amendment would ensure that the Board Members are required by statute to serve a notice period, to assist with ensuring continuity of resources and skills, while also providing greater clarity and certainty in the terms of the appointment.

3. Compliance with Rule 4 of the Rules of Procedure

3.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be

⁴ Section 3(5)(c) of the Ordinance.

put into effect.

- 3.2 In accordance with Rule 4(4), it is confirmed that the propositions above have the unanimous support of the Committee.
- 3.3 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee including its responsibility to develop all sectors of business and to protect the reputation of the Island as a centre for commerce and industry.
- 3.4 Also in accordance with Rule 4(5), the Committee has consulted appropriately including with the board members of the Scheme.

Yours faithfully

C Parkinson
President

A C Dudley-Owen
Vice-President

D de Lisle

D Tindall

J I Mooney

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

STATES' ASSEMBLY & CONSTITUTION COMMITTEE

AMENDMENTS TO
 THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION AND THEIR COMMITTEES

The States are asked to decide whether, after consideration of the policy letter entitled "Amendments to the Rules of Procedure of the States of Deliberation and their Committees" dated 10th September 2018, they are of the opinion:-

1. That the Rules of Procedure of the States of Deliberation and their Committees should be amended with immediate effect as follows:
 - (a) To amend Rule 1.(3) (under 'Dates of Meetings') as set out in paragraph 2.1 of this policy letter, replace Schedule 1 with the Schedule attached as Appendix 2 to this policy letter and amend the revised Schedule 1 to include the 2019 – 2020 States' Meeting dates agreed by the States in September 2018.
 - (b) To amend Rule 3.(5) (under 'Submission of items to the States') as set out in paragraph 3.2 of this policy letter.
 - (c) To amend Rule 4.(2) (under 'Information to include in motions laid before the States') as set out in paragraph 4.3 of this policy letter.
 - (d) To amend Rule 6.(2)(b) (under 'Hours of sitting, extensions and adjournments') as set out in paragraph 5.1 of this policy letter.
 - (e) To amend Rule 9.(3) (under 'The Business of the Meeting') as set out in paragraph 6.2 of this policy letter.
 - (f) To delete Rule 23.(5)(f) (under 'Policy & Resource Plan') as set out in paragraph 6.3 of this policy letter.
 - (g) To amend Rule 10.(1) (under 'Statements') as set out in paragraph 7.5 of this policy letter.
 - (h) To amend Rule 10.(2) (under 'Statements') as set out in paragraph 7.6 of this policy letter.
 - (i) To amend Rule 10.(3) (under 'Statements') as set out in paragraph 7.7 of this policy letter.

- (j) To amend Rule 10.(5) (under 'Statements') as set out in paragraphs 7.8 - 9 of this policy letter.
- (k) To amend Rule 11.(2)(e) (under 'Question Time') as set out in paragraph 8.3 of this policy letter.
- (l) To amend Rule 11.(3) (under 'Question Time') as set out in paragraph 8.4 of this policy letter.
- (m) To amend Rule 14.(2) (under 'Questions for written reply') as set out in paragraph 9.1 of this policy letter.
- (n) To amend Rule 16.(3)(b) (under 'Elections') as set out in paragraph 10.5 of this policy letter.
- (o) To amend Rule 16.(6) (under 'Elections') as set out in paragraph 10.8 of this policy letter.
- (p) To amend Rule 17.(12) (under 'Rules of debate') as set out in paragraph 11.6 of this policy letter.
- (q) To amend Rule 19 (the section 'Motion to annul a Statutory Instrument or Ordinance') as set out in paragraph 12.3 of this policy letter.
- (r) To amend Rule 24.(1) (under 'Secondary propositions – amendments, sursis, etc.') as set out in paragraph 13.6 of this policy letter.
- (s) To amend Rule 24.(2) (under 'Secondary propositions – amendments, sursis, etc.') as set out in paragraph 13.8 of this policy letter.
- (t) To amend Rule 3.(11)(e) (under 'Submission of items to the States') as set out in paragraph 13.9 of this policy letter.
- (u) To amend Rule 24.(2) (under 'Secondary propositions – amendments, sursis, etc.') as set out in paragraph 13.17 of this policy letter.
- (v) Under 'Closure and voting' as set out in paragraph 14.3 of this policy letter:
 - (i) to delete Rule 26.(1) and renumber the subsequent paragraphs accordingly.
 - OR, if that proposition is rejected
 - (ii) in Rule 26.(1), to amend the words *"the Presiding Officer shall put the said request to the vote and if the majority of the Members voting support it..."*

to “the Presiding Officer shall put the said request to the vote and two-thirds of the Members voting support it...”

- (w) To amend Rule 26.(2) (under ‘Closure and voting’) as set out in paragraph 14.4 of this policy letter.
 - (x) To amend Schedule 2 entitled ‘Declaration of Interests made pursuant to Rules 29 and 36 of the Rules of Procedure of the States of Deliberation and their Committees’ and the accompanying Explanatory Notes as set out in paragraph 15.4 of this policy letter.
 - (y) To amend Rule 37.(4) (under ‘Term of office’) as set out in paragraph 16.2 of this policy letter.
 - (z) To amend Rule 37.(4) (under ‘Term of office’ as set out in paragraph 16.6 of this policy letter.
 - (aa) To note the Committee will produce a guidance note providing an overview of what may or may not constitute a “direct or special interest” as set out in paragraph 17.8 of this policy letter.
2. To direct the States’ Assembly & Constitution Committee to amend the Indexes to the Rules of Procedure of the States of Deliberation and their Committees, taking into account the resolutions agreed by the States of Deliberation further to consideration of Proposition 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

AMENDMENTS TO
THE RULES OF PROCEDURE OF THE STATES OF DELIBERATION AND THEIR COMMITTEES

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

10th September, 2018

Dear Sir

1 Executive Summary

- 1.1 The States' Assembly & Constitution Committee aims to maintain its practice of periodically submitting to the States of Deliberation a policy letter containing any proposals for reform which, in the opinion of the Committee and based on experience of events, would benefit the way the States function as a democratic parliament and government.
- 1.2 This is the second such report¹ produced by the present Committee further to the introduction of the Rules of Procedure of the States of Deliberation and their Committees ("the Rules") which have been in force since the 1st May, 2016.
- 1.3 The policy letter also considers suggestions made by Members of the States, some of which have led to the Committee recommending reform and some of which have not. Appendix 1 to this policy letter sets out the areas where the Committee is not recommending reform further to suggestions made.

¹ Billet d'État XXIV, 2016, '[Changes to the Rules of Procedure of the States of Deliberation and their Committees](#)' (P. 2016/26) presented to the States of Deliberation on 7th September, 2016.

1.4 This policy letter proposes amendments to the following Rules:

| Rule | Section of the Rules | Paragraph | Proposition |
|-------------|---|------------------|--------------------|
| 1.(3) | Dates of Meetings | 2.1 | 1(a) |
| 3.(5) | Submission of items to the States | 3.2 | 1(b) |
| 4.(2) | Information to include in motions laid before the States | 4.3 | 1(c) |
| 6.(2)(b) | Hours of sitting, extensions and adjournments | 5.1 | 1(d) |
| 9.(3) | The Business of the Meeting | 6.2 | 1(e) |
| 23.(5)(f) | Policy & Resource Plan | 6.3 | 1(f) |
| 10.(1) | Statements | 7.5 | 1(g) |
| 10.(2) | Statements | 7.6 | 1(h) |
| 10.(3) | Statements | 7.7 | 1(i) |
| 10.(5) | Statements | 7.8 - 9 | 1(j) |
| 11.(2)(e) | Question Time | 8.3 | 1(k) |
| 11.(3) | Question Time | 8.4 | 1(l) |
| 14.(2) | Questions for written reply | 9.1 | 1(m) |
| 16.(3)(b) | Elections | 10.5 | 1(n) |
| 16.(6) | Elections | 10.8 | 1(o) |
| 17.(12) | Rules of debate | 11.6 | 1(p) |
| 19 | Motion to annul a Statutory Instrument or Ordinance | 12.3 | 1(q) |
| 24.(1) | Secondary propositions – amendments, sursis, etc. | 13.6 | 1(r) |
| 24.(2) | Secondary propositions – amendments, sursis, etc. | 13.8 | 1(s) |
| 3.(11)(e) | Submission of items to the States | 13.9 | 1(t) |
| 24.(2) | Secondary propositions – amendments, sursis, etc. | 13.17 | 1(u) |
| 26.(1) | Closure and voting | 14.3 | 1(v) |
| 26.(2) | Closure and voting | 14.4 | 1(w) |
| Schedule 2 | ‘Declaration of Interests made pursuant to Rules 29 and 36 of the Rules of Procedure of the States of Deliberation and their Committees’ and the accompanying Explanatory Notes | 15.4 | 1(x) |
| 37.(4) | Term of office | 16.2 | 1(y) |
| 37.(4) | Term of office | 16.6 | 1(z) |
| 49.(1) | Declaration of Interest at Committee meetings | 17.8 | 1(aa) |

1.5 In line with the practice started in 2013, the Committee has distributed to States’ Members a copy of the Rules with the changes proposed in the

Propositions shown with ‘tracked changes’. This is also available at the States’ Assembly & Constitution Committee’s website² for members of the public to view.

- 1.6 In this policy letter, any additional text proposed is shown in bold and any deletions of existing text are shown using the ‘strikethrough’ function.

2 Dates of Meetings

- 2.1 Rule 1.(3) relates to the dates that States’ Meetings were convened for the period from the 1st of May, 2016 to the 31st of August, 2017. As this information is now historic, the Committee recommends this Rule should be amended to ensure Schedule 1 contains the forthcoming dates on which States’ Meetings shall be convened. It is proposed to amend Rule 1.(3) as follows (Proposition 1(a)):

~~*In respect of the period from the 1st of May, 2016 to the 31st of August, 2017*~~
†The dates on which States’ Meetings shall be convened, in respect of the relevant period set out in paragraph 1, subject to the other provisions of these Rules, shall be as set out in Schedule 1 to these Rules.

- 2.2 It is also proposed to replace Schedule 1 with Appendix 2 to this policy letter ‘Dates for the first day of States’ Meetings’; and, further to the States resolving the States’ Meeting dates for 2019 – 2020 in September 2018, for this Schedule to be updated with those meeting dates.

3 Submission of items to the States

Timing of the publication of propositions

- 3.1 Rule 3.(5) requires the Greffier to publish an original proposition ‘*as soon as possible on the States’ website*’. The Committee received feedback that the propositions being published late afternoon (particularly on a Friday) limited the media’s ability to give the item adequate coverage and therefore could limit the extent to which the public is informed on the subject.
- 3.2 It is suggested to amend the Rules so that the Greffier shall cause a proposition to be published ‘*within one working day on the States’ website, or as soon as possible thereafter*’ to more efficiently manage the information being disseminated to the public, Members and the media. It is proposed to amend Rule 3.(5) to read as follows (Proposition 1(b)):

² The document can be accessed on the www.gov.gg website under [Government>The States of Guernsey \(Parliament and government\)>Committee Responsibilities>States Assembly & Constitution](#)

*On receipt of an original proposition submitted for consideration by the States the Greffier shall cause it to be published ~~as soon as possible~~ **within one working day** on the States' website, **or as soon as possible thereafter**, and in such other form as he or she may determine. The Greffier shall also notify all Members that the item is on the website and send it to them by the method which the Member has chosen. The Greffier shall simultaneously transmit the item to the Presiding Officer and the Policy & Resources Committee and shall also cause a notice of its title to be posted on the noticeboard in the Royal Court building.*

4 Information to include in motions laid before the States

Statements explaining when an item should be considered

- 4.1 Rule 4.(2), states *"every original proposition laid before the States may be accompanied by a statement from the Committee or group of Members, as the case may be, expressing its or their preferred date when the item should be considered by the States."*
- 4.2 It was submitted that a number of Committees wished to have the option to request that their proposition should be prioritised in the agenda and suggested that the Rule is extended to cover the prioritisation of the proposition in the draft schedule. It was further suggested that the Rule be clarified to ensure a Committee includes the reasoning for the request in its statement, and highlight any implications of a proposition not being debated at a certain Meeting or day.
- 4.3 After consideration, the Committee agreed the Rule should be amended in line with the above suggestion. It suggests Rule 4.(2) should be amended as follows (Proposition 1(c)):

*"every original proposition laid before the States may be accompanied by a statement from the Committee or group of Members, as the case may be, expressing its or their preferred date **and an explanation, if required**, when the item should be considered by the States.*

5 Hours of sitting, extensions and adjournments

- 5.1 The Committee was asked to consider the hours of sitting of the States of Deliberation (see paragraph 2.8 of the appendix report). Whilst the Committee agreed that the times States' Meetings ordinarily commence and adjourn remain appropriate, it did, nevertheless, agree by a majority (with Deputy Dorey dissenting) that the length of the lunchtime adjournment should be reduced from 2 hours to 1 ½ hours and is proposing Rule 6.(2)(b) should be amended from 14:30 to 14:00, to read as follows (Proposition 1(d)):

- (2) *Unless the business of a Meeting is previously concluded ordinarily the Meeting shall on each day thereof:*
(a) *be adjourned by the Presiding Officer as near as may be to 12.30;*
(b) resume at 14.00;
(c) *be adjourned by the Presiding Officer, in accordance with paragraph (3) or (4), as near as may be to 17.30;*

6 The Business of the Meeting

- 6.1 On 6th June 2018³, the States of Deliberation agreed to amend Rule 1.(2) of the Rules of Procedure of the States of Deliberation and their Committees to the following:

Ordinarily the first day of a Meeting shall be a Wednesday, except for the Meetings held to consider the annual Budget of the States which shall begin on the first Tuesday in November, and the Policy & Resource Plan and States' Accounts which shall be considered at the same dedicated Meeting in June which shall begin on a Tuesday except in general election years when they will be considered at a later date in that year.

- 6.2 As a result of this change, Rule 9.(3) requires a minor amendment as follows (Proposition 1(e)):

The only business at a special Meeting shall be the Annual Budget of the States or the States' Accounts ~~or~~ and the Policy & Resource Plan, as the case may be.

- 6.3 For completeness, it also recommends that Rule 23.(5)(f) should be deleted. (Proposition 1(f)). The Rule reads as follows:

each year the Policy & Resource Plan shall be debated at a States' meeting at which no other business shall be considered.

7 Statements

- 7.1 Rule 10 sets out the Rules relating to Statements made in meetings of the States of Deliberation.

Time-limits on statements under Rule 10

- 7.2 It was noted a time-limit only applied to statements given under Rule 10.(4). After consideration, it was agreed to propose a 15-minute time limit for statements given under Rules 10.(1),(2) and (3) (included in the recommendations below).

³ Billet d'État No. XV, 2018, Resolution 2(a): www.gov.gg/CHttpHandler.ashx?id=113614&p=0

- 7.3 It was suggested that there could be an exceptional need for a Committee to make a statement that cannot be delivered in 15 minutes and that, if a 15-minute time limit is introduced for statements under Rule 10.(3), there should be a proviso that the Presiding Officer can permit a longer statement at his discretion (included in the recommendation below).

Correcting information previously provided in Statements

- 7.4 It was highlighted to the Committee that there is no mechanism by which a Member can rectify incorrect information previously provided to the States of Deliberation. The Committee is therefore proposing that the first sentence of Rule 10.(1) should be amended.
- 7.5 The Committee proposes Rule 10.(1) should read as follows (Proposition 1(g)):

*“Any Member who has obtained permission from the Presiding Officer to make a statement on a matter of a personal nature, **or to correct information previously provided by that Member**, which, in the opinion of the Presiding Officer, should be made may make that statement:-*

- (a) at the time prescribed in Rule 9; or*
(b) at such other time as the Presiding Officer may direct;

*Provided that the Member has supplied the Presiding Officer with the text of the statement in advance **and that the statement shall not exceed 15 minutes in duration”.***

- 7.6 It is recommended Rule 10.(2) is amended to read as follows (Proposition 1(h)):

Any Member holding the office of President or member of a Committee who has tendered a resignation from that office who wishes to make a statement regarding that resignation may do so at the next Meeting after tendering the resignation or during the meeting at which a successor to the vacated office is to be elected:

- a) at the time prescribed in Rule 9; or*
b) at such other time as the Presiding Officer may direct.

Provided that the statement shall not exceed 15 minutes in duration.

Clarifying that statements are agreed by Committees

- 7.7 Rules 10.(3) and (4) relate to a statement made on behalf of a Committee. In order that it is clear that the statement has been agreed by the Committee, and

the President is responding on behalf of their Committee, it is suggested the first section of Rule 10.(3) is amended to read as follows (Proposition 1(i)):

*(3) Any Member who has obtained permission from the Presiding Officer to make a statement on behalf of, **and approved by**, a Committee or otherwise relating to States' business which, in the opinion of the Presiding Officer, should be made may make that statement:*

a) at the time prescribed in Rule 9; or

b) at such other time as the Presiding Officer may direct.

***Provided that the statement shall not exceed 15 minutes in duration (which may be extended at the discretion of the Presiding Officer in exceptional circumstances).** In respect of (3) only, after the Member has made the statement, the Presiding Officer shall allow a period not exceeding 15 minutes (which period may be extended at the discretion of the Presiding Officer) for questions to be asked within the context of the statement;*

7.8 It is suggested that the first sentence of Rule 10.(5) should be amended as follows (Proposition 1(j)):

*(5) Any statement made under the provisions of paragraph (4) shall not exceed 10 minutes in duration **and shall be approved by the Committee.***

7.9 It was also noted that changes made to Rule 10 as a result of the propositions and policy letter entitled 'Regular Statements by Committee Presidents'⁴ had introduced some ambiguity as to the interruption of the Rule. The proviso regarding question and answer limits, which previously applied to Rule 10.(3), had been moved to after Rule 10.(5). This change inadvertently meant that it could be interpreted that the proviso no longer applied to Rule 10.(3) but to Rule 10.(5) only. To ensure absolute clarity, the Committee propose to replace the semi-colon at the end of Rule (5) with a full stop and for the proviso to be amended to state:

Provided that:

after any question asked further to a statement made under Rule 10, 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.

⁴ Billet d'État XI, 2017 <https://www.gov.gg/article/159812/Regular-Statements-by-Committee-Presidents>

8 Question Time

8.1 Rule 11 sets out the procedure for question time in the States of Deliberation. Rule 11.(2) and (3) require the question(s) to be sent to the person to whom it is addressed, the Presiding Officer and HM Procureur five clear days before the Meeting. The Member replying to the question provides the answer to the Presiding Officer and HM Procureur the day before the meeting.

8.2 Given the Greffe manages the administration of States' business (including producing the initial draft States' Meeting agenda and updating the States of Guernsey website), it is proposed that Rules 11.(2) and (3) are amended to ensure the questions and response are also submitted to HM Greffier.

8.3 It is proposed that Rule 11.(2)(e) is amended as follows (Proposition 1(k)):

*shall be furnished, either in writing or electronic format, to the person to whom it is addressed, the Presiding Officer, Her Majesty's Procureur, **the Greffier** and to the official postal or e mail address of the relevant Committee not later than 15.00 on the day preceding the fifth clear day before the day of the Meeting, excluding Saturdays, Sundays and Public Holidays;*

8.4 The Committee further propose that Rule 11.(3) should be amended to make it clear that the response provided to a question lodged under Rule 11 has been agreed by the Committee, and that the President is responding on behalf of their Committee. The Committee therefore proposes that Rule 11.(3) should be amended as follows (Proposition 1(l)):

*The Member replying to the question shall furnish, either in writing or electronic format, the proposed answer **approved by the Committee** to the Presiding Officer, ~~and~~ to Her Majesty's Procureur **and the Greffier** not later than noon on the day (excluding Saturdays, Sundays and Public Holidays) preceding the Meeting of the States and by 17.00 of that same day to the Member asking the question. The answer, when given in the Assembly, shall not exceed one and a half minutes in duration.*

9 Questions for written reply

9.1 The Committee propose that Rule 14.(2) should be amended to make it clear that the response provided to a question lodged under Rule 14 has been agreed by the Committee, and that the President is responding on behalf of their Committee. The Committee therefore proposes that Rule 14.(2) should be amended to read as follows (Proposition 1(m)):

*Where a question is placed in accordance with this Rule the President of the Committee shall, subject to Rule 15, furnish a written reply **approved by the***

Committee thereto to the Member who placed the question within 15 clear days of the receipt of the question; and the President of the Committee shall furnish a copy of the reply to the Presiding Officer and the Greffier;

10 Elections

Tied votes in elections

- 10.1 Rule 16 covers the election of Members to the offices listed at (a) to (i). Rule 16.(3)(b) relates to two or more candidates securing an equal number of votes. It reads as follows:

if two or more candidates secure an equal number of votes and the addition of one vote to his or her poll would have entitled any such candidate to be declared elected, a second ballot shall be held in respect of such candidates only; and where in such a second ballot the addition of one vote to his or her poll would have entitled a candidate to be declared elected, the Presiding Officer shall either rule that a further ballot, or, if necessary, further ballots, shall be held, or direct that the candidates shall draw lots to determine the matter;

- 10.2 It was suggested to the Committee that the Rule be amended to include a provision that, in the event of a tied vote for a position, either a further short speech from each candidate, or a further short period of questions should be permitted e.g. for a duration of 15 minutes before another ballot. It was suggested that the provision of further information from the candidates would help give more legitimacy to the outcome.
- 10.3 It was further suggested that the provision to “draw lots to determine the matter” is removed. It was submitted this would be an unsatisfactory means by which an election would be determined and the result would arguably not be accepted as legitimate.
- 10.4 The Committee agree the drawing of lots is an unsatisfactory means of resolving a tie in elections; however, in the absence of a viable alternative, it concluded the option should be retained.
- 10.5 After considering the suggestion for a further speech, or a further period of questions, it concluded that there was merit in a further period of questions being permitted after a second tied ballot and therefore proposes 16(3)(b) be amended to read as follows (Proposition 1(n)):

if two or more candidates secure an equal number of votes and the addition of one vote to his or her poll would have entitled any such candidate to be declared elected, a second ballot shall be held in respect of such candidates

*only; and where in such a second ballot the addition of one vote to his or her poll would have entitled a candidate to be declared elected, the Presiding Officer shall **allow Members to question the candidates for a period of not more than fifteen minutes.** ~~either rule that~~ **Following conclusion of the period of questions, a further ballot shall be held, and, where in such a third ballot the addition of one vote to his or her poll would have entitled a candidate to be declared elected,** the Presiding Officer shall either rule that a ~~or, if necessary,~~ further ballot, shall be held, or direct that the candidates shall draw lots to determine the matter;*

Election of members of a Committee: enabling the candidate to speak

- 10.6 Rule 16.(6) relates to the election of members of a Committee. The proposer may speak for not more than five minutes in respect of each candidate proposed by that person before voting takes place, and neither the candidates nor any other member shall be entitled to speak.
- 10.7 It was suggested to the Committee that candidates for membership of a Committee should be allowed to speak to provide them with the opportunity to explain why they wish to undertake the role, what they would offer, etc.
- 10.8 The Committee agreed there is merit in enabling the candidates to speak as part of the process and agreed to propose a change to Rule 16.(6) to enable the Proposer for speak for up to 3 minutes and the candidate to speak for up to 3 minutes. It is recommended to amend Rule 16.(6) as follows (Proposition 1(o)):

*....If there are more candidates than vacancies the Presiding Officer shall invite each proposer to speak, for not more than ~~five~~ **three** minutes in respect of each candidate proposed by that person; **and each candidate to speak, for not more than three minutes,** before voting takes place. No other member shall be entitled to speak.*

11 Rules of debate

- 11.1 Rule 17.(12) is commonly known as the 'give way' provision and was introduced in 2013⁵. It reads:

A Member who wishes to make an interjection relevant to the point being made by the Member speaking may do so if the Member speaking agrees to give way. The Member speaking should at all times be aware that another Member may wish to interject. The Member speaking may, in his or her discretion, refuse to

⁵ Billet d'État XV, 2013 - Volume 2, Article 15: <https://www.gov.gg/article/150426/States-Meeting-on-30th-July-2013-Billets-XV-XVI-Accounts-XVII>

give way. A Member wishing to make the interjection shall so signify by standing and remaining silent until the Member speaking either gives way or refuses to give way. When a request to give way has been refused the Member standing shall resume his or her seat immediately.

- 11.2 Given the layout of the Chamber, Members may not be aware that a Member has stood and is waiting silently to be noticed. Equally, Members reading from a pre-prepared speech may not be aware that someone has stood. This has sometimes led to murmurs and coughing in the Chamber to alert the Member speaking that another Member has stood.
- 11.3 Rule 17.(11) enables members to call a “Point of Order” or “Point of Correction”. The Committee recommends that a similar call should be introduced for Rule 17.(12). In the House of Commons, it is common practice for a Member to stand and state “*Will the Honourable Member give way*”. It is suggested Rule 17.(12) is adapted to enable Members to stand and ask “*Will the Member give way*”.

Introducing time-limits for interjections

- 11.4 Erskine May⁶ advises that ‘*interventions should not be excessively long*’ and that ‘*interventions in interventions are not allowed*’. When the Committee originally introduced the concept it had commented that ‘*Giving way is a means of making an interjection, not a speech. It should only be for a brief period, after which the Member called to speak resumes speaking*’.
- 11.5 The Committee has noted that some interjections under this Rule have been prolonged and therefore recommends that a two minute time limit is introduced on such interjections.
- 11.6 The Committee therefore proposes that Rule 17.(12) should be amended to read as follows (Proposition 1(p)):

*A Member who wishes to make an interjection relevant to the point being made by the Member speaking may do so if the Member speaking agrees to give way. ~~The Member speaking should at all times be aware that another Member may wish to interject.~~ The Member speaking may, in his or her discretion, refuse to give way. A Member wishing to make the interjection shall **do** so by standing and **stating “Will the Member give way?”**. ~~signify by standing and remaining silent until~~ The Member speaking **may, in his or her discretion**, either give way or refuse to give way. When a request to give way has been refused the Member standing shall resume his or her seat immediately. **When a Member***

⁶ Erskine May, Parliamentary Practice – 24th edition, p. 436

speaking agrees to give way, the Member making the interjection shall speak for not more than two minutes.

12 Motion to annul an appointment laid before the States of Deliberation

12.1 Rule 19 refers to a motion to annul a Statutory Instrument or Ordinance.

Introducing a motion to annul an appointment laid before the States

12.2 From time to time, appointments are laid before the States of Deliberation. For example, on 27th September 2017, an appointment was laid before the States of Deliberation regarding the ‘Appointment of Chairman of the Guernsey Banking Deposit Compensation Board’, in accordance with section 3(4) of the *Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008*. In June 2015, March 2017 and February 2018, the appointment of a Chairman and the appointments to the Board of the Office of the Financial Services Ombudsman were laid before the States in accordance with *The Financial Services Ombudsman (Bailiwick of Guernsey) Law, 2014*.

12.3 Both pieces of legislation state that the States of Deliberation have the power to annul the appointment but there is currently no mechanism in the Rules of Procedure for a Member to move a motion to annul an appointment laid. The Committee proposes Rule 19 is amended to read as follows to enable a Member to move a motion to annul an appointment (Proposition 1(q)).

Motion to annul a Statutory Instrument, Ordinance or appointment

(1) *This rule applies to any Statutory Instrument **or appointment** laid before the States pursuant to a Law or Ordinance providing that it may be annulled and to any Ordinance laid before States pursuant to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended.*

(2) *Every motion to annul a Statutory Instrument, Ordinance **or appointment** must be in writing and must state the names of its proposer and seconder.*

(3) *A Member who proposes to move a motion of annulment must furnish the proposed motion to the Presiding Officer and copies thereof:*

(a) to the President, Policy & Resources Committee;

*(b) to the President of the Committee concerned with the Statutory Instrument, Ordinance or **appointment** to which the proposed motion relates;*

(c) to H. M. Procureur; and

(d) to the Greffier

not later than five clear days (excluding Saturdays, Sundays and Public Holidays) before the Meeting of the States at which the motion is proposed to be moved. Immediately after the closing date for the receipt of such motions the Greffier shall cause a copy thereof to be delivered to every Member.

*(4) Unless the enactment governing the instrument otherwise provides, a motion to annul may be proposed either at the Meeting at which the Statutory Instrument, Ordinance **or appointment** is laid before the States or at the next subsequent Meeting.*

*(5) When notice of a proposed motion of annulment has been given in accordance with paragraph (3), the Presiding Officer shall invite the President of the Committee which made the Statutory Instrument or proposed the enactment of the Ordinance **or agreed the appointment** to speak on the matter:*

*(a) if the motion is to be proposed at the Meeting when the Statutory Instrument, Ordinance **or appointment** is laid before the States, immediately after it has been so laid by the Greffier; or*

*(b) if the motion is to be proposed at the next subsequent Meeting of the States following the Meeting at which the Statutory Instrument, Ordinance **or appointment** is laid before the States, immediately before consideration of any business which would be debated in category 9(1)(g).*

(6) The motion of annulment shall then be proposed and seconded, following which general debate shall be permitted. After general debate, if any, the President of the Committee concerned shall be entitled to respond to the debate, following which the proposer of the motion shall be entitled to respond to the debate.

13 Secondary propositions – amendments, sursis, etc.

13.1 Rule 24 sets out the process for submitting secondary propositions.

Explanatory notes

13.2 The layout of amendments is set out in the appendices to HM Greffier's Directive entitled 'The Submission of Propositions to the States' (as required by Rule 3.(23)). The Rules are silent as to what form an amendment should take. However, practice to date has been that the amendment only sets out how the propositions are to be amended, sometimes with a brief 'explanatory note' (albeit the Rules do not expressly state that such a note may be included).

- 13.3 Rule 3.(21) has a specific provision stating that legislation shall be accompanied by a brief explanatory memorandum approved by HM Procureur. Rule 3.(1) states that *'any supporting policy letter or requête or motion must be attached to the original proposition at the time of submission'*. However, no such provision is available for the submission of secondary propositions and therefore it appears the Rules do not envisage that anything should be attached to secondary propositions.
- 13.4 Under the 'Standing Orders of the States of Jersey', any draft proposition may be accompanied by a report setting out why the proposer considers that the proposition should be adopted.
- 13.5 At present, the only mechanism by which the proposer of a secondary proposition could formally present any supporting evidence or a report to the States is by requesting that either the Policy & Resources Committee or the Scrutiny Management Committee include this as part of a letter of comment (in accordance with Rule 3.(19)). It would then be circulated as if it was an original proposition and given the same identification number as the principal item.
- 13.6 There have been amendments and a sursis lodged during this political term where the proponents may have wished to have the ability to attach a report setting out why the proposition should be approved. The Committee believes that those lodging a secondary proposition should have the ability to append a report setting out why the proposition should be adopted, should they wish to do so. It is therefore proposed to amend Rule 24.(1) to insert the sentence in bold after the first sentence to enable this (Proposition 1(r)):

*Any Member who intends to lay before the States a secondary proposition shall submit it to the Greffier and it must state the names of the proposer and seconder, **and it can include a brief explanatory note. A supporting report may be attached to the secondary proposition at the time of submission.***

Inconsistency in the wording of Rule 24(2)

- 13.7 An issue was raised with the inconsistency in the wording of Rule 24.(2). Whereas (d) and (e) make specific reference to a Member proposing to move an amendment to a Proposition, this is not specifically stated in (a), (b), (c), (f), (g) and (h) and therefore is arguably open to broad interpretation as to what can be amended.
- 13.8 It is therefore proposed the wording of Rule 24(2) is amended to read as follows (Proposition 1(s)):

(6) A Member who proposes to move an amendment or sursis (other than one proposed on behalf of the Committee submitting the original proposal or

one proposed on behalf of requérants in the case of a requête) **to a proposition:**

- (a) to **approve** a *Projet de Loi* or draft Ordinance; or
- (b) which may have the effect of increasing expenditure; or substituting another contractor; or altering the timing of any works; or
- (c) **relating** to the Annual Budget; or
- (d) ~~to a proposition~~ relating to taxation, fees or other charges bearing on the revenues of the States; or
- (e) ~~to a proposition to approve~~ **relating** to a Policy & Resource Plan; or
- (f) **relating** to a draft Strategic Land Use Plan, or any amendment to such a Plan, which is laid before the States pursuant to section 5(3) of the Land Planning and Development (Guernsey) Law, 2005; or
- (g) **relating** to any proposals for a Development Plan, Subject Plan or Local Planning Brief or any amendment to such a Plan or Brief, which is laid before the States pursuant to section 9(4) of the Land Planning and Development (Plans) Ordinance, 2007; or
- (h) **to set or approve social insurance and other related benefit and contribution rates or otherwise relating to the annual policy letter concerning those benefit and contribution rates** ~~relating to the annual policy letter proposing social insurance rates of contribution and benefits~~

13.9 If the proposed amendment to Rule 24.(2) is successful, for consistency Rule 3.(11)(e) under 'Submission of items to the States', should also be amended as follows (Proposition 1(t)):

- (11) Any original proposition which proposes the approval of any of:
...
- (e) **any proposals in the annual policy letter proposing concerning social insurance and other related benefit and rates of contribution rates and Benefits** ~~proposing concerning social insurance and other related benefit and rates of contribution rates and Benefits~~

Timeframe for submission of secondary propositions under Rule 24.(2)

13.10 The timeframe for the submission of secondary propositions under Rule 24.(2) was considered. It was noted that at the States' Meeting held on 25th February

2010⁷, the timeframe to submit amendments under the equivalent rule (then Rule 13.(2)) was increased from five to seven days. It has been suggested that the timeframe to submit amendments under Rule 24.(2) should be reduced to five days.

- 13.11 In 2010, a Minister submitted that five clear days' notice of an amendment or sursis pursuant to Rule 13 was insufficient to give the department or committee concerned enough time for a full investigation of its implications and, because of that, some amendments had proved to be very costly and time delaying and requested that the Committee review the operation of this rule. Given that, at that time, a Member of the States only had eight working days in which to digest a report and draft an amendment, the Committee took the view at that time that it was not feasible to require a longer period between the lodging of an amendment and the debate.
- 13.12 However, as the States agreed to the earlier publication of Billets d'État, it was subsequently possible to allow a slightly longer period and the then Committee recommended that the notice period be changed to require seven clear days' notice which would allow departments and committees a full week and two days to consider the implications of the amendment.
- 13.13 At the time, the Committee commented that whilst the change appeared modest, it was anxious that it should not negate the benefits of an earlier publication of the Billet d'État by extending the notice period for amendments and sursis. The Committee quoted a letter from the then Chief Minister of the Policy Council who had been consulted on the proposal:

"[Policy Council] Members considered whether, in light of the proposed increase in the time that information contained in a Billet d'État is in States Members' hands, the time limits for amendments should be increased in order to give Departments/Committees longer to consider them. There was also a suggestion that there could be a requirement to consult Departments/Committees before submitting amendments.

There was no consensus on this matter and, indeed on balance, Members concluded that this could have the undesirable effect of changing the balance in favour of Government at the expense of individual States Members who use amendments as a means of influencing States policy".

- 13.14 The Committee considered the arguments for maintaining the status quo or reverting to a five clear day timeframe. It noted that, while policy letters are

⁷ Billet d'État IV of 2010, Article 12, Publication of States Reports and Frequency & Hours of Meetings of the States of Deliberation, p.129': www.gov.gg/article/150477/States-Meeting-on-24th-February-2010-Billets-II-IV-V

now generally published at least five weeks before they will be debated in the States, given Members' heavy workloads, Members have limited time and resources to prepare amendments. Where Meetings are scheduled only two weeks apart (e.g. 28th November and 12th December 2018), the agenda for the latter meeting would only be determined two weeks before the Meeting is held, limiting Members' time to prepare amendments. It was further noted that there had been occasions during this political term where Members have sought to suspend the Rule 24.(2) to enable amendments to be debated.

13.15 It was noted that setting a timeframe of seven clear working days gave Committees 11 days to prepare a response, as it would include two weekends. The Committee concluded that a timeframe of five clear working days provided seven days for a Committee to respond to an amendment which was sufficient. A Committee presenting propositions benefits from staff and resources to respond to any amendment lodged whereas a Member lodging an amendment does not have such support.

13.16 The Committee concluded – in line with the then Policy Council's caution in 2010 - that the balance has been weighted too heavily in favour of Committees at the expense of States Members, and therefore proposes amendments under Rule 24.(2) being lodged five clear days before the meeting.

13.17 The Committee recommends amending the following sentence of Rule 24.(2) to enable this (Proposition 1(u)):

must furnish the proposed amendment or sursis to the Greffier not later than 15.00 on the day preceding the ~~seventh~~ fifth clear day before the meeting (excluding Saturdays, Sundays and Public Holidays) or, in respect of an amendment to propositions which have financial implications and which is proposed to be moved by the President or another representative of the Policy & Resources Committee, not later than 15.00 on the day preceding the second clear day before the meeting (excluding Saturdays, Sundays and Public Holidays).

14 Closure and voting

14.1 Rule 26.(1) is colloquially known as the 'guillotine motion'. A Member who has not already spoken in the debate, otherwise than in pursuance of Rule 17(3), (11) or (12), may at any time (but without interrupting another Member who is addressing the Meeting) request the Presiding Officer to close a debate on any matter (including an amendment or a sursis).

14.2 There was a range of views within the Committee regarding the threshold that should be reached for such a motion to be successful. At present, if the majority of the Members voting support the motion debate shall be closed. It

was suggested that this should be amended to require a two-thirds majority. It was also suggested that the Rule should be rescinded.

- 14.3 Given the disparate views the Committee held, it agreed to submit two options on Rule 26.(1) for the States to consider, as follows (Proposition 1(v)):

Under the section heading 'Closure and voting':

- (i) *to delete Rule 26.(1) and renumber the subsequent paragraphs accordingly.*

OR, if that proposition is rejected

- (ii) *in Rule 26.(1), to amend the words "the Presiding Officer shall put the said request to the vote and if the majority of the Members voting support it..." to "the Presiding Officer shall put the said request to the vote and if two-thirds of the Members voting support it..."*

If a Member wishes to retain the existing Rule as drafted, it is recommended they vote against both of the above propositions.

- 14.4 Rule 26.(2) states "A Member may vote only from his or her seat in the States' Chamber. Immediately before announcing his or her vote in a division (appel nominal), a Member must switch on his or her microphone and switch it off again immediately after he or she has voted". Whilst this system generally works well, in presidential elections when there are two or more candidates, Members are not always in their allocated seats (given the Presidents of the Principal Committees and Members of the Policy & Resources Committee will move from the top bench to the main body of the Chamber to enable the period of questions from Members to candidates under Rule 16(4)(b)). It is therefore suggested that Rule 26.(2) be amended to clarify that a Member must be seated in the Chamber to vote in a presidential election where there are two or more candidates. It is proposed to amend the Rule as follows (Proposition 1(w)):

"A Member may vote only from his or her seat in the States' Chamber. In presidential elections where there are two or more candidates, a Member may vote only from a seat in the States' Chamber. Immediately before announcing his or her vote in a division (appel nominal), a Member must switch on his or her microphone and switch it off again immediately after he or she has voted".

15 Register of Members' Interests and Register of Members' Unspent Convictions

- 15.1 In line with Rule 29, the Greffier maintains a Register of Members' Interests in which all lodged Declarations of Interest are kept. All persons elected are required within seven days of being elected or re-elected, and subsequently during the month of May annually, to make and lodge with the Greffier a Declaration of Interest.
- 15.2 It was suggested that Declarations of Interest should not be restricted to only Bailiwick Interests. An unsuccessful amendment had been lodged in 2015 to replace 'Real Property situated in the Bailiwick' with 'Real Property, wherever situated'. The Committee noted that one of the arguments against the amendment was in respect of the security of unoccupied properties outside the Bailiwick if the address was disclosed.
- 15.3 The Committee concluded that there may be occasions where property situated outside the Bailiwick is a relevant interest which should be disclosed in relation to matters under consideration by the States e.g. discussion on transport links etc. In light of concerns regarding the security of property outside the Bailiwick, it proposes Members should disclose only the town/city/region that the property is located.
- 15.4 It is proposing that Parts 6 and 7 of Schedule 2 '*Declaration of Interests made pursuant to Rules 29 and 36 of the Rules of Procedure of the States of Deliberation and their Committees*' and the accompanying Explanatory Notes are amended to read as follows (Proposition 1(x)):

Part 6 Real Property ~~situated in the Bailiwick~~

| | |
|---|--|
| <i>Enter 'none' in box if there is no interest to declare</i> | |
|---|--|

| <i>Address of each Property in the Bailiwick; town/city/region of each property outside the Bailiwick</i> | <i>State whether owned, leased, rented or held in trust</i> | <i>Purpose for which Property is held</i> |
|--|--|--|
| | | |

Part 7 Company Shareholdings

| | |
|---|--|
| <i>Enter 'none' in box if there is no interest to declare</i> | |
|---|--|

| |
|---|
| <i>Name and address of each Company</i> |
| <i>In respect of companies listed above where the holding is over 10% of the issued share capital, give a brief description of their business/work and state what real property, if any, they hold (either directly or indirectly) in the Bailiwick.</i> |

EXPLANATORY NOTES:

...

| |
|--|
| <i>Part 6</i> <i>Real Property situated in the Bailiwick</i> |
|--|

...

| |
|---|
| <i>Part 7</i> <i>Company Shareholdings</i> |
|---|

...

In addition, if the shareholding, or aggregate shareholding, exceeds 10% of the issued share capital you must also give a brief description of the main business activities of each of those companies and state what real property, if any, ~~situated in the Bailiwick~~ is held, either directly or indirectly, by the company.

16 Term of office

- 16.1 Rule 37.(4) states as follows: *If the President or a member of a Committee resigns from that office in a letter to the Presiding Officer, the resignation shall take effect automatically on the election by the States of a successor to the office vacated. No debate shall be held on the matter of the resignation.*
- 16.2 The Committee is proposing that this Rule is amended so that the resignation of a President or Member of the Committee shall take effect automatically on a proposition being laid before the States for a successor to the office. The Committee believes it is unreasonable – in the exceptional event that a successor is not appointed – that the resigning Member should be required to remain in post. It proposes that if, when a proposition is laid, no nominations are proposed, the post should become vacant⁸. It therefore recommends that the wording in Rule 37.(4) is amended as follows (Proposition 1(y)):

If the President or a member of a Committee resigns from that office in a letter to the Presiding Officer, the resignation shall take effect automatically on a

⁸ Rule 40(7) provides for circumstances where a Committee is inquorate and an urgent decision is required.

proposition being laid before the States for the election by the States of a successor to the office vacated. No debate shall be held on the matter of the resignation.

- 16.3 The Committee was asked to consider whether, when a President of a Committee resigns from that office, the remaining Committee Members' tenure should also cease and be followed by an election for Committee Members.
- 16.4 An argument in favour of this proposal is that the Committee as a whole would receive a fresh mandate from the States. The President could nominate the existing Committee Members or nominate other Members. Existing Committee Members could seek re-election to the Committee, even if they are not the President's preferred nomination, or take the opportunity to reflect whether they wish to continue on the Committee and not seek re-election. It would afford the President the opportunity to propose to the States their preferred team and for the States to elect the Committee as a whole.
- 16.5 An argument against this proposal is that all Members of the Committee are elected as equal members of the Committee and that the resignation of the President should not necessitate the dissolution of the entire Committee. It could be argued that such a Rule would undermine the role and status of Committee Members. Members having to stand down and subsequently seek re-election may be viewed as unnecessary. If the Committee proved unworkable with its new President, it would remain open to Members (including the President or Committee Members) to lodge a motion of no confidence in the Committee which, if carried, would require the immediate resignation of all the members.
- 16.6 The Committee is, on balance, in favour of the suggestion set out in paragraph 16.3. It was noted there would be occasions where requiring the entire Committee to resign may be viewed as excessive e.g. if the President resigned for personal reasons or had passed away. However, having taken into account all the arguments, the Committee believed there was merit in the suggestion and therefore recommends that when a President is elected, any remaining members of that Committee will cease to hold office. It therefore recommends inserting paragraph Rule 37.(4A) to read as follows (Proposition 1(z)):

On election by the States of a successor to a vacated office of President of a Committee, any remaining members of the relevant Committee will cease to hold office.

17 Declaration of Interest at Committee meetings

17.1 Rule 49.(1) reads as follows:

(1) A Member of a Committee who (or whose spouse, or any of whose infant children or any company in which the Member has a controlling interest on the Member's own or their behalf) has a direct or special interest in the business under consideration by the Committee must not participate in either discussion or voting thereon and must immediately declare the interest and withdraw from the meeting during the discussion and voting on the matter concerned.

17.2 There has been criticism that the reference to '*a direct or special interest*' is ill-defined. Some Members have made representations to the Committee that the Rule should be liberalised or that '*direct or special interest*' should be specifically defined within the Rules. One Member suggested the Rule should be rescinded entirely.

17.3 The Committee has carefully considered the representations made to it and has noted Members' concerns that the term '*special interest*' is ambiguous. As publicly stated, the Committee is not in favour of liberalising the Rules relating to declaration of interests.

17.4 The Committee previously consulted with HM Procurer as to whether the existing wording could be clarified or improved and was advised that the wording could be clarified if Members wished to change the effect and/or meaning of the Rule. However, HM Procurer indicated that it might be impractical to seek to clarify the Rule if the Committee's view was that the Rule should remain and should continue to be interpreted strictly.

17.5 HM Procurer noted that the particular concerns which had arisen related to specific cases where advice had been given leading to some Members considering that the Rules were being interpreted too strictly. HM Procurer also noted that the Rule, as literally interpreted, could cause some practical difficulties which were perhaps unsurprising in a small jurisdiction where Members often wear more than one hat. Prior to the Rule being changed many years ago, it could be seen as important for Members with particular interests (which one might now consider to be a '*direct or special interest*') to sit on relevant Committees where their particular knowledge and experience might be thought to add value to their membership. This has to be weighed against the current wording which, if followed, should give protection for Members against potential accusations of bias or conflict.

17.6 HM Procurer pointed out that the wording of the Rule had not changed for several years (and was unaffected by the 2016 machinery of government

changes) and in practice seemed well understood in the majority of cases. There was scope for the Rule to be changed if the Committee wished to do so - to cover purely financial interests, for example, or to exclude the interests of family members - but this depended upon whether the Committee wished to change the effect of the Rule. In discussion it was also noted that what constituted 'special interest' was, in practice, largely a matter of judgment based on particular facts – changing the wording to suit particular circumstances set out in the Rules would not therefore necessarily assist Members.

17.7 After lengthy deliberation, the Committee as a majority (with Deputy Inder dissenting) resolved not to suggest the further liberalisation of the Rule. In June 2018⁹, an amendment was lodged to amend the Rules of Procedure to define "special interest" as *"an interest from which the Member or other person concerned could derive benefit"*. The amendment was narrowly defeated but the debate demonstrated the States desired more clarity regarding the definition of a "special interest".

17.8 Whilst this policy letter does not include a proposition to amend the Rule, the Committee has agreed to work with the Law Officers of the Crown to develop and publish general guidance on what may or may not constitute a "direct or special interest". In giving a commitment to provide such guidance, the Committee emphasises that it is impossible for it to be exhaustive, given, as stated above, 'special interest' is, in practice, largely a matter of judgment based on particular facts. It therefore proposes the following (Proposition 1(aa)):

To note the Committee will produce a guidance note providing an overview of what may or may not constitute a "direct or special interest".

17.9 It remains open for any Member, who is unsatisfied with the Committee's position, to lodge an amendment inserting a Proposition seeking to amend this Rule for consideration by the States.

18 Indexes to Section 1 and Section 2

18.1 Further to any changes to the Rules of Procedures of the States of Deliberation and their Committees, it is recommended that the Indexes to each Section of the Rules be updated to include any new provisions. Proposition 2 sets out this recommendation.

⁹ Billet d'État XVIII, 2018, Article 4, Amendments to the Code of Conduct for Members of the States of Deliberation (P.2018/50): <https://www.gov.gg/article/165368/Amendments-to-the-Code-of-Conduct-for-Members-of-the-States-of-Deliberation>

19 Compliance with Rule 4

- 19.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 19.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 19.3 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 have the majority support of the Committee. Please note that Deputy Dorey does not support Proposition 1(d).
- 19.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies in relation to the procedures and practices of the States of Deliberation and committees of the States.
- 19.5 Also in accordance with Rule 4(5), the Committee consulted with the Law Officers of the Crown regarding the proposed amendments to the Rules.

Yours faithfully

P. J. Roffey
President

H. L. de Sausmarez
Vice-President

M. H. Dorey
N. R. Inder
M. K. Le Clerc

Appendix 1: Review of the Rules of Procedure of the States of Deliberation and their Committees: further suggestions

1. Introduction

- 1.1 The Committee received a number of suggestions for amendments to existing Rules, and new Rules, during the consultation undertaken as part of its review. This report sets out why the Committee resolved not to propose amendments to the Rules relating to these suggestions.
- 1.2 The Committee also received a number of suggestions which fell outside of the review of the Rules of Procedure. The second part of this report deals with these suggestions.

2 Suggestions considered but rejected by the Committee

- 2.1 This section details the suggestions put to the Committee that it resolved not to progress.

Submission of items to the States: propositions ‘to note’

- 2.2 Rule 3.(24) states that *“any proposition the effect of which is to note the contents of an accompanying policy letter shall be construed as a neutral motion, neither implying assent for, nor disapproval of, the contents of the policy letter concerned”*.
- 2.3 It has been suggested that a proposition ‘to note’ is meaningless and that the above Rule should be rescinded. The Committee concluded that the ability for the States ‘to note’ remained important given, for example, that it enabled the States to note an existing resolution or workstream being undertaken by the Committee relevant to other propositions under consideration.

Information to include in motions laid before the States: consultation with Treasury regarding the financial implications of a proposition

- 2.4 Rule 4.(3) requires that:

“Every proposition laid before the States which has financial implications to the States shall include or have appended to it in a policy letter or requête or otherwise an estimate of the financial implications to the States of carrying the proposal into effect;

Provided that:

the proposer(s) of such a proposition may request from any Committee any information required to enable such an estimate to be included or appended and the Committee shall thereupon provide complete and accurate information to enable the proposer(s) to set out the estimate.

- 2.5 It has been suggested that an additional paragraph should be included in the Rules along the lines of the following:

“Every original proposition laid before the States which has financial implications to the States shall have appended to it a statement that it has been submitted to Treasury for advice and evaluation”.

- 2.6 The Committee noted that the existing wording of Rule 4.(3) required that every proposition which has financial implications shall include information regarding an estimate of the financial implications to the States of approving the Proposition.
- 2.7 The Committee further noted that Rule 3.(19) provided the Policy & Resources Committee with the right to submit letters of comment on items submitted for consideration by the States. It therefore considers the Policy & Resources Committee has the ability to provide advice and evaluation – if required – on any proposition submitted through this mechanism. It does not consider the Rules require amendment to enable the Policy & Resources Committee to comment.

Hours of sitting, extensions and adjournments

- 2.8 Rule 6 sets out the times that Meetings shall ordinarily commence and adjourn. It has been suggested that Meetings should commence at 8:30, be adjourned as near as may be to 12:30, resume at 14:00 and be adjourned as near as may be to 18:00. It has been further suggested that there should be a 15 minute break as near as may be to 10:15 and again at 16:00.
- 2.9 The Committee considered the merits of introducing set adjournments during States’ Meetings. Given Members have the freedom to leave the Chamber during debate when they choose, it concluded that set adjournments were unnecessary, and could prove disruptive to debate.
- 2.10 The Committee considered the suggestion that Meetings should commence earlier and conclude later. However, after discussion, it felt that the current times were appropriate.

Opening of Meetings etc: Prayers and Afternoon Roll Call

- 2.11 Rule 7.(2) directs the Greffier to recite the Lord's Prayer in French at the commencement of each day of a meeting and pronounce the Grace in French at its close. It had been questioned whether the practice of reciting prayers in the States of Deliberation remains appropriate in an increasingly secular society. The Committee, as a majority, with Deputy Roffey dissenting, agreed the practice should continue.

Afternoon Roll Call

- 2.12 Rule 7.(3) requires the Greffier, immediately after the opening prayer, to call the roll of Members. There is no Roll Call after the lunchtime adjournment and it has been suggested that the Greffier call the roll of Members at the start of the afternoon session.
- 2.13 Any Member who is absent during the morning Roll Call is not called during an *appel nominal* (a recorded vote) unless that Member has been relev  . When an *appel nominal* is called, any Member who was present at the initial Roll Call but subsequently absent for the vote will be notable by their absence and marked as 'absent' in the published vote. After discussion, the majority of the Committee (with Deputy Inder dissenting) did not believe there was merit in introducing an afternoon Roll Call.

Order: communication with the public gallery

- 2.14 Rule 8.(2) prevents Members having any communication with a person in the public gallery while the States are in session. It was suggested to the Committee that the Rule be rescinded. The Committee noted that whilst it was possible for a Member to communicate with a person in the public gallery – and beyond - by use of an electronic device, the key purpose of the Rule was to prevent verbal communication and the passing of paperwork between Members of the States and the public gallery while the States are in session.
- 2.15 The Committee concluded the Rule was required, as verbal communication or the passing of documents between the public gallery and Members during a Meeting could be potentially disruptive to proceedings, distracting for Members, and disrespectful to the Member speaking at that time.

Statements: Quarterly financial updates from the Policy & Resources Committee

- 2.16 The President of the Policy & Resources Committee previously committed to provide quarterly financial update statements. It was suggested to the Committee that such statements should be required under the Rules and

incorporated into the annual rota of *“Regular Statements by Presidents of Committees of the States and the nominated Alderney Representative”*. The Committee consulted with the Policy & Resources Committee who stated, given such updates had been regularly delivered to date and would continue to be delivered in future, it did not see the merit in introducing a Rule to that effect. It also stated that it was important to have a degree of flexibility regarding the timing of the updates.

- 2.17 Having taken into account the comments of the Policy & Resources Committee, the Committee concluded that a Rule was not required at this time. However, if the regularity of such statements reduces, or ceases, in future, the Committee will consider proposing a Rule.

Question time: Supplementary questions and duration of question time

- 2.18 A Member requested that Rule 11 be amended to enable Members to ask a question regarding a President’s response to a supplementary question. Rule 11.4)(a) states that *‘no Member may ask more than two supplementary questions in respect of each principal question’* and the Rules do not permit a Member to ask an additional question on a supplementary answer.
- 2.19 The previous Committee had considered whether this Rule should be amended in its policy letter dated 27th January, 2015¹⁰ and had concluded that there would be no change to the Rules relating to supplementary questions (then Rule 5.4)) and provided the following reasoning:

10. *Rule 5 prescribes the procedure for asking questions during the question time period at the beginning of States’ meetings. Sub-rule 5(4) provides that no Member may ask more than two supplementary questions in respect of each principal question. The important element is that supplementary questions can arise only out of the principal reply: they cannot be about a supplementary question nor a supplementary answer. This can be restrictive and result in the need for a further question or questions to be asked at a subsequent meeting or result in a Rule 6 (written) question being asked. In many cases the answers could probably be given at the time if the topic of the series of questions could be widened.*
11. *However, it would be difficult to restrict where the questioning could lead as the questions went step-by-step ever further from the original question. Nor does the Committee believe that a system, such as*

¹⁰ Billet d'État VI 2015, Article 7, States Assembly and Constitution Committee - The Rules of Procedure of the States of Deliberation, The Rules Relating to the Constitution and Operation of States' Departments and Committees and Related Matters, p. 552:
<https://www.gov.gg/article/120649/States-Meeting-on-24th-March-2015-Billets-IV-V-VI>

pertains in the House of Commons, where the initial question is a bland non-question, usually about the Prime Minister's engagements for the day, followed by the 'real' question, is appropriate in the Guernsey context. All committees of the States are comparatively small and do not have the considerable resources to devote to anticipating the questions that a Minister or Chairman might be asked in a particular States' meeting. It is difficult to make question time more spontaneous when the heads of committees, howsoever titled, are replying on behalf of their committees and therefore cannot commit themselves, at least in terms of policy, to anything which their committee cannot support.

12. *The Committee therefore proposes that Rule 5(4) should not be amended.*

- 2.20 The Committee has considered the suggestion and concurs with the view of the previous Committee.
- 2.21 Rule 11.(6) states that, if, at the conclusion of one hour after the commencement of question time, all the questions have not been disposed of, the Presiding Officer may, in his or her discretion, postpone dealing with questions not then disposed of to no later than the conclusion of the meeting. It has been suggested that, as the number of questions lodged has increased, this Rule should be rescinded.
- 2.22 The Committee concluded that one hour for question time was sufficient, particularly given that the introduction of the general update statements from Presidents offered Members the opportunity to question Committees on matters under their mandate. The existing Rule does not preclude question time from continuing past an hour; it merely gives the Presiding Officer the discretion to postpone questions not then disposed of to no later than the conclusion of the meeting.

Elections: Points of correction during the question time of a presidential election

- 2.23 Rule 16.(4) enables a period of questions where there are two or more candidates for the election of a President of a Committee. It was highlighted that in the course of a normal debate, Members are permitted to make points of correction whereas they are unable to raise points of correction during the election process. It was suggested that Members are allowed to advocate a 'point of correction' during question time.
- 2.24 The Committee considered the points raised and agreed that any information provided during question time should be accurate. However, it noted there are significant differences between normal debate and elections, most notably that

there are time limits at every stage of the question time element of elections. The Committee believes it would be unwise to remove the time limits and considers that there is no practical way of permitting points of correction while time limits remain.

Removing appendix reports

- 2.25 In March 2005, the House Committee presented a report¹¹ which included a recommendation to enable reports published as appendices to be debated. It advised that the Rule sought to *'strike a balance between, on the one hand, giving Members an opportunity to debate an appendix report and, on the other hand, preventing such a debate from being used to direct policy matters which may not have been considered by the department or committee which presented the report'*.
- 2.26 Rule 20 mirrors the Rule introduced in 2005. It has been suggested to the Committee that it would be preferable that every report submitted for inclusion in a Billet d'État should be placed on the agenda for debate, thus dispensing with appendix reports and the need to lay a motion to debate them. It was further suggested that some major reports have been lodged as appendix reports and not been subject to debate.
- 2.27 The Committee considered the purpose of appendix reports and noted that such reports were primarily submitted to provide information to the States and the public and to ensure the reports are permanently placed in the public domain by virtue of their inclusion in a Billet d'État. It further noted that, for the majority of reports, their content did not generally necessitate debate by the States of Deliberation. However, if Members believed the report did require debate, the mechanism existed to enable this.
- 2.28 The Committee further noted that in the present term only one motion to debate an appendix report had been submitted and any Member who wished an appendix report to be debated should utilise the existing Rule to facilitate this. It therefore did not consider there were compelling grounds to propose an amendment to this Rule.

Secondary propositions – amendments, sursis, etc.

- 2.29 It was suggested to the Committee that there was merit in requiring a secondary proposition to set out, in the explanatory note, what consultation had taken place with the Committee responsible for the original proposition prior to the secondary proposition being lodged. The reasoning was that this

¹¹ Billet III, 2005, Article 6 'House Committee – Rules of Procedure of the States of Deliberation, p. 381': <https://gov.gg/article/150541/States-Meeting-30th-March-2005-Billet-III>

would facilitate discussion of the implications of the amendment between the proponent and the relevant Committee(s).

- 2.30 After consideration, the Committee resolved that whilst there was an expectation that Members should liaise with the relevant Committee(s) regarding amendments lodged, it did not believe this should be set out as a requirement in the Rules. It concluded it would be clear in the debate of the amendment – and the subsequent ‘Hansard’ report – what consultation had taken place.
- 2.31 It was further suggested that explanatory notes should be mandatory rather than optional to ensure that the reasoning for the proposed amendment was set out on the face of the amendment.
- 2.32 A Member is required to set out the arguments in favour of an amendment when it is presented to the States. Given their line of reasoning (and any further supporting or counter arguments in debate) will be published in the ‘Hansard’ Report, the Committee resolved this would provide an adequate record of the reasoning for the States supporting or rejecting a proposition. It did not support explanatory notes being mandatory and is therefore not proposing any changes to the Rules.

Closure and voting

- 2.33 As stated in paragraph 14.1 of the policy letter, Rule 26.(1) is colloquially known as the ‘guillotine motion’. It has been suggested that those who have already spoken in debate should not be allowed to vote to close any debate, as those who have spoken can prevent Members who have not spoken yet. The Committee considered the suggestion but did not agree there were grounds to preclude any Member from voting on such a motion.

Register of Members’ Interests and Register of Members’ Unspent Convictions

- 2.34 It was suggested to the Committee that Members should be required to disclose membership of the Freemasons. The Committee considered the suggestion. However, it concluded that it would not amend Schedule 2 to specifically require disclosure of membership of the Freemasons over membership of any other organisation.
- 2.35 It noted that Part 11 of the Declaration of Interest form requires Members to *“Declare here any other interest or benefit received which, whilst not required to be registered under Parts 1-10 might reasonably be perceived by other persons to influence actions as an elected Member of the States”*. If a Member believes that their involvement in an organisation might be perceived to influence their actions, they have the ability to disclose this in that section. In

line with the guidance notes on the form, Members “*may also use this section to record any interests or other matters that are not required to be registered but which, in your opinion, should be disclosed to the public*”.

Length of debates and speeches

- 2.36 Some Members have suggested that there should be limits on the length of speeches, with one Member suggesting that speeches – outside those given in opening and closing – should be limited to 10 - 15 minutes. This topic was previously considered by the Committee when it proposed the new Rules in November 2015¹², as follows:

44. *There could be limits on the length of speeches, which could, for example, include provisions to give a longer time to the Member proposing the matter than to other speakers and different lengths for different debates. The latter would necessitate some form of categorising debates to determine which length of speeches a debate was permitted. Although in general it is evident which items will need or justify longer than others, it is not always clear cut. It is likely that there would be frequent moves to recategorise items or suspend the Rule.*

45. *Any credible limit on the length of speeches would probably need to be set somewhere around ten minutes. This would inevitably cut short some, though by no means all, of the better speeches heard in the States. There is also a danger that a time limit on the length of Members’ speeches could come to be seen as a target to be achieved, or at least an allowance to be used, rather than the limit and this could even have the effect of lengthening debates. Therefore, the Committee is not proposing a limit on the length of speeches.*

- 2.37 The majority of the Committee (with Deputy Inder dissenting) agrees with the conclusion reached in the 2015 policy letter.

Comments on legislation laid before the States

- 2.38 The Scrutiny Management Committee highlighted there was no mechanism by which the Legislation Review Panel could comment on legislation that has been laid before the States during a Meeting. Legislation laid before the States would not be subject to debate unless a motion to annul a Statutory Instrument or Ordinance was lodged.

- 2.39 The Scrutiny Management Committee submitted that the Panel wished to have

¹² Billet d’État XVII, 2015, Rules of Procedure of The States of Deliberation and Their Committees - Proposed New Rules <https://www.gov.gg/article/150853/States-Meeting-on-24th-November-2015-Billets-XX-XXI-and-XXIIa>

the option to bring particular issues that had been discussed by the Panel to the attention of Members and stated it should be possible for the President to comment on legislation at the time it is laid before the States of Deliberation.

- 2.40 The Committee gave careful consideration to the suggestion and whether there was merit in suggesting an amendment to the Rules to enable a motion to be lodged to debate Statutory Instruments or Ordinances, similar to the option available to debate appendix reports. It questioned the value of introducing such a mechanism in respect of legislation laid before the States if the Panel was not suggesting annulling a Statutory Instrument or Ordinance. It noted that nothing precluded the Legislation Review Panel from circulating comments to Members in advance of debate regarding Statutory Instruments or Ordinances.

Restricting Members to serving on two Committees

- 2.41 It was suggested that Members should be restricted to serving on two Committees unless there were exceptional circumstances. It was argued that it was important that all elected members served on at least one Committee.
- 2.42 The Committee concluded it was for the States of Deliberation – in the full knowledge of a candidate’s existing Committee membership – to determine who should serve on a Committee.

Restricting Presidents of Principal Committees from sitting as an ordinary member on other Principal Committees

- 2.43 It was suggested that Presidents of Principal Committees should not sit as an ordinary member on any other Principal Committee. The Committee concluded that it was for the States of Deliberation – in the full knowledge of a candidate’s existing Committee membership – to determine who should serve on a Committee.

Suspending the Rules of Procedure

- 2.44 Under Section 7.(1) of the Reform (Guernsey) Law, 1948, as amended, “*The States of Deliberation may by Resolution decide the Rules of Procedure to be applicable from time to time in and in relation to assemblies of the States of Deliberation or of the States of Election, and may likewise at any time vary, revoke or suspend such Rules or any of them*”.
- 2.45 It was suggested to the Committee that if a Rule needed to be suspended to enable the States of Deliberation to operate, the Rule was not needed in the first place. The Committee noted that, if this assertion was correct, in the light of recent suspensions of the Rules, this would necessitate the deletion of Rule 24.(2) (regarding a timeframes for amendments to certain propositions) and

Rule 26.(6) (regarding an amendment which goes further than the original proposition).

- 2.46 The Committee believes there are inherent risks in suggesting that such Rules be deleted. It has suggested an amendment to Rule 24.(2) to provide Members with more time to place amendments which should reduce the number of requests to suspend the Rules to enable such amendments to be lodged. It also believes that Members should seek, as far as is practicable, to adhere to the Rules the States of Deliberation have agreed, and only seek to suspend in the Rules in exceptional circumstances.
- 2.47 It was suggested to the Committee that a suspension of the Rules should require a two-thirds majority to succeed. After discussion, a majority of the Committee (with Deputies Roffey and Dorey dissenting) agreed it would be untenable to reject a majority vote.

Proxy voting

- 2.48 A request was made for the Committee to consider introducing a mechanism to allow Deputies to vote by proxy. The Committee reported on proxy voting in March 2015¹³. The relevant extract is produced below:

77. *At present, Members can vote only if they are present in the Royal Court Chamber and in their places. It has been suggested by a Member of the States that there should be a provision for Members to leave a voting slip with a fellow Member if they are unable to be present for a vote (effectively proxy voting).*

78. *Such a system could increase the numbers of Members voting in divisions and ensure their views were taken into account. There are several practical issues. The whole point of holding a debate is to try to influence other Members to vote the same way as the speaker. The Proposition in the Billet d'État may well have been, and often is, amended before the vote on it is taken, perhaps by an amendment laid séance tenante. The Member might want to vote on an amended Proposition in a different way from on the original. The colleague who would be casting the proxy vote would have to cast the vote regardless but it might not accurately reflect the absent Member's intentions at the point when the vote was held. Potentially it could encourage absenteeism.*

¹³ Billet d'État VI, 'The Rules of Procedure of the States of Deliberation, The Rules Relating to the Constitution and Operation of States' Departments and Committees and Related Matters', www.gov.gg/article/120649/States-Meeting-on-24th-March-2015-Billets-IV-V-VI

79. *The Committee does not therefore believe that such a system of proxy voting should be introduced.*

- 2.49 The Committee considered the request and concurred with the conclusions of the previous Committee.

3 Other matters falling outside the review of the existing Rules of Procedure

- 3.1 During its consultation on the Rules, the Committee received suggestions that fell outside the review of the existing Rules of Procedure. They are summarised briefly below.

The dual role of the Bailiff

- 3.2 As part of the submissions received, it was requested that the Committee review whether the Bailiff should continue to be the Presiding Officer of the States of Deliberation after June 2020.
- 3.3 The dual role of the Bailiff as President of the Royal Court and Presiding Officer of the States of Deliberation was considered as part of the 'Review of the Machinery of Government in Guernsey'¹⁴ (Section 3, 'The Role of the Bailiff in the machinery of government'). The Committee notes that the majority of the points presented in the report regarding the role remain valid today.
- 3.4 Recent focus on the dual role of the Bailiff has arisen, in part, through the States of Jersey's discussions on the subject, and the original decision to hold a referendum in 2018 asking whether the Bailiff as President of the States Assembly should be replaced by a Speaker elected by States' Members. The decision to hold a referendum was overturned on 10th July, 2018.
- 3.5 The Committee's view to date – noting that the Bailiff is apolitical, has professional skills suited to presiding over the States of Deliberation, and questioning the appetite for change – is that considering changes to the role has not been a priority for the States of Deliberation. However, it is maintaining a close watch on developments in Jersey and is of the view that if in the future Jersey decides against the Bailiff remaining the President of the States, it will seek the view of the States of Deliberation whether it wishes to retain or remove the Bailiff's dual role in Guernsey.

The number of Alderney Representatives

- 3.6 The Reform (Guernsey) Law, 1948, as amended directs that the States of

¹⁴ Review of the Machinery of Government in Guernsey
<https://www.gov.gg/CHttpHandler.ashx?id=79138&p=0>

Deliberation shall be composed as follows: The Bailiff, His Majesty's Procureur, His Majesty's Comptroller, thirty-eight People's Deputies and two Alderney Representatives.

- 3.7 It was suggested to the Committee, given the reduction in the number of States' Members, the number of Alderney Representatives should be reduced to one. The Committee does not believe it is appropriate to look at the constitution of the States of Deliberation only two years since the machinery of government reforms and will therefore not be considering this matter at this time.

Mid-term elections

- 3.8 In Autumn 2017, a Member requested the Committee conduct a review into implementing mid-term elections from May/June 2018. The Committee concluded it would be premature, in advance of the referendum on Guernsey's voting system, to look at the issue. It agreed to defer further consideration of the suggestion until after the results of the 2018 referendum were known.

The number of Members required on Committees

- 3.9 It was suggested the Committee review the number of Members required on Committees. As stated above, the Committee does not believe it is appropriate to look at the constitution of Committees only two years since the machinery of government reforms, and will therefore not be considering this matter at this time.

Length of political terms

- 3.10 It was suggested the duration of a political term should be extended to five years. The Committee agreed to consider this suggestion in more depth once the outcome of the referendum on Guernsey's voting system is known.

Attendance Records

- 3.11 The Committee is required by resolution to publish a record of States Members' attendance at meetings of the States of Deliberation, and Members' attendance at Committee Meetings, from time to time.
- 3.12 A few Members contacted the Committee requesting the discontinuation of the collation and publication of attendance records. The Committee appreciates the publication of such information provides only limited information on the output of States' Members. It does not show attendance at Committee sub-committee meetings or presentations. Nor does it show the amount of work or time spent, for example, on dealing with issues raised by

parishioners, correspondence and preparing for meetings.

- 3.13 The Scrutiny Management Committee requested the attendance statistics be amended to include public hearings organised by the Committee. The Committee has long adopted a policy that only attendance at official States' Committee meetings, and the States of Deliberation, will be included in the published report. The Committee noted that the Scrutiny Management Committee could either convene their public hearings as formal Committee meetings or publicise attendance at its hearings through other means, for example by detailing it in its annual report or issuing a press release providing details of attendance figures.
- 3.14 In future, the Committee wishes to investigate the production of more meaningful statistics regarding the work of the States of Deliberation and Members. However, in the interim, it believes a move to rescind the resolution would not be in line with the transparency expected by the electorate and therefore will not be recommending any changes to the practice.

Disclosure and Barring Checks for Members

- 3.15 The Committee has been asked to investigate requiring Members to have Disclosure and Barring Checks. This item has been added to the Committee's forward work programme to review after the referendum has taken place.

Simultaneous Electronic Voting

- 3.16 It was suggested that simultaneous electronic voting should be introduced. The Committee previously reported to the States of Deliberation in 2014¹⁵ on the topic, including the arguments for and against, the costs of different systems and the practical and procedural effects of establishing it. It also answered questions in the States of Deliberation on 13th December, 2017¹⁶. Given existing priorities, reconsidering the introduction of such a system is not a high priority for the Committee; however, it has agreed to add the topic to its forward work programme for consideration in future.

Publication of voting records

- 3.17 The website www.theyworkforyou.ie/ has recently been introduced in Jersey, which takes open data from the States of Jersey and presents them in a way that is easy to access. It provides a voting summary, voting data and the voting patterns of Members. It was suggested that a system to enable the public to

¹⁵ Billet XXI, 2014: www.gov.gg/CHttpHandler.ashx?id=92398&p=0

¹⁶ Hansard Report of Proceedings at the States of Deliberation on 13th December 2017
www.gov.gg/article/162531/States-Meeting-on-13-December-2017-Billets-XXIV--XXV

access voting records at a glance should be introduced in Guernsey.

- 3.18 As stated at paragraph 3.14, the Committee is keen to improve how information regarding the work of the States of Deliberation can be more accessibly presented. It has added this to its forward work programme but, given limited resources, cannot prioritise this workstream at the present time.

Schedule 1

Dates for the first day of States' Meetings
(all Wednesday, except where indicated)

2018

| | | |
|------------------|-----------------------------|--------|
| 26 th | September | |
| 24 th | October | |
| 6 th | November (<i>Tuesday</i>) | Budget |
| 28 th | November | |
| 12 th | December | |

2019

| | | |
|------------------|-------------------------|---|
| 30 th | January | |
| 27 th | February | |
| 27 th | March | |
| 24 th | April | |
| 22 nd | May | |
| 12 th | June | |
| 25 th | June (<i>Tuesday</i>) | Policy & Resource Plan (progress & review) & Accounts |
| 17 th | July | |

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

REQUÊTE

TO EXAMINE THE POSSIBILITY OF COMMISSIONING 107 METRES OF STARTER STRIP/PAVED
RUNWAY END SAFETY AREA ("RESA") TO INCREASE THE CURRENT AVAILABLE RUNWAY
LENGTH FROM 1463 METRES TO 1570 FOR TAKE-OFF AND LANDING ON RW09 AND
LANDING ON RW27

THE HUMBLE PETITION of the undersigned Members of the States of Deliberation SHEWETH
THAT:

1. The recent airport pavement rehabilitation project moved the runway 120 metres to the west and retained and rehabilitated the 120 metres of the original pavement to the east. The total paved length is 1583 metres.
2. This 120 metres strip is used as a "starter strip" for take-off on RW27 and by aircraft landing on RW09 to access a taxiway. It is part of the RESA at the eastern end.
3. During the rehabilitation process regulations changed so that Engineered Materials Arrestor System ("EMAS") could be considered when reviewing RESAs.
4. The Director of Civil Aviation is obliged to follow International Civil Aviation Organisation ("ICAO") guidelines in relation to RESAs. The minimum length is 90 metres.
5. If a runway length of 1570 metres was to become available it would enable an Airbus A319 to operate commercially with a full load into Gatwick and Guernsey airports. It would also allow the Embraer 195 to fly to more distant destinations as a result of reduced payload penalties. The flights to Barcelona were restricted to 100 passengers. Aurigny could operate an A319 with the resulting cost savings and lowering of fares.
6. Your Petitioners wish to test whether there is an appetite amongst Members to pursue the possibility of utilising existing airport infrastructure for maximum operational benefit in the pursuit of lower air fares and improving air links.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

1. To direct the States' Trading Supervisory Board to consult with the Director of Civil Aviation to determine if:
 - a) A 90 metres "undershoot" RESA is acceptable for landings on runway 27
 - b) A 90 metres "overrun" RESA is acceptable on runway 09.

AND

- c) To identify any safety enhancements, including EMAS, which would be required to enable the commissioning of 107 metres of the starter strip/paved RESA or to mitigate the reduction in the length of the RESA from 197 metres to 90 metres.
2. Following that consultation, if there is evidence to suggest that the commissioning of the 107 metres is possible, to direct the States' Trading Supervisory Board to return to the States by March 31st 2019 with a Policy Letter giving, inter alia, indicative estimates of the costs of all components of the commissioning requirements.

AND YOUR PETITIONERS WILL EVER PRAY
GUERNSEY

This 27th day of June 2018

Jan Kuttelwascher

DAVID DE LIRE

RICHARD GRAHAM

JENNIFER MERRETT

PETER FORSLAND

JOE MOONEY

Emilie YERRY

The original signed copy of this
Requete is held at the Greffe



Policy & Resources
Committee

Sir Charles Frossard House
La Charroterie
St Peter Port
GUERNSEY
GY1 1FH

The Presiding Officer
States of Guernsey
Royal Court House
St Peter Port
GUERNSEY
GY1 2NZ

+44 (0) 1481 717000
www.gov.gg

14 August 2018

Dear Sir

MEDICAL PRACTITIONERS' REGISTRATION PANEL ANNUAL REPORT

It is a requirement of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, that the Medical Practitioners' Registration Panel submit an annual report to the States of Guernsey through the Policy & Resources Committee.

The Committee considered the Report at its meeting on 31st July 2018 and submits it under Rule 3(3) of the Rules of Procedure of the States of Deliberation and their Committees as a report for inclusion as an appendix to the Billet d'État of the meeting of the Assembly on 24th October 2018.

Yours faithfully

Deputy L S Trott
Vice-President



The Office of the
Committee for
Health & Social Care

Le Vauquiedor Office
Rue Mignot
St Andrew
Guernsey
GY6 8TW
+44 (1481) 725241
www.gov.gg

Deputy Gavin St Pier
President Policy & Resources Committee
Sir Charles Frossard House
St Peter Port
GY1 1FH

10th July 2018

Dear Deputy Gavin St Pier

Re. The Medical Practitioners' Registration Panel Annual Report

It is a requirement of the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015; that the Medical Practitioners' Registration Panel submit an annual report to the States of Guernsey through Policy & Resources.

As Chair of the Panel I am pleased to submit the first annual report which covers the calendar year 2017. I would be grateful if you could arrange for this report to be considered appropriately by P&R, and submitted to the States if you see fit.

Yours sincerely

Geoffrey Colclough, LLB; B.Com; CPA; LTA.

The Medical Practitioners' Registration Panel

Annual Report 2017

Geoffrey Charles Colclough, LLB; B.Com; CPA: LTA and Barrister and Solicitor (retired.)

Chair,

The Registration Panel.

6 June 2018

The Medical Practitioners' Registration Panel

Annual Report 2017

Functions of the Registration Panel:

The Medical Practitioners' Registration Panel was established under The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 (hereafter referred to as the Ordinance). The Panel oversees the registration of Medical Practitioners in the Bailiwick, and serves as a review body for decisions made by the Responsible Officer relating to registration under the Ordinance (e.g. imposing additional registration conditions, or suspending a registration).

The Panel must ensure that unsuitable persons are not registered as medical practitioners in the Bailiwick. The Ordinance specifies mandatory grounds for refusing an application for registration, such as a murder conviction or being subject to a national disqualification under Section 159 of the National Health Service Act 2006. Discretionary grounds for refusal are also specified, such as unsatisfactory references, suspicion of fraud, where the practitioner's registration with the GMC is subject to conditions, or general unsuitability.

The Panel has the power to extend the suspension of a practitioner beyond the period of 3 or 6 months which may be imposed by the Responsible Officer. Suspension by the Responsible Officer is limited to 3 or 6 months, depending upon the grounds of suspension (e.g. a suspension pending the decision of a court or regulatory body will have a 6-month limit), and an extension can only be granted by the Panel.

The Panel has the power to remove practitioners from the Register (and may delegate this power where it considers appropriate, such as where a request is made by the practitioner, or where removal is on mandatory grounds, such as the death of the practitioner). The Ordinance provides for termination of registration only in limited cases: death of practitioner, on request by practitioner, failure to pay annual charge despite reminder, or if the practitioner fails to satisfy the requirement to be fully registered and licensed by the GMC (or if the practitioner is suspended by the GMC). Additional mandatory and discretionary grounds for removal would include a murder conviction, a sentence of imprisonment exceeding 6 months upon a criminal conviction, being subject to a national disqualification under Section 159 of the National Health Service Act 2006, and non-compliance with registration conditions. In addition, a practitioner could be removed from the register if he or she has not practised as a medical

The Medical Practitioners' Registration Panel

* * *

practitioner in Guernsey or Alderney during the preceding 12 months (if he or she has been registered for 12 months or more). A practitioner could also be removed from the register:

- if the Panel determines that the continued inclusion of the practitioner in the register would prejudice the efficient provision of medical services under a contract with any Department or Committee of the States of Guernsey, or for which a medical benefit is paid;
- in cases of fraud; or
- where the practitioner is unsuitable to be included in the register, based on specified criteria.

In the interests of fairness, there is a process for reinstating a practitioner to the Register, if, for example, the criminal conviction on which removal was based is later overturned by a court. The Ordinance sets out a process for the Panel to review registration-related decisions made by the Responsible Officer (a decision to impose additional conditions on the registration of a practitioner, the issue of a resolution notice, or suspension of registration).

Decisions of the Panel may be subject to an appeal to the Royal Court or the Court of Alderney. The usual grounds of appeal should apply: *ultra vires* or other error of law, unreasonableness, bad faith, lack of proportionality, or material error as to the facts or as to the procedure.

The Panel has the same powers as the Responsible Officer to require and share information, for the purposes of discharging the Panel's functions. Members of the Panel are excluded from personal liability in the absence of bad faith, so they can discharge their duties without fear of civil liability.

Membership of the Registration Panel

The Panel is composed of a legally-qualified chair, a medical practitioner who has not worked in the Bailiwick within the previous 20 years, and at least one lay member. The Ordinance allows for a maximum of 6 members and a chair in total.

The following appointments to the Registration Panel were approved by the Policy and Resources Committee on 13th April 2017, following recommendation by the Committee for Health & Social Care:

- Mr Geoffrey Charles Colclough (Legally Qualified Chair)
- Advocate Charisma Jay Lyall (Legally Qualified)
- Dr Callum Macleod (Medical Representative)
- Mrs Trish de Carteret (Lay Representative)

Activity of the Registration Panel in 2017

1) Activity in establishment of the Panel:

Members of the Panel were appointed by Policy & Resources in April 2017.

The Panel's introductory meeting included an overview of the local Ordinance and functions of the Panel from one of the Law Officers of the Crown. The Panel received a presentation from the Responsible Officer and the Registration Officer as to the current procedures in maintaining the Register.

The Panel received and approved the Register as it stood at the time of their meeting.

The Panel used its power to delegate to the Officer its functions in respect of maintaining the local Register on a day to day basis.

Panel members signed Declarations of Secrecy regarding confidential information which they might acquire by virtue of their role on the Panel.

A secure encrypted email system (Egress) was put in place to allow confidential exchange of information between and with Panel members.

2) Applications for Registration:

38 practitioners applied for registration on the local Register in the calendar year 2017. All applications were made in line with the conditions of the Ordinance. No applications were refused.

3) Practitioners removed from the Register

No practitioner was removed from the Register except with agreement of the practitioner in the year 2017. Most removals relate to doctors whose registration in the Bailiwick was time-limited at registration, such as locum and visiting doctors; other common reasons for removal related to retirement or moving away. There were 31 removals in total.

4) Other Activity:

The Panel received no requests from practitioners to review a decision made by the Responsible Officer in 2017. The Responsible Officer did not request that the Panel extend a period of suspension in the calendar year. There were no appeals to the Royal Court in respect of decisions by the Panel.

The Medical Practitioners' Registration Panel

* * *

Conclusion:

The Ordinance established a Registration Panel for the purposes described above. The Panel has now been appointed and has undergone induction. It has met, and is fulfilling its statutory functions.

**Annual
Report**

2017

**Eighth Annual Report of the Guernsey Planning
Panel**

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Chairman's Introduction

I am pleased to present this the eighth (but my first) Annual Report of the Guernsey Planning Appeals Panel covering the period of the 1st January to the 31st December 2017. Having been appointed by the States of Deliberation as Chairman with effect from the 1st April 2017 I am pleased to report that the Panel continues to provide an expert and independent forum for the hearing of planning appeals.

It will be noted that the number of appeals against a refusal of planning permission has fallen this year from nine in 2016 to four in 2017. This could be a reflection on the slowdown of development in the Island or an indication that the more permissive policies of the Island Development Plan are now starting to have an effect.

As will be seen from Appendix 2 quite a number of appeals were made in 2017 which did not come to fruition as either they were withdrawn by the Appellant or conceded by the Development & Planning Authority. In addition several cases were resolved by new planning applications being made to remedy an earlier breach of planning permission. Although this has reduced the Panels work load it can only be beneficial to Appellants that they are able to resolve matters with the Development & Planning Authority rather than having to take the more expensive and uncertain route of progressing an appeal.

During the year the Panel in conjunction with its Annual General Meeting held a training course on the new High Hedge (Guernsey) Law, 2016 which is now in force although as yet we still await our first appeal in respect of this recently enacted legislation.

As referred to in the main body of the Annual Report, the Panel came under close scrutiny concerning the appeal relating to the Les Blanches development in St Martin. The appeal once again raised the thorny issue of third party representations. Following discussions with the Law Officers and the Committee *for the* Environment and Infrastructure, I believe that a way has been found to hear such representations where the representor is able to provide evidence which is relevant and material to the issues being determined by a Planning Tribunal.

As mentioned at the beginning of this introduction this is my first report as Panel Chairman. I and the Panel are indebted to Mr Patrick Russell, our former Chairman, for his time expertise and guidance in the establishment of the Panel and I hope that I will be able to continue his good work. Following Mr Russell's resignation as a member of the Panel, I am pleased to welcome Advocate Mark Dunster as a new lay member Mark having been elected by the States of Deliberation in September 2017.

I am most grateful for the expert knowledge and support given by the Panel's Vice Chairman, Mr Stuart Fell, together with the expertise of our professional members, Mrs Linda Wride and Mr Jonathan King. In addition the remaining lay members of the Panel have all contributed substantially to the work of the Panel over the last twelve months and I am grateful for their assistance and wise counsel.

Our administration and secretarial function has once again been undertaken in an exemplary manner by Miss Elizabeth Dene who I and the Panel wholeheartedly thank particularly for her work in respect of the Les Blanchés appeal and in respect of the Panel's prompt response to the Arm's Length Body Review which was commenced in late 2017.

I expect that 2018 will provide new challenges for the Panel but I am confident that the Panel is well placed to deal with these as and when they arise.

David Harry
Chairman
June 2017

1. The Planning Panel

The Planning Panel was established in April 2009, under the Land Planning and Development (Guernsey) Law, 2005 (2005 Law) to determine appeals against planning decisions made by the Development & Planning Authority¹.

The Panel is an independent appeal body, with its own secretariat and administration. The Panel members are appointed by the States of Guernsey. To ensure the independence of the Panel the following groups of people cannot serve on it:

- (a) A Member of the States of Deliberation
- (b) An employee, member, or anybody carrying out work or providing services for the Environment Department
- (c) A member of the Strategic Land Planning Group
- (d) Anybody holding judicial office in Guernsey
- (e) Anybody who has held any of the above posts in the preceding two years.²

2. Planning Panel Membership

In early 2017, Mr Patrick Russell, the Panel's Chairman since it was established in April 2009, gave notice of his intention to step down from the Panel with effect from 31st March 2017.

The Panel echoes the Committee's thanks to Mr Russell and appreciation for his hard work in leading the Panel for its first eight years. The Panel recognised that Mr Russell's considerable professional experience, especially as a part-time Tribunal Judge of the First-Tier Tribunal, Health, Education and Social Care Chamber, has helped establish the Panel as a fair and accessible appellant body for those wishing to challenge a planning decision.

The Committee *for the* Environment & Infrastructure nominated Mr David Harry to replace Mr Russell as Chairman and the States of Deliberation approved this nomination and elected Mr Harry in March 2017.

Mr Harry was initially appointed to the Panel in 2009 as a "reserve member" and in September 2012 he was elected as a lay member. Mr Harry has sat on a large number of appeals and participated in and contributed to training for Panel members.

In 2014, Mr Harry retired from professional practice as a solicitor specialising in property matters.

¹ See section 86 of the Land Planning and Development (Guernsey) Law, 2005

² See section 4 of the Land Planning and Development (Appeals) Ordinance, 2007

During his career, Mr Harry gained a wide ranging commercial and private client legal experience including advocacy before courts and tribunals and considerable property and planning experience in connection with residential and commercial property situated in England and Wales.

Mr. Harry has been actively involved in Island life and has served on the St. Peter Port and St. Andrew's Douzaine (he stood down from the St. Andrew's Douzaine in December 2016). He has also been actively involved in sport on Guernsey, especially cycling. He is also chairman of the Guernsey Commonwealth Games Association and is a member of the panel of legal advisers appointed to advise the Commonwealth Games Federation is a member of the Commonwealth Games Federation Court.

In addition, following Mr Russell's resignation, the Committee *for the* Environment & Infrastructure advertised for a new member. The advertisement attracted ten applications and following shortlisting and interviews, Advocate Mark Dunster was put forward for election by the States of Deliberation. In addition, the Committee *for the* Environment & Infrastructure agreed to appoint Mrs Victoria Russell as a "reserve member".

Advocate Dunster was called to the Guernsey Bar in 1997 and is currently a managing partner at Carey Olsen. He specialises in litigation, compliance and financial regulatory matters. Advocate Dunster is the current Chairman of the Guernsey Association of Compliance Officers, and a member of the Legislation Review Panel which reviews draft new laws and ordinances and recommend changes to legislation. He is also the former Bâtonnier (Chairman) of the Guernsey Bar Association

Mrs. Russell trained as a nurse before moving to Asia. Whilst living in the Isle of Wight, Mrs Russell was elected as Chairman of the Local Conservative Association. She was also a lay representative on the Planning Control Committee, Church Warden, and lay governor of a primary school. During her time on the Isle of Wight Planning Control Committee, Mrs. Russell, participated in various planning-related training including, training in Design in Context organised by the Chartered Association of Building Engineers. Since returning to Guernsey she has been appointed to the Board of Governors for the College of Further Education and as a member of the Guernsey Tax Tribunal.

The Panel is confident that Advocate Dunster's and Mrs Russell's knowledge and understanding of planning matters will ensure the Panel continues to provide informed, independent and evidence-based decision making at a high professional level.

3. Panel Staff

In 2017 there were no staff changes and Miss Dene continues to act as the Panel's Secretary on a half-time basis.

4. Casework

In 2017 (2016), the Panel received 19 (24) appeals. This represents a slight decrease on the number of appeals lodged in 2016. Tables 1 and 2 provide a breakdown of the categories of appeals made and their disposal.

| <u>Table 1</u> | Number of Appeals | | | | | |
|--|--------------------------|-------------|-------------|-------------|-------------|-------------|
| | 2017 | | 2016 | | 2015 | |
| | Commercial | Householder | Commercial | Householder | Commercial | Householder |
| Refusal of planning permission | 1 | 3 | 3 | 6 | 6 | 10 |
| Refusal of outline planning permission | 1 | -- | 1 | -- | -- | -- |
| Planning conditions | -- | -- | -- | 1 | -- | -- |
| Non-determination | -- | -- | -- | -- | -- | -- |
| Compliance Notices | 3 | 8 | -- | 7 | 6 | 5 |
| Completion Notices | -- | -- | -- | -- | -- | -- |
| Confirmation of a Tree Protection Order | -- | -- | -- | 1 | -- | -- |
| Addition to Protected Building List | -- | 3 | 2 | 3 | 1 | 6 |
| TOTAL | 5 | 14 | 6 | 18 | 13 | 21 |

At the end of 2017, two appeals remained unheard. One of the appeals was lodged in late December 2017. In the other case, the appellants had requested a deferment of consideration of their appeal against the addition of a building to the Protected Buildings List whilst pre-application advice was sought from the Development & Planning Authority.

Table 2
Breakdown of
Appeal Cases by
Outcome

| | Number of Appeals | | | Outcome | | | | | | | | | | | | | | | | | |
|--|-------------------|-----------|-----------|---|----------|----------|---|----------|-----------|------------------------|----------|----------|-------------------------------------|----------|----------|--------------------|----------|----------|---|----------|-----------|
| | | | | Allowed (i.e. where the Tribunal found in favour of the appellant) | | | Dismissed (i.e. where the Tribunal upheld the Department's decision) | | | Other | | | | | | | | | | | |
| | | | | | | | | | | Withdrawn by Appellant | | | Conceded or Withdrawn by Department | | | Appeal out of time | | | Dismissed under s.69(5) of the 2005 Law | | |
| | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 | 2017 | 2016 | 2015 |
| Refusal of planning permission | 4 | 8 | 16 | -- | 1 | 7 | 3 | 3 | 8 | 1 | 3 | 1 | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Refusal of outline planning permission | 1 | 1 | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Planning conditions | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Non-determination | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Compliance Notice | 11 | 9 | 11 | -- | -- | 1 | 5 | -- | 5 | 3 | 4 | -- | 1 | 1 | 1 | 1 | 1 | 1 | -- | 3 | -- |
| Completion Notice | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Confirmation of a TPO | -- | 1 | -- | -- | 1 | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- | -- |
| Add building to or amend existing entry on Protected Building List | 3 | 4 | 7 | -- | -- | 1 | 1 | 2 | 2 | 2 | 1 | 1 | -- | 1 | 1 | -- | -- | -- | -- | -- | -- |
| TOTAL³ | 19 | 24 | 34 | 1 | 3 | 9 | 9 | 5 | 15 | 6 | 8 | 2 | 1 | 2 | 2 | 1 | 1 | 1 | 0 | 3 | -- |

³ 2 appeal cases (1 appeal against the planning conditions attached to the grant of planning permission and the other relating to the refusal of outline planning permission) remain unheard as the parties had either submitted revised planning applications or requested additional time to try and negotiate a settlement with the Development & Planning Authority

5. Case Administration

As noted above, there remains a strong preference for appellants to request that an appeal be heard before a Planning Tribunal.

Table 3 provides a more detailed breakdown of representation. In 2017, just under half of the appellants were represented by an Advocate or Architect. The Panel continues to encourage appellants, where they wish, to present their own appeals without the need for professional representation.

The Panel is mindful that, when it was established, one of the main reasons for moving away from appeals before the Royal Court to a Tribunal approach was to enable anybody who had been refused planning permission to be able to appeal the decision without having to incur possibly substantial legal costs.

| Table 3 Breakdown of Representation⁴ | | 2017 | 2016 | 2015 | 2014 |
|--|---------------------|-------------|-------------|-------------|-------------|
| Unrepresented | | 8 | 13 | 10 | 6 |
| Unrepresented but assisted by friend or family member | | 1 | -- | 1 | 1 |
| Represented | Architect | 4 | 17 | 8 | 10 |
| | Advocate | 1 | 15 | 4 | 4 |
| | Planning consultant | 7 | 3 | 3 | -- |
| | Surveyor | 1 | -- | 2 | -- |

6. Case Review

The Decision Notices for each planning appeal is set out in Appendix 1. In 2017 (2016), 10(8) of the appeals lodged proceeded to an adjudication.

In 2017, three cases involved matters which the Panel believe merit more detailed comment and review in this report, namely

- (a) The rights of third party representors to give evidence at an appeal hearing (arising from PAP/003/2017 – appeal against the refusal of outline planning permission for a residential development at Les Blanchés, St Martin);
- (b) The relationship between the Urban and Rural Area Plans and the Island Development Plan (arising from PAP/003/2017 – appeal against the refusal of outline planning permission for a residential development at Les Blanchés, St Martin);

⁴ Numbers relate to appeals determined at a public hearing; in some cases the appellant was represented by an Advocate together with other professional parties

- (c) Appeals under section 72(1) of the Land Planning and Development (Guernsey) Law, 2005 to the Royal Court (arising from PAP/001/2017 – appeal against a Compliance Notice issued in respect of an alleged breach of development control at 2 Courtil des Vent, Rue de la Fallaize, St Martin).

(a) *The rights of third party representors to give evidence at an appeal hearing*

In 2017, this matter was again raised in respect of the appeal against a refusal of outline planning permission at Les Blanchés, St Martin. The planning application had attracted over 90 individual representations and a petition containing over 250 signatures was also submitted. All opposed the development.

This is a matter which the Panel has raised in previous Annual Reports. Third party representors do not have a right to give evidence to a Tribunal but, the Tribunal may call them to give evidence. Section 5 (h) of the Land Planning and Development (Appeals) Regulations, 2009 provide a Planning Tribunal with the powers to call as witnesses any third party representors where there may be a need to do so, namely:

“The Appellate Body may call for such documents and examine such persons on oath, affirmation or otherwise as appear likely to afford evidence which is relevant and material to any question to be determined by the Appellate Body.”

The Panel has reflected further on this matter and, having taken legal advice, is satisfied that the provisions under section 5(h) of the Land Planning and Development (Appeals) Regulations, 2009 provide a Planning Tribunal with the powers to call as witnesses any third party representors where there may be a need to do so.

In its preparation for the appeal hearing, the Tribunal carefully reviewed each of the written representations and identified the concerns raised in the letters. The Tribunal considered whether it was feasible to examine some of the third party representors during the hearing. Having reviewed each letter, it concluded that, as the representations were clear as to the reasons why the authors opposed the development, there were no matters on which the Tribunal was unclear about the points the representors were making. Therefore, it concluded that there was no need to ask representors to appear before the Tribunal.

The Tribunal decided to prepare its agenda to ensure that the parties, i.e. the appellant and the Authority, were questioned in detail on the matters raised in the written representations and did not call any of the representors to give evidence in person.

The Tribunal also directed the Secretary to write individually to the representors to explain the procedure for appeals against the refusal of planning permission and the limitations placed on the Tribunal by virtue of section 69(1) of the 2005 Law. In total, four separate letters were sent to the third party representors to explain the procedure for the hearing itself and other aspects of the appeal process. In addition,

the Panel issued additional guidance specifically aimed at anybody who had submitted an objection to a planning application (see Appendix 4).

Prior to the hearing, a small number of the third party representors questioned why they could not address the Tribunal and many attended the hearing to follow the proceedings. However, following publication of the Tribunal's Decision Notice confirming that the Tribunal had decided to allow the appeal, subject to some limitations on access routes, many of the representors questioned why they had not been allowed to appoint representatives and be granted the same rights as the parties to address the Tribunal, including cross-examining the parties, and present their points and concerns in response to questions from the Tribunal.

The Panel appreciates the frustrations expressed by the representors and understands why some observers may question the fairness of the planning appeal process. However, a Tribunal must act within the vires of the 2005 Law. Planning appeals are a judicial process.

The Panel has provided feedback to the Committee *for the Environment & Infrastructure* on the appeal process generally and the rights of third party representors to give evidence at appeal hearings. In the meantime, the Panel will continue to write to all third party representors when an appeal under section 68(1) of the 2005 Law is registered and invite them to review the appeal bundles and attend the hearing. Further, the Panel will continue to, on a case by case basis, review the representations and where necessary to clarify a matter invite third party representors to address a particular matter, question or issue to assist the Tribunal in its understanding of the representations.

(b) *The relationship between the Urban and Rural Area Plans and the Island Development Plan*

The appeal against the decision to refuse outline planning permission for a residential development of 12 houses and 14 apartments on a field at Les Blanchés in St Martin raised a number of concerns regarding how planning policy transfers from one development plan to a new one.

The Authority's decision was reached in September 2016 under the planning policies of the Rural Area Plan but in November 2016 the States approved and adopted the Island Development Plan as the relevant development plan under sections 10 and 11 of the Land Planning and Development (Plans) Ordinance, 2007. The appeal was lodged in February 2017. However, section 69(1) of the Land Planning and Development (Guernsey) Law, 2005 directs that a Tribunal may only determine an appeal against the refusal of planning permission on the basis of the evidence, facts and material before the Authority when it reached its decision.

In the Les Blanchés case, the Authority had made its decision to refuse planning permission having applied the policies in the Rural Area Plan. The adoption of the Island Development Plan resulted in a number of policy changes which meant that there was no planning gateway to allow the appeal site to be developed as proposed by the developers in the Les Blanchés application. In particular, following a successful amendment to the Island Development Plan, the appeal site and the adjoining fields were designed as Agriculture Priority Area (“an APA”). The Island Development Plan defines an APA as,

*“**Agriculture Priority Areas** are large areas of contiguous agricultural land, and other areas well related to established agricultural operations, which represent Guernsey’s most valuable agricultural land.”*

The policies within the Island Development Plan place significant restrictions on development in an APA. For example paragraph 17.3.6 states,

“Within Agriculture Priority Areas there will be support for development which is related to the agricultural use of an existing farmstead or existing agricultural holding. Support will also be given where development is proposed which would be ancillary or ordinarily incidental to the principal agricultural use but may not, of itself, be an agricultural use. This will give flexibility for agricultural businesses to consider limited diversification to develop a use which, whilst supporting the agricultural business, is nevertheless still ancillary or incidental to the agricultural use. For example, this would facilitate the development of a small farm shop selling goods and produce predominantly grown or made on the particular holding or development associated with providing visitor accommodation ancillary to the agricultural use of the site. Where policies would not support the proposal as a stand-alone use, the Authority will need to be satisfied that any proposed development is genuinely ancillary or ordinarily incidental to the principal use and is not likely to result in an incremental change that would change the principal use. For this reason planning conditions may be attached to any permission granted to ensure the scale and nature of the development remains ancillary or ordinarily incidental to the principal use.”

The appeal site had been identified as including some of Guernsey’s best agricultural land and paragraph 17.3.10 sets out the higher level of protection for such land,

“However, in order to protect Guernsey’s best agricultural land, where appropriate, proposals for development which would result in the loss of an existing farmstead or agricultural holding in the Agriculture Priority Areas will only be supported where it is demonstrated that the farmstead, building or land is no longer required for agricultural purposes and any proposed new use accords with the other relevant policies of the Island Development Plan.”

A number of the many third parties opposing the development and the States Deputies who had proposed and supported the amendment to the Island Development Plan were understandably disappointed to note that the Tribunal considering the appeal could not give any weight to the change in status of the site and the strict limitations the designation of the appeal site as an APA under the Island Development Plan.

The Panel is mindful that in Guernsey, unlike in England and Wales, a Tribunal can give no weight to an emerging development plan. It also acknowledges the understandable frustrations of those who believe when the appeal site was designated as an APA no development would be possible on the site.

Here again, the Panel has provided feedback to the Committee *for the Environment & Infrastructure* on the appeal process generally and, in particular, the limitations section 69(1) of the 2005 Law place on a Tribunal and the weight that could be given to an emerging Development Plan.

(c) *Appeals under section 72(1) of the Land Planning and Development (Guernsey) Law, 2005 to the Royal Court*

One appeal determined in 2017 was appealed to the Royal Court under the provisions of section 72(1) of the Land Planning and Development (Guernsey) Law, 2005. The appellant, Mr Ozanne, was served with a compliance notice by the Development & Planning Authority on 23rd December 2016 requiring the permanent removal from land at 2 Courtil des Vents, Rue de la Fallaise, St Martin of a moveable structure, namely a Kia Sportage vehicle.

In brief, this case was about a vehicle which had been damaged in a road traffic collision in August 2010. Following the accident Mr Ozanne had placed it on his property intending to either repair the vehicle or use it for spares. He placed the vehicle on an area of his property which was outside the property's domestic curtilage.

The vehicle remained on the land and in August 2015 the Authority received a complaint about the vehicle as the complainant was concerned that the vehicle was an eyesore, potentially dangerous and appeared abandoned. The Authority commenced enforcement proceedings and in December 2015 a compliance notice was issued requiring Mr Ozanne to remove the vehicle from the land it was on. This notice was appealed and in April 2016, a planning tribunal dismissed the appeal but issued a revised compliance notice to correct factual errors in the original notice.

Following receipt of the tribunal's decision notice, Mr Ozanne cut off the roof of the vehicle with an angle grinder and left the vehicle in situ with the roof now resting on the chassis.

In December 2016, following further correspondence between the Authority and Mr Ozanne, the Authority went to Mr Ozanne's property to remove the vehicle. At this point, Mr Ozanne raised a Clameur de Haro stopping the Authority's actions.

The Clameur was duly registered in the Royal Court and it was at this point that Mr Ozanne pointed out a typographical error on the amended compliance notice whereby the incorrect sub-section of the 2005 Law was referred to. The Royal Court held that the revised compliance notice was therefore ultra vires.

Following this decision, the Authority issued a new and corrected compliance notice in December 2016 and Mr Ozanne appealed this notice. The appeal was heard by a planning tribunal on 10th March 2017 and it issued its written decision on 31st March 2017. The appeal was dismissed and the compliance notice was upheld.

On 28th April 2017, Mr Ozanne issued a notice of appeal under section 72(1) of Land the 2005 Law against the Tribunal's finding. Mr Ozanne argued two matters of planning law, namely:

- (a) Whether the vehicle was a "moveable structure"; and
- (b) The date on which the act of "placing" the vehicle on the appeal site took place.

On 11th September 2017, when the appeal was heard by the Bailiff, Mr Ozanne successfully sought permission to amend his grounds of appeal to include a number of procedural irregularities during the appeal hearing before the Tribunal. Mr Ozanne alleged that:

- (a) The hearing had not be recorded and so no transcript of the hearing was available; and
- (b) During a recess, the Tribunal members had a closed/private meeting with the officers of the Authority from which Mr Ozanne was excluded.

Although not a party to the appeal, the Panel provided the Royal Court with sworn affidavits from each of the Tribunal members, including a copy of their hand-written notes made during the hearing, and the Panel's Secretary refuting any suggestion that a closed/private meeting had taken place between the Tribunal members and the Authority during the hearing.

In her affidavit, the Panel's Secretary explained the Panel's general practice during adjournments. Where a separate room for use by the Tribunal is not available, the Panel's Secretary is responsible for asking all parties and any members of the media and the general public to leave the hearing room. The door is then closed and remains closed until the Tribunal directs the Panel Secretary to invite the parties and any others to re-enter the room.

The Bailiff concluded,

- “58. As the Tribunal met in a location where there was no retiring room or other private room available for the Members, it is inevitable that at the beginning and end of a session, one party may be present in the room with them at a time when the other party is absent. That is unavoidable however I am satisfied that the Tribunal Members and the Secretary were aware of their responsibilities and I accept their evidence that no conversation took place between them and the representatives of the Authority when the Appellant was out of the room. The Appellant was not present so his allegation that a conversation took place is merely speculative and is insufficient to disprove what the Members and Secretary of the Tribunal said in their affidavits.”*

Following a further hearing on 11th December 2018, the appeal was allowed and the compliance notice was quashed. The Bailiff held,

- “100. I have therefore concluded the Vehicle was a moveable structure that had been placed on the Appellant’s land. The act of doing so was a breach of planning control.*
- 101. The next question is when did that act occur, the act of placing the Vehicle on the land? In my judgment, it occurred when the Appellant drove the Vehicle onto the land. The Tribunal were led into considerations of whether the Vehicle was or was not roadworthy and whether for the purposes of the motor vehicle legislation it was still considered to be a motor vehicle by reason of the fact that it still had a chassis and a chassis number. I have no doubt that the Appellant presented his submissions on that issue with great passion and with the benefit of his research and thorough analysis, just as he did in the Royal Court. The Tribunal were led into making findings of fact as to the Vehicle’s roadworthiness that were irrelevant to the issues before them. The earlier Tribunal had done the same and perhaps their approach misled the later Tribunal.*
- 102. The date of the breach of planning control was the date on which the Appellant drove the Vehicle onto his land after the road accident. That was a date on or before the 20th August 2010 when he bought a replacement vehicle. That date was more than four years prior to the issue of the 2016 Compliance Notice and was therefore outside the period when enforcement action could be taken by the Authority under the amended section 48(4) of the 2005 Law.”*

In respect of Mr Ozanne’s point on whether the proceedings should have been recorded, the Bailiff stated,

“73. It can be seen that there are inconsistencies between the several sets of notes but that is not surprising and does not render the notes unreliable. The Tribunal Members are not expected to make a complete note of the entire hearing. The purpose of their notes is to act as an aide memoire to assist them in the preparation of their decision by reminding them of the key passages in the evidence and submissions they will have heard. One difficulty that any judge or tribunal member has is that it is not always apparent at the time which passages in the proceedings are the most important. Another reason why a note may not be complete is that the judge or tribunal member will be paying attention to other aspects such as the presentation and demeanour of any witnesses to enable him or her to assess their credibility. At the time of making the note, it probably did not occur to the Members that what they wrote would have to be produced to an appellate court and scrutinised some time afterwards.”

and,

“81. Finally, the Appellant raised the lack of a recording and transcript of the Tribunal proceedings. There is no requirement for the proceedings to be recorded or transcribed. The Tribunal might find it helpful if the proceedings were recorded but the absence of a recording is not unjust. The Tribunal members made contemporaneous notes and their notes have been disclosed to this court.”

The Bailiff went on to conclude,

“82. I reject all the procedural criticisms raised by the Appellant.”

The Panel recognises that appeals to the Royal Court are an important part of the appeal process. The Panel has studied the Royal Court’s judgment and is reviewing its procedures and practices to ensure that all appeals continue to be considered fairly and transparently.

7. Update on Issues raised in the Planning Panel’s previous Annual Reports

(a) *Third Party Representations*

In previous Annual Reports, the Panel has commented on the restrictions placed on third parties and indicated its agreement that some relaxation of the current restrictions placed on taking evidence from third parties would be beneficial.

See Section 6(a) above for more detailed comments arising from one case heard during 2017.

(b) *Appeal Periods*

The Panel has previously raised concerns that in some cases where an individual is appealing against a refusal of planning permission on a retrospective application and an associated Compliance Notice, the difference between the two appeal periods (six months from the date of the refusal of planning permission and 28 days from the date of service of a Compliance Notice) may be used as a means to delay enforcement action.

The Panel is disappointed that the Authority has been unable to progress an amendment to 2005 Law to amend the appeal period in the case of planning applications where enforcement action has been formally commenced. However, it understands that whilst the proposed amendment may appear relatively minor, it would involve a significant number of consequential amendments to the enforcement provisions within the 2005 Law and Land Planning and Development (Appeals) Ordinance, 2007, the Land Planning and Development (Appeals) Regulations, 2009 and other Ordinances. The Panel appreciates that the Authority's resources are limited and, following the adoption of the Island Development Plan a number of new work streams have commenced. The Panel notes that this matter remains on the Authority's list of matters which require action and hopes that it may be possible to progress this matter in late 2018.

(c) *Use of Character Assessments and Statements of Significance for Conservation Areas*

The Panel is pleased to note that the Island Development Plan includes character assessments and statements of significance for the Conservation Areas designated under the Plan.

8. Other Developments during 2017

(a) *Commencement of the High Hedges (Guernsey) Law, 2016*

On 2nd October 2017, the High Hedges (Guernsey) Law, 2016 came into force in October 2017. The High Hedges (Guernsey) Law, 2016 is intended to act as a last resort, when all other attempts to resolve the problem through discussion with the neighbour have failed.

The Panel is be the appellant body for parties to appeal decisions by the Authority against decisions under section 8(5)(a) that the allegation made in the complaint is not justified, or under section 8(5)(b) that no action should be taken in relation to the high

hedge. The Law provides a right of appeal to the owners and occupiers of domestic properties in respect of hedges adjoining their property which are over 2 metres high and predominantly of evergreens and the hedge adversely affects the reasonable enjoyment of their property because the hedge forms a barrier to light.

The Panel has issued additional guidance notes for anybody considering whether or not to make an appeal under this new legislation.

The Panel has been advised by the Authority that during the last quarter of 2017 it had not issued any notices under the provisions of the High Hedges (Guernsey) Law, 2016.

(b) *The Land Planning and Development (Use Classes) Ordinance, 2017*

In March 2017, the States approved the Land Planning and Development (Use Classes) Ordinance, 2017.

The Ordinance repeals and replaces the Land Planning and Development (Use Classes) Ordinance, 2007. The main difference between the proposed Ordinance and the current 2007 Ordinance is that the number of use classes is reduced from 44 in the current Ordinance to 28 in the proposed Ordinance so that fewer changes of use will requiring planning permission.

The Authority consulted the Panel prior to presenting the proposals to the States. The Panel noted that the reduction in the number of individual use classes and the alignment of use classes with the new planning policies under the Island Development Plan should prove beneficial to all involved in planning process.

(c) *Certificates of Lawful Use*

In May 2017, the Authority presented a Policy Letter to the States entitled, The Island Development Plan – Provision for a café at Stan Brouard Group’s Landes Du Marché site through the introduction of Certificates of Lawful Use.

Prior to submission of the Policy Letter, the Authority had consulted with the Panel in respect of the appeal provisions where the Authority refused to grant a Certificate of Lawful Use. The Panel noted that the number of applications under this new provision was likely to be low and so should not add unduly to the Panel’s workload.

After consideration of the Policy Letter, the States resolved:

“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.”

9. Conclusion

During 2017, the Panel has again continued to build on and develop its knowledge and understanding of development control and its understanding of the planning process. This included reviewing the Island Development Plan and identifying areas where planning policy had changed significantly compared to that the Urban and Rural Area Plans.

The Panel continues to use its best endeavours to ensure that its members are kept up-to-date with relevant planning matters and to review its own policies and practices. This is undertaken through in-house training and regular reviews of its operational policies and procedures whilst monitoring any developments in local planning policy or other States policy which may have an impact on the cases it is asked to determine.

Looking forward to 2018, the Panel anticipates that, aside from the particular issues that may arise from individual appeals, Tribunals will be called upon to determine appeals under the policies in the Island Development Plan. Although the Island Development Plan was adopted in November 2016, none of the five appeals against the refusal of planning permission heard this year were made under the Island Development Plan.

The Panel believes that this is in part due to the fact that people whose planning applications are refused have six months from the date of the refusal of planning permission to lodge an appeal and in part due to the more permissive approach to planning applications under the Island Development Plan.

Finally, the Panel is grateful for the professional and courteous assistance it continues to receive from appellants, their representatives, the Director of Planning and his officers, the President, Board members and Chief Secretary of the Committee *for the Environment & Infrastructure* and officers from other States committee and departments who have given evidence at appeal hearings. The Panel is appreciative of this assistance and recognises that without such co-operation it would face greater challenges in discharging its statutory responsibilities.

Appendices

APPENDIX 1 – PLANNING PANEL MEMBERSHIP

| Name | Position on Panel | Date Appointed | Term of Office |
|--------------------|--------------------------------------|-----------------------------|--|
| Mr Patrick Russell | Chairman | March 2015 ⁵ | <i>Resigned 31st March 2018</i> |
| Mr. David Harry | Chairman Lay Member | September 2012 ⁶ | Until March 2021 |
| Mr Stuart Fell | Vice Chairman Professional Member | March 2015 ⁷ | Until March 2021 |
| Mr Jonathan King | Professional Member | January 2012 | Until March 2018 |
| Mrs Linda Wride | Professional Member | January 2012 | Until March 2018 |
| Mrs Sheelagh Evans | Lay Member | January 2013 ⁸ | Until March 2019 |
| Mr Mark Dunster | Lay Member | October 2017 ⁹ | Until March 2021 |
| Mr John Weir | Lay Member | January 2012 ¹⁰ | Until March 2018 |
| Ms Julia White | Lay Member | January 2012 ¹¹ | Until March 2018 |

⁵ Mr. Russell was first appointed as a lay member in March 2009 to serve for 6 years and was re-elected in 2015 for a further 6 year term

⁶ Mr Harry was elected as the Panel's Chairman with effect from 1st April 2018 to serve the unexpired part of Mr Russell's term until 31st March 2021

⁷ Mr. Fell was first appointed as a professional member in March 2009 to serve for 6 years and was re-elected in 2015 for a further 6 year term

⁸ Mrs. Evans was first appointed as a lay member in March 2009 to serve for 4 years and was re-elected in 2013 for a further 6 year term

⁹ Mr Dunster was elected to fill the vacancy created by Mr Russell's resignation for a 6 year term

¹⁰ Mr. Weir was first appointed as a lay member in March 2009 to serve for 3 years and was re-elected in 2012 for a further 6 year term

¹¹ Ms. White was first appointed in September 2011 to serve the unexpired term of Mr. Bowen's appointment (who resigned from the Panel in May 2012) and was re-elected in 2012 for a further 6 year term

APPENDIX 2 - SYNOPSIS OF APPEAL CASES DETERMINED DURING 2017

| PAP Ref | Planning Reference | Details | Appeal Outcome |
|---------|--------------------|--|--|
| 001 | ENF/2015/00135 | Appeal against a Compliance Notice served on 20th December 2016 for an alleged unauthorised development namely placing a moveable structure, namely a scraped Kia Sportage vehicle on land at 2 Courtil des Vents, Rue de la Fallaise, St. Martin | <i>Appeal dismissed and later overturned on appeal to the Royal Court</i> |
| 002 | PB1668 | Appeal against decision to add The Barn, La Neuve Maison, Le Coudre, St. Pierre du Bois to the List of Protected Buildings | <i>Appeal withdrawn by appellant</i> |
| 003 | OP/2016/1180 | Appeal against the refusal of outline planning permission to erect 12 dwellings and 14 flats with associated parking and landscaping at Les Blanches, La Route des Blanches, St. Martin | <i>Appeal allowed</i> |
| 004 | ENF/2016/0106 | Appeal against a Compliance Notice served on 31st January 2017 for an alleged unauthorised development namely a change of use in that a single dwelling house Côte de Colline, Les Vardes, St. Peter Port, falling within Residential Use Class 1 of the Land Planning and Development (Use Classes) Ordinance, 2007 is being used as a lodging house for people not living together as a single household and so falling within Residential Use Class 6 | <i>Appeal withdrawn by appellant following discussions with the Development & Planning Authority</i> |
| 005 | ENF/2016/0106 | Appeal against a Compliance Notice served on 21st February 2017 for an alleged unauthorised development namely that agricultural land is being used as a yard for the storage vehicles and other items on land off the Rue des Marette, St Sampson | <i>Appeal withdrawn by appellants</i> |

| PAP Ref | Planning Reference | Details | Appeal Outcome |
|---------|--------------------|--|---|
| 006 | ENF/2016/0117 | Appeal against a Compliance Notice served on 8 February 2017 for an alleged unauthorised development namely the alleged installation of replacement doors and windows to the southern elevation of a dwelling, 2 Le Sommet, Mount Durand, St. Peter Port without planning permission | <i>Appeal conceded by the Development & Planning Authority</i> |
| 007 | FULL/2016/1570 | Appeal against refusal of planning permission to convert two flats into a single dwelling at Mycot, Hubits de Bas, St. Martin | <i>Appeal dismissed</i> |
| 008 | FULL/2016/1895 | Appeal against refusal of planning permission to erect two semi-detached dwellings with associated parking at Chez Nous, Baubigny Road, St. Sampson | <i>Appeal dismissed</i> |
| 009 | ENF/2016/0190 | Appeal against a Compliance Notice served on 8 March 2017 for an alleged unauthorised development namely parking vehicles on agricultural land at Brooklands, Baubigny Road, St. Sampson | <i>Appeal withdrawn by appellants following grant of planning permission to regularise the breach</i> |
| 010 | FULL/2016/0213 | Appeal against refusal of planning permission to alter and convert Le Chalet Hotel, Fermain Lane, St. Martin to create 17 residential units with associated car parking and landscaping and demolish staff accommodation blocks and outbuildings | <i>Appeal dismissed</i> |
| 011 | ENF/2016/0189 | Appeal against a Compliance Notice served on 10 March 2017 for an alleged unauthorised development namely the use of land defined as for use in connection with the visitor economy being used to park and store vehicles at the former Strawberry Farm, Rue des Issues, St Saviour | <i>Appeal withdrawn by appellants following grant of planning permission to regularise the breach</i> |

| PAP Ref | Planning Reference | Details | Appeal Outcome |
|----------------|---------------------------|--|-----------------------------------|
| 012 | ENF/2015/0130 | Appeal against a Compliance Notice served on 22 March 2017 in respect of an alleged unauthorised development, namely the installation of replacement windows and doors without planning permission, at Le Val Farm, Route des Blicqs, Forest | <i>Appeal dismissed</i> |
| 013 | ENF/2015/0130 | Appeal against a Compliance Notice served on 22 March 2017 in respect of an alleged unauthorised development, namely the replacement of the barn roof without planning permission, at Le Val Farm, Route des Blicqs, Forest | <i>Appeal dismissed</i> |
| 014 | ENF/2015/0130 | Appeal against a Compliance Notice served on 22 March 2017 in respect of an alleged unauthorised development, namely the replacement of a water pump without planning permission, at Le Val Farm, Route des Blicqs, Forest | <i>Appeal dismissed</i> |
| 015 | ENF/2016/0117 | Appeal against a Compliance Notice served on 8 February 2017 for an alleged unauthorised development namely the alleged installation of replacement doors and windows to the southern elevation of a dwelling, 2 Le Sommet, Mount Durand, St. Peter Port without planning permission | <i>Appeal dismissed</i> |
| 016 | PB1682 | Appeal against decision to add The Dolphins, Jerbourg, St. Martin to the List of Protected Buildings | <i>Appeal to be heard in 2018</i> |

| PAP | Planning | Details | Appeal Outcome |
|------------|-----------------|----------------|-----------------------|
|------------|-----------------|----------------|-----------------------|

| Ref | Reference | | |
|-----|----------------|---|---|
| 017 | FULL/2017/0867 | Appeal against refusal of planning permission to extend domestic curtilage at Bon Temps, Rue des Delisles, Castel | <i>Appeal withdrawn by appellants following grant of planning permission to regularise the breach</i> |
| 018 | PB1960 | Appeal against decision to add La Galliotte Cottage, Icart Road, St. Martin to the List of Protected Buildings | <i>Appeal withdrawn by appellants following an amendment to the extent of the listing</i> |
| 019 | ENF/2015/0187 | Appeal against compliance notice issued on 30 November 2017 in respect of alleged breach of planning control at La Hurbede, Hougues Magues Lane, St Sampson | <i>Appeal to be heard in 2018</i> |

APPENDIX 3 - THE PLANNING PANEL'S GENERAL POLICIES AND PROCEDURES

(a) Determination of an Appeal by a Single Professional Member

When deciding whether an application should be made to the Committee *for the Environment & Infrastructure* to seek its approval that an appeal should be determined by a Single Professional Member the Panel Chairman will consider the following factors:

- Are the appeal papers complete and self-contained? In other words, can the Tribunal easily understand how the planning decision was reached, the appellants' reasons for appealing the decision and why the Development & Planning Authority is resisting the appeal?
- Are the relevant planning policies and issues clear? In other words, can the Tribunal clearly understand the issues by reading the appeal papers and visiting the site?
- Is there an over-riding public interest? Examples of appeals which may have an over-riding public interest will include large scale developments, developments in areas of particular environmental or historic sensitivity or where the policy issues are unclear. In other words, is there likely to be significant public interest in the development or have the policy issues linked to the appeal ones which are the subject of wider debate so that it is appropriate for a hearing to be held.
- Were any third party representations objecting to the development received by the Development & Planning Authority?
- Are there significant disputes as to the facts?
- Are there any novel legal issues?

(b) Determination on an Appeal by Written Representation by either a Single Professional Member or by a Full Tribunal

When deciding whether an Appeal should be determined by Written Representations by a Single Professional Member the Panel Chairman will consider the factors referred to above in addition to those below relating to determination by a full Tribunal:

- Does the appeal involve a planning application of Island-wide significance or concern development where an environmental statement has or may be required, as specified under section 6 (2) (a) and (b) of the Land Planning and Development (Appeals) Ordinance, 2007?

- Is the matter appealed fairly minor and uncomplicated?
- Is the evidence self-explanatory and complete?
- Were there any third party representations received by the Development & Planning Authority how many and from whom?

(c) General Procedure for Determining Compliance Notices and Confirmation of Tree Protection Order

When deciding whether an appeal against the issue of a Compliance Notice or the Confirmation of a Tree Protection Order should be determined by a Hearing or by Written Representations by either a Single Professional Member or by a full Tribunal, the Panel Chairman's general presumption is that the appeal should be heard by way of public hearing.

This general presumption is because these types of appeal are likely to be of wider public interest and, in some cases, the issues are likely to be more complex, and so require the Tribunal to hear evidence from a number of parties, other than the person making the appeal and the Development & Planning Authority.

(d) General Procedure for Site Visits

When determining an appeal the Tribunal or Single Professional Member will always visit the appeal site.

As a general rule, where an appeal is determined at a public hearing the site visit will take place at the end of the hearing. However, the Tribunal or Single Professional Member may direct that the site visit should take place at the start of a hearing or part way through a hearing. Such decisions will be determined on a case-by-case basis and the Tribunal or Single Professional Member will explain its decision.

These site visits will require the attendance of the appellants and/or his representative and the Development & Planning Authority's representative/s. All parties must be present throughout the site visit and should remain in close proximity to the Tribunal Members to ensure that they can hear any questions that Members may ask and the answers given.

Where an appeal is determined by Written Representations the site visit will generally be made privately, i.e. the attendance of the appellants and/or his representative and the Development & Planning Authority's representative/s will not be required. However, where the Tribunal Members need to gain access to a building or cannot view the appeal site without entering privately owned land the site visit will be

conducted in the presence of the appellants and/or his representative and the Development & Planning Authority's representative/s.

For all accompanied site visits the appellant should ensure he brings any keys which may be needed to afford Tribunal Members access to any locked buildings, sheds, etc. on the appeal site.

(e) General Procedure for Handling Post-Hearing Correspondence with the Parties

As a general rule, the Tribunal or Single Professional Member will not enter into any post-hearing correspondence with the parties. However, from time to time this may be necessary, e.g. to clarify a point made in evidence by either party or to seek both parties' comments on the wording of a non-standard planning condition.

Where it is necessary for a Tribunal or Single Professional Member to open such correspondence copies of any letters or email communications will be sent to all parties, together with the replies received from each party.

(f) General Procedure for Determining Linked Appeals against the Refusal of Planning Permission and against a Compliance Notice

As a general rule the Panel will endeavour to prioritise appeals against Compliance Notices.

This general rule will be modified where retrospective planning permission has been refused and the Development & Planning Authority has commenced enforcement measures before the appeal period for the refusal of planning permission has expired.

The Panel's general policy for dealing with appeals against both the refusal of planning permission and a Compliance Notice seeks to ensure that the party's rights under s.68 of the 2005 Law to appeal a decision refusing planning permission are not interfered with and that the Development & Planning Authority's endeavours to deal with any breaches of the Island's development controls are not frustrated.

APPENDIX 4 - SUPPLEMENTARY GUIDANCE ON PROCEDURES FOR PLANNING APPEAL

This supplementary guidance should be read in conjunction with the Planning Panel's *Guide to Planning Appeals in Guernsey* and only applies to appeals made under section 68(1) of the Land Planning and Development (Guernsey) Law, 2005.

Appeal Bundles

In all cases, the appellant will submit his/her appeal papers, including the grounds for the appeal, to the Planning Tribunal ("the Tribunal") and the Development & Planning Authority will be invited to prepare a written response to the appeal. These documents form the core of the written evidence the Tribunal will have read and carefully considered prior to any appeal hearing.

In some cases, the Tribunal will request the parties (the appellant and the Development & Planning Authority) to submit additional information in order to clarify a particular point or where it appears there is a gap in the information. In doing so, the Tribunal will always be mindful that such requests should not introduce new evidence that was not before the Development & Planning Authority when the planning application was determined. Further, any additional information requested, will be copied to the other party to the appeal and they will also have an opportunity to make any written response.

The parties will each receive a full copy of the appeal papers prior to the appeal hearing.

Further, a copy of the appeal papers will be made available for inspection, on request, at Sir Charles Frossard House by any person who may have submitted a representation in respect of the planning application or otherwise have an interest in the appeal.

Limitations on Evidence

Where a Tribunal is convened to hear an appeal made under section 68(1) of the Land Planning and Development (Guernsey) Law, 2005 ("the 2005 Law"), i.e. an appeal against the refusal of planning permission, section 69(1) of the 2005 Law places a statutory limitation on the evidence a Tribunal may take into consideration when reaching its decision. Section 69(1) states:

"An appeal under section 68 shall be determined by the Planning Tribunal on the basis of the materials, evidence and facts which were before the Department in the case of an appeal under section 68(1), when it made the decision appealed against."

Therefore, the Tribunal cannot consider any evidence, facts or material which was not considered by the Development & Planning Authority when it reached its decision on

the planning application. The only exception to this limitation is where the Tribunal is aware or it is directed towards a published document which, in the Tribunal's opinion, a reasonably competent planning authority should have taken into consideration when determining the planning application.

Further, a Planning Tribunal may only take into account considerations material to planning, in particular those within the terms of the Land Planning and Development (Guernsey) Law, 2005 and associated Ordinances, and may not take into account any matter which is not material to planning. Matters which are not normally planning considerations and which, therefore, cannot normally be taken into account include:

- Effect on land or property values
- The character or identity of the applicant or objectors
- Boundary or property disputes
- How the application affects a private view (as opposed to the wider effect on public amenity which may include the effect on public views)
- Issues of commercial competition
- The status of property under other legislation (e.g. the Housing Control Laws)
- Moral or ethical issues or judgements
- Weight of numbers of public opposition or support in itself (as opposed to relevant planning basis for such views).

Who may address a Planning Tribunal?

The procedure for the determination of an appeal by the Tribunal is set out in Regulation 5 of the Land Planning and Development (Appeals) Regulations, 2008 (see Appendix 1).

Regulation 5(b) limits those parties who have a right to make representations to the Tribunal to the principal parties, i.e. the appellant and/or his/her representative/s and the Development & Planning Authority, and the occupier of the appeal site, if not the appellant. Therefore, other parties with an interest in the appeal, including anybody who may have made a written representation of the Development & Planning Authority as part of the planning process, neighbours to the appeal site, etc., do not have a right to make representations, written or oral, to the Tribunal.

Regulation 5(h) allows the Tribunal to examine such persons as appear likely to afford evidence which is relevant and material to any question to be determined.

A Tribunal may, having carefully considered all the written submissions from the parties, request additional persons to attend the appeal hearing to give evidence in person, including answering questions from the Tribunal members and the parties, or to provide a written response to specific questions. Examples of who may be called under this Regulation include:

- (a) The author of any expert report which was submitted as part of the planning application;
- (b) The appellant's architect, design consultant, etc.;
- (c) Any party, including other States' Committees or service areas, who may have provided a consultation report for the Development & Planning Authority as part of its assessment of the planning application; and
- (d) Any other party, who the Tribunal may be able to assist in answering any question to be determined.

This last group may include somebody who made a written representation to the Development & Planning Authority when the planning application was advertised for consultation.

The decision about who may be called to give evidence rests with the Tribunal.

Structure for Appeal Hearings

Where an appeal is determined at a public hearing, the Tribunal will, in most cases, issue an agenda which sets out the issues which the Tribunal members have identified as requiring further inquiry through questions.

A Tribunal issues the agenda to the parties between five to seven working days before the hearing. It also makes copies of the agenda available at the hearing to anybody attending in person.

The hearing will take the form of a structured discussion led by the Tribunal members, including asking questions of the parties and any witnesses. There is no formal recital of the case by the parties as this should have all been included in their written submission.

The parties will have the opportunity to ask questions of each other and any witnesses. These questions must be asked through the presiding member of the Tribunal.

The Tribunal hearings are not recorded. The individual members of the Tribunal make their own notes of the proceedings and rely on these when reaching their decision and drafting their written Decision Notice. These notes are not available to any other parties.

Procedure for Site Visits

As part of the appeal process, the Tribunal will undertake an accompanied site visit to assist the members in understanding the physical context of the appeal site and proposed development and its setting which are part of the material considerations in the case.

As a general rule, the site visit will be confined to the appeal site and any neighbouring public areas of land. The Tribunal may request to visit a neighbouring property if it believes this would assist it in understanding the impact of the proposed development. In such cases, the land owner will have the right to decline the request. If the landowner is willing to allow the Tribunal members onto his/her property but refuses access to one of the principal parties, the Tribunal members will not be able to undertake this aspect of the site visit.

This site visit will generally take place at the end of the appeal hearing. It will involve the Tribunal members, representatives of the principal parties and any third parties the Tribunal may expressly invite. Other interested parties, neighbours and members of the public will not be permitted to attend the site visit. Similarly, canvassing and lobbying of Tribunal members or presentation of new material during site visits will not be permitted.

No photographs may be taken during the site visit without the express permission of the Tribunal.

In many cases, the Tribunal will have visited the appeal site and the surrounding area prior to the hearing. Depending of the issues raised in a particular case, more than one such site visit may take place. For example, where traffic issues have been raised as a concern, the Tribunal members may visit the appeal site at different times of the day or days of the week to gain a better understanding of traffic movements in the surrounding area.

Conduct at an Appeal Hearing

The appeal hearing is a judicial process and therefore the rules which apply in the Magistrate's and Royal Courts apply to the hearing.

Members of the public, neighbours and anybody interested in the appeal and representatives of the media may attend an appeal hearing. No photography or recording of the proceedings is allowed. Those attending the hearing, including representatives of the media, are not permitted to speak with the Tribunal members. Any questions or queries must be directed to the Panel's Secretary who will be in attendance throughout the proceedings.

Representatives of the media are asked to note that, interviews with the appellant or their representatives, or with any member of the public present, are not permitted within the room designated for the appeal hearing.

Mobile phones must be turned off or set to silent.

Those attending an appeal hearing are expected to behave appropriately and not to interrupt or otherwise disrupt the proceedings. Those attending the hearing are requested not to speak amongst themselves as this may prevent the Tribunal members or the parties from hearing questions or the answers to them.

Any person who behaves in a manner which is disruptive to the appeal hearing will be required to leave.

Appeal Decision

The Tribunal will not issue its decision on the day of the hearing. A formal written Decision Notice setting out the Tribunal's decision and its reasons will be issued to the parties following the hearing and this is generally issued within three weeks of the hearing.

A copy of the written decision will be sent to all those who made a written representation when the planning application was under consideration by the Authority. The Decision Notice is also published on the notice boards at Sir Charles Frossard House and the Royal Court.