



BILLET D'ÉTAT

WEDNESDAY, 27th FEBRUARY, 2019

III
2019

ELECTIONS AND APPOINTMENTS

1. Election of a Member of the Transport Licensing Authority, P.2019/9
2. Election of a Member of the Development & Planning Authority, P.2019/12

LEGISLATIVE BUSINESS

Legislation Laid Before the States

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The Road Traffic (Speed Limits) (Amendment) (No. 2) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 3) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 4) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 5) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 6) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 7) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 8) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 9) Regulations, 2018
The Road Traffic (Speed Limits) (Amendment) (No. 10) Regulations, 2018
The Public Records (Fees for Registration and Certified Copies of Documents) Regulations, 2018
The Marriage Fees (Guernsey) Regulations, 2018
The Fire Services (Fees and Charges) (Guernsey) Regulations, 2018
The Health Service (Payment of Authorised Appliance Suppliers) (Amendment) Regulations, 2018
The Health Service (Payments of Authorised Suppliers) (Amendment) Regulations, 2018
The Health Service (Medical Appliances) (Amendment) Regulations, 2018
The Social Insurance (Benefits) (Amendment) Regulations, 2018

The Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 (Commencement) Regulations, 2018
The Guernsey Finance LBG (Levy) (Guernsey) (Amendment) Regulations, 2018
The Income Tax (Substance Requirements) (Implementation) Regulations, 2018
The Notifiable Animal Diseases Order, 2018
The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018
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3. Committee *for* Economic Development - The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019, P.2019/7
4. Development & Planning Authority - The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019, P.2019/6

OTHER BUSINESS

5. Committee *for* Health & Social Care - Health and Care Regulation in the Bailiwick, P.2019/3
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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 **27th February, 2019** 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

6th February, 2019

**ELECTION OF A MEMBER OF THE
TRANSPORT LICENSING AUTHORITY**

The States are asked:

To elect, in accordance with Rule 16 of The Rules of Procedure, a member of the Transport Licensing Authority to complete the unexpired term of office (that is to the 30th June 2020) of Mr S. D. G. McKinley O.B.E. who has ceased to hold a seat in the States of Guernsey.

(N.B. The President and Members of the Policy & Resources Committee, the President and Members of the Committee *for* Economic Development, the President and Members of the Committee *for the* Environment & Infrastructure, and the President and Members of the States' Trading Supervisory Board shall not be Members of the Transport Licensing Authority.)

**ELECTION OF A MEMBER OF THE
DEVELOPMENT & PLANNING AUTHORITY**

The States are asked:

To elect a member of the Development & Planning Authority to complete the unexpired term of office (that is to the 30th June 2020) of Deputy Lester C. Queripel who has resigned that office, and whose letter of resignation is appended hereto, in accordance with Rule 16 of The Rules of Procedure of the States of Deliberation.

[N.B.

1. Pursuant to the Mandate of the Development & Planning Authority, neither the President nor any member of the Authority shall be the President or a member of the Policy & Resources Committee or the President or a member of the Committee *for the* Environment & Infrastructure.]

Tourrettes
Rue des Tamaris
La Rocquette
Castel
GY5 7BA

February 3rd 2019.

Dear Sir,

In accordance with Rule 37(4) I am writing to inform you that I am resigning from my position as a member of the Development and Planning Authority.

Yours sincerely

Deputy Lester Queripel

SIGNED

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

No. 69 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 1) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, "The Road Traffic (Speed Limits) (Amendment) (No. 1) Regulations, 2018" made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads around Blanchelande College.

These Regulations come into force on the 7th day of April, 2019.

No. 70 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 2) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, "The Road Traffic (Speed Limits) (Amendment) (No. 2) Regulations, 2018" made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the part of Ruelle de la Tour specified therein.

These Regulations come into force on the 7th day of April, 2019.

No. 71 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 3) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, "The Road Traffic (Speed Limits) (Amendment) (No. 3) Regulations, 2018" made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads around L'Aumone.

These Regulations come into force on the 7th day of April, 2019.

No. 72 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 4) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 4) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads in St Martin.

These Regulations come into force on the 7th day of April, 2019.

No. 73 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 5) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 5) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads in St Pierre du Bois.

These Regulations come into force on the 7th day of April, 2019.

No. 74 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 6) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 6) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the road specified therein. These Regulations affect roads in Forest.

These Regulations come into force on the 7th day of April, 2019.

No. 75 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 7) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 7) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads around L'Islet.

These Regulations come into force on the 7th day of April, 2019.

No. 76 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 8) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 8) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the roads specified therein. These Regulations affect roads in St Sampson and the Vale.

These Regulations come into force on the 7th day of April, 2019.

No. 77 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 9) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 9) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in the part of La Route du Bray specified therein.

These Regulations come into force on the 7th day of April, 2019.

No. 78 of 2018

THE ROAD TRAFFIC (SPEED LIMITS) (AMENDMENT) (NO. 10) REGULATIONS, 2018

In pursuance of section 2(2) and 8A of the Road Traffic (Speed Limits and Trials) Ordinance, 1987, as amended, “The Road Traffic (Speed Limits) (Amendment) (No. 10) Regulations, 2018” made by the Committee *for the* Environment & Infrastructure on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations, one in a series of ten statutory instruments, have the effect of introducing a 25m.p.h. speed limit in Gategny Esplanade and Salter Street.

These Regulations come into force on the 7th day of April, 2019.

No. 81 of 2018

THE PUBLIC RECORDS (FEES FOR REGISTRATION AND CERTIFIED COPIES OF DOCUMENTS) REGULATIONS, 2018

In pursuance of sections 1 and 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007 as amended, “The Public Records (Fees for Registration and Certified Copies of Documents) Regulations, 2018” made by the Policy & Resources Committee on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations increase the fees payable on registration at the Greffe of documents such conveyances and bonds.

These Regulations shall come into force on 1st January, 2019.

No. 82 of 2018

THE MARRIAGE FEES (GUERNSEY) REGULATIONS, 2018

In pursuance of sections 1 and 5 of the Fees, Charges and Penalties (Guernsey) Law, 2007 as amended, “The Marriage Fees (Guernsey) Regulations, 2018” made by the Policy & Resources Committee on 20th November, 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations increase the fees payable to the Registrar-General of Marriages under the Marriage Fees (Guernsey) Ordinance, 1978 for taking notice of marriage, solemnisation of marriage etc.

These Regulations shall come into force on 1st January, 2019.

No. 83 of 2018

THE FIRE SERVICES (FEES AND CHARGES) (GUERNSEY) REGULATIONS, 2018

In pursuance of sections 1A(1), 12(4AB), 24(2A) and 26A of the Fire Services (Guernsey) Law, 1989, The Fire Services (Fees and Charges) (Guernsey) Regulations, 2018, made by the Committee *for* Home Affairs on 10th December 2018, is laid before the States.

EXPLANATORY NOTE

These Regulations prescribe fees and charges for equipment and services provided by agreement with the Committee for Home Affairs (acting through the Guernsey Fire & Rescue Service) ("**the Committee**"), fees for notification of controlled premises, and charges in respect of mandatory consultation with the Committee.

These Regulations come into force on the 1st January 2019.

No. 84 of 2018

THE HEALTH SERVICE (PAYMENT OF AUTHORISED APPLIANCE SUPPLIERS) (AMENDMENT) REGULATIONS, 2018

In pursuance of sections 19 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 11th December 2018 are laid before the States.

EXPLANATORY NOTE

These Regulations set out the payments which may be made out of the Guernsey Health Service Fund for the supply of medical appliances.

These Regulations come into force on the 1st January, 2019.

No. 85 of 2018

THE HEALTH SERVICE (PAYMENTS OF AUTHORISED SUPPLIERS) (AMENDMENT) REGULATIONS, 2018

In pursuance of sections 14 and 35 of the Health Service (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 11th December 2018 are laid before the States.

EXPLANATORY NOTE

These Regulations set out the payments which may be made to pharmacists out of the Guernsey Health Service Fund, for the supply of pharmaceutical items.

These Regulations come into force on 1st January, 2019.

No. 86 of 2018

THE HEALTH SERVICE (MEDICAL APPLIANCES) (AMENDMENT) REGULATIONS, 2018

In pursuance of sections 18 and 35 of the Health Services (Benefit) (Guernsey) Law, 1990, made by the Committee *for* Employment & Social Security on 11th December 2018 and laid before the States.

EXPLANATORY NOTE

These Regulations set out the payments which made be made out of the Guernsey Health Service Fund for the supply of medical appliances.

These Regulations come into force on the 1st January, 2019.

No. 87 of 2018

THE SOCIAL INSURANCE (BENEFITS) (AMENDMENT) REGULATIONS, 2018

In pursuance of sections 15, 20, 39 and 116 of the Social Insurance (Guernsey) Law, 1978, made by the Committee *for* Employment & Social Security on 11th December 2018 are laid before the States.

EXPLANATORY NOTE

These Regulations replace the schedules to the Social Insurance (Benefits) Regulations, 2003, and prescribe the reduced rates of benefit payable from 7th January, 2019 to claimants who do not satisfy the conditions for entitlement to payment of the maximum rate of benefit.

These Regulations come into force on the 7th January, 2019.

No. 88 of 2018

THE LEGAL AID (GUERNSEY AND ALDERNEY) (SCHEMES AND MISCELLANEOUS PROVISIONS) ORDINANCE, 2018 (COMMENCEMENT) REGULATIONS, 2018

In pursuance of section 30 of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, made by the Committee *for* Employment & Social Security on 11th December 2018 are laid before the States.

EXPLANATORY NOTE

These Regulations bring the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018, into force on the 1st January, 2019.

The Ordinance is made under the Legal Aid (Bailiwick of Guernsey) Law, 2003, and places the current system of legal aid on a statutory footing.

No. 89 of 2018

THE GUERNSEY FINANCE LBG (LEVY) (GUERNSEY) (AMENDMENT) REGULATIONS, 2018

In exercise of the powers conferred on it by sections 3, 4, 25 and 28 of the Guernsey Finance LBG (Levy) (Guernsey) Law, 2010, the Guernsey Finance LBG (Levy) (Guernsey) (Amendment) Regulations, 2018, made by the Committee *for* Economic Development on 6 December 2018, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the Guernsey Finance LBG (Levy) (Guernsey) Regulations, 2010 by providing that for the purposes of the Guernsey Finance LBG (Levy) (Guernsey) Law, 2010 –

- (a) the amount of the levy in respect of each full time employee of the licensed person in question shall be £125 in respect of 2019 and subsequent years, with reductions for licensees who become subject to the levy in the course of the year, and
- (b) the maximum amount payable by a licensed person by way of levy shall be unlimited in respect of 2019 and subsequent years (and therefore capped solely by reference to the number of full time employees).

These Regulations came into force on 1st January, 2018.

No. 90 of 2018

**THE INCOME TAX (SUBSTANCE REQUIREMENTS)
(IMPLEMENTATION) REGULATIONS, 2018**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Substance Requirements) (Implementation) Regulations, 2018" made by the Policy & Resources Committee on 13th December 2018, are laid before the States.

EXPLANATORY MEMORANDUM

These Regulations implement and enable the administration and enforcement in domestic law of substance requirements in respect of companies which are tax resident, and which carry out relevant activities and other specified classes or descriptions of business or activity, in Guernsey, in order to ensure that real economic activity is being carried on in Guernsey in respect of the profits and income of the companies in question.

No. 91 of 2018

NOTIFIABLE ANIMAL DISEASES ORDER, 2018

In pursuance of sections 1(4) and 33 of the Animal Health Ordinance, 1996 made by the Committee *for the* Environment & Infrastructure on 6th December, 2018, is laid before the States.

EXPLANATORY NOTE

This Order substitutes Schedule 1 to the Animal Health Ordinance, 1996 for a new Schedule 1 set out in the Schedule to this Order to reflect the list of diseases by the Office International des Epizooties (OIE) as significant in terms of animal health or important in terms of economic impact.

Schedule 1 to the 1996 Ordinance lists diseases that are notifiable animal diseases and compulsory slaughter diseases and the animals which are susceptible to those diseases for the purposes of controls on diseases set out in the Ordinance. In particular, all such diseases must be notified to the Committee under the Ordinance.

The main changes are:

1. to add Chronic Wasting Disease (affecting deer) and Sheep Scab (psoroptic or sarcoptic mange) (affecting sheep) to the list of notifiable disease,

2. to remove:

Avian Chlamydiosis (Psittacosis) (affecting poultry),
Echinococcus granulosus (Cystic Hydatid) (affecting sheep, goats and dogs),
Echinococcus multilocularis (Alveolar Hydatid) (affecting dogs and susceptible wild animals),
Enterovirus Encephalomyelitis (affecting pigs),
Enzootic Abortion of Ewes (Ovine Chlamydiosis) (affecting sheep and goats),
Filariasis (affecting sheep, goats, dogs and susceptible wild animals),
Fowl Cholera (Pasteurellosis) (affecting birds and any wild animal),
Fowl Pox (affecting poultry and wild birds),
Fowl Typhoid and pullorum disease (Salmonella enterica) (affecting poultry),
Infectious Bronchitis (affecting birds),
Infectious Coryza (Avibacterium) (affecting birds),
New World Screwworm (Cochliomyia hominivorax) (affecting cattle, buffalo, sheep, goats, camels, pigs, dogs, cats and susceptible wild animals),
Old World Screwworm (Cochliomyia bezziana) (affecting cattle, buffalo, sheep, goats, camels, pigs, poultry and other susceptible birds, rabbits and hares, dogs, cats and susceptible wild animals),
Porcine Cysticercosis (affecting pigs), and
Surra (Trypanosoma evansi) (affecting cattle, buffalo, horses and camels),

from the list of notifiable diseases, and

3. to substitute "Paramyxovirus of pigeons" for "Paramyxovirus 1 in pigeons" in the list of notifiable diseases. There are some additional minor amendments to the list of notifiable diseases.

The order comes into force on 6th December, 2018.

No. 93 of 2018

**THE INCOME TAX (SUBSTANCE REQUIREMENTS)
(IMPLEMENTATION) (AMENDMENT) REGULATIONS, 2018**

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Substance Requirements) (Implementation) (Amendment) Regulations, 2018" made by the Policy & Resources Committee on 19th December 2018, are laid before the States.

EXPLANATORY MEMORANDUM

These Regulations amend the Income Tax (Substance Requirements) (Implementation) Regulations, 2018, which implement and enable the administration and enforcement in domestic law of substance requirements in respect of companies which are tax resident, by disapplying the Regulations from foundations; clarifying the position of business carried on in partnership; empowering the optional striking off of companies in the first and third accounting periods of default where the Director decides that there is no realistic possibility of the company complying with the substance requirements applicable in respect of it; amending section 4 of the Law in respect of company residence; and by making all necessary consequential changes.

No. 94 of 2018

THE BOARDING PERMIT FEES ORDER, 2019

In pursuance of section 17 of the Tourist Law, 1948, as amended, "The Boarding Permit Fees Order 2019", made by the Committee *for* Economic Development on 20th December 2018, is laid before the States.

EXPLANATORY NOTE

This Order prescribes the fees payable by an applicant for a boarding permit valid during the period 1st April 2019 to 31st March 2020 and replaces "The Boarding Permit Fees Order, 2018".

The Order comes into force on 1st April 2019.

The full text of the statutory instruments can be found at:
<http://www.guernseylegalresources.gg/article/163343/2018>

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE ELECTRONIC TRANSACTIONS (ELECTRONIC AGENTS) (GUERNSEY) ORDINANCE,
2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019", 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 sections 14(1) and 21 of the Electronic Transactions (Guernsey) Law, 2000.

Section 2 of the Ordinance makes provision for the legal effect of actions carried out by means of an electronic agent (as defined in section 5 of the Ordinance) in the context of the making, formation, creation, delivery, execution, performance and termination of contracts.

Section 3 establishes a rebuttable presumption that a person who has used an electronic agent for the purposes of making, forming or creating a contract intended to create a legally binding contract.

Sections 4 and 5 provide that nothing in the Ordinance prejudices the operation and application of the rules of private international law or the exemptions from the application of the Law conferred by the Electronic Transactions (Exemptions) Order, 2001.

The Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019

THE STATES, in pursuance of their Resolution of the 25th October, 2018^a, and in exercise of the powers conferred on them by sections 14(1) and 21 of the Electronic Transactions (Guernsey) Law, 2000, as amended^b and all other powers enabling them in that behalf, hereby order:-

Legal effect of actions carried out by means of an electronic agent.

1. Sections 2 and 3 make provision for the legal effect of actions carried out by means of an electronic agent.

2. (1) A contract or any provision thereof shall not be denied legal effect, validity, enforceability or admissibility solely because its making, formation, creation or delivery involved the action or use of one or more electronic agents.

(2) An action executing, performing or terminating a contract shall not be denied legal effect, validity, enforceability or admissibility solely because it involved the action of one or more electronic agents.

(3) A contract may be made, formed or created by the interaction

^a Article XII of Billet d'État No. XXIII of 2018.

^b Order in Council VIII of 2000; as amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII of 2003); the Electronic Transactions (Obligation to use Electronic Form) (Guernsey) Ordinance, 2014 (No. XIV of 2014); the Organisation of States' Affairs (Transfer of Functions) Ordinance, 2016 (No. IX of 2016); the Electronic Transactions (Cheque Imaging) (Guernsey) Ordinance, 2017 (No. XXIV of 2017).

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.

(4) A contract may be made, formed or created by the interaction of an electronic agent, acting on behalf of one party, and a natural person, acting on his or her own behalf or for another person, even where no natural person on whose behalf the electronic agent was acting was aware of, or reviewed, the electronic agent's actions or the resulting terms.

(5) A contract may be made, formed or created 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 natural person on whose behalf the electronic agent was acting was aware of, or reviewed, the information, the electronic agent's actions, or the resulting terms.

(6) An electronic agent may act on behalf of one or more parties to the same transaction.

(7) For the purposes of this section "**contract**" includes a document, record, notice or instrument producing legal consequences.

(8) The provisions of this section are for the avoidance of doubt.

Presumption of intention to create a legally binding contract.

3. Where an electronic agent has acted on behalf of a person for the purposes of the making, formation or creation of a contract, there is a rebuttable presumption that that person intended to create a legally binding contract.

Nothing to prejudice the rules of private international law.

4. The provisions of this Ordinance are without prejudice to the operation and application of the rules of private international law (and accordingly the legal effect, validity, enforceability and admissibility of a contract or any provision thereof will continue to be determined by the system of law applicable to the contract or that provision, or governing its legal effect, validity, enforceability or admissibility, according to the rules of private international law).

Ordinance not applicable to transactions covered by Exemptions Order.

5. The provisions of this Ordinance do not apply to transactions, matters or things exempted from the application of sections 1 to 5 and 8 of the Electronic Transactions (Guernsey) Law, 2000 by the provisions of the Electronic Transactions (Exemptions) Order, 2001^c.

Interpretation.

6. In this Ordinance "**electronic agent**" means 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.

Citation.

7. This Ordinance may be cited as the Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019.

Commencement.

8. This Ordinance shall come into force on the 1st March, 2019.

^c Guernsey Statutory Instrument No. 13 of 2001.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

THE ELECTRONIC TRANSACTIONS (ELECTRONIC AGENTS) (GUERNSEY) ORDINANCE, 2019

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

10th January, 2019

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 ("**the Committee**") requests that the draft Electronic Transactions (Electronic Agents) (Guernsey) Ordinance, 2019 (the "**draft Ordinance**") be considered at the States' meeting to be held on 27th February 2019.

The draft Ordinance supports the implementation of the States of Guernsey's Economic Development Strategy and, more specifically, the "Objectives for a fintech foundation" set out in the Financial Services Policy Statement that was published jointly by the Committee and Guernsey Finance on the 7th December 2018.

The Committee believes it to be important that the draft Ordinance is considered by the States at the first available opportunity, to maintain momentum in the implementation of the Economic Development Strategy and the Finance Sector Policy Framework.

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 LAND PLANNING AND DEVELOPMENT (CERTIFICATES OF LAWFUL USE)
ORDINANCE, 2019**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019", 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 certificates of lawful use under the Land Planning and Development (Guernsey) Law, 2005 so as to allow an application to be made to regularise unlawful changes of use where a compliance notice cannot be issued in respect of that unlawful change of use under the Law, and the use does not amount to a contravention of a compliance notice in force at the time of the application. It also provides for a right of appeal against the refusal of a certificate, and makes consequential amendments to other planning legislation.

The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019

THE STATES, in pursuance of their Resolutions of the 8th June, 2017^a, and in exercise of the powers conferred on them by sections 21, 22, 27, 68(3), 81 and 89 of the Land Planning and Development (Guernsey) Law, 2005^b, and all other powers enabling them in that behalf, hereby order:-

PART I

POWER TO PROVIDE FOR CERTIFICATES OF LAWFUL USE

Amendment of power to provide by Ordinance for certificates.

1. (1) Section 22 (planning status, certificates and opinions) of the Law is amended as follows.

(2) After subsection (2) insert -

"(3) For the purposes of this Law insofar as it relates to control of development, an existing use is lawful at any time if –

(a) no compliance notice may be issued under this Law in respect of the use because –

^a Article VIII of Billet d'État No. XI of 2017.

^b Order in Council No. XVI of 2005 as amended by Order in Council No. XIII of 2010, Ordinance Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007, No. XVIII of 2011 and Nos. IX and XI of 2016.

- (i) the time for the issuing of a compliance notice has expired, or
 - (ii) the unlawful material change of use occurred before the date of commencement of Part V of the Law, and
- (b) the use –
 - (i) neither constitutes a contravention of any measures required by a compliance notice or an interim compliance notice then in force, nor
 - (ii) is the subject of any proceedings instituted under the repealed enactments.

(4) For the avoidance of doubt, in subsection (3) "use" does not include a use arising from a material change of use within the meaning of the building regulations."

PART II

CERTIFICATES OF LAWFUL USE

Application for a certificate of lawful use.

2. (1) An owner of land may make an application to the Authority for it to issue a certificate as to the lawfulness of any existing use of that land.

- (2) An application under subsection (1) must –
- (a) be made on a form supplied by the Authority and include the particulars specified in that form,
 - (b) be accompanied by -
 - (i) copies of a plan which clearly and accurately identifies the location of the land to which the application relates,
 - (ii) copies of a block layout plan which –
 - (A) clearly and accurately identifies the land to which the application relates, and
 - (B) where the application relates to two or more uses, indicates to which part of the land each use relates,
 - (iii) such evidence verifying the information included in the application as the applicant can provide,
 - (iv) the fee required to accompany the application in accordance with the Land Planning and Development (Fees and Commencement)

Ordinance, 2008^c,

and in making an application the applicant must have regard to any guidance in relation to the making of an application under this section issued by the Authority from time to time.

- (3) The form supplied by the Authority must –
 - (a) require the applicant to –
 - (i) specify the land to which the application relates,
 - (ii) describe the use to which the application relates,
 - (iii) state the date on which each use began,
 - (iv) specify the name of any use class which the applicant considers applicable to the use,
 - (v) specify the applicant's reasons for regarding the use as lawful, and
 - (b) specify the number of copies of the plans required under subsection (2)(b) for the description of

^c Ordinance No. XLI of 2008 as amended by Ordinance No. XVIII of 2011 and No. IX of 2016, G.S.I. No. 6 of 2010, No. 11 of 2012, No. 47 of 2012, and No. 29 of 2017.

application in question.

(4) The Authority may request the applicant in writing to supply such further information in writing, including plans or drawings, as it may consider necessary to determine an application.

Issuing and effect of certificate of lawful use.

3. (1) On an application under section 2, the Authority must issue a certificate of lawful use for the relevant use set out in subsection (2), if it is satisfied that it has been provided with information satisfying it of the lawfulness of that use, at the time of the application; and in any other case it must refuse the application.

(2) The use referred to in subsection (1) is –

- (a) the use described in the application under section 2,
or
- (b) the use described in the application as modified or substituted by the Authority having considered the application.

(3) A certificate under this section must –

- (a) specify the land to which it relates,
- (b) describe the use in question (including, where relevant, the use class),
- (c) give the reasons for determining that the use is lawful,

(d) specify the date of the application for the certificate,
and

(e) be in the form set out in the Schedule or in a form
substantially to the same effect.

(4) A certificate under this section may be issued –

(a) for all or part of the land specified in the application,
and

(b) where the application specifies two or more uses, for
any one or more of the uses.

(5) The lawfulness of any use, at the time of the application, for
which a certificate is in force under this section is conclusively presumed.

Notification of decision on an application for a certificate of lawful use.

4. (1) The Authority must give the applicant notification of its
decision on an application under section 2 as soon as reasonably possible after it has
made its decision.

(2) Where an application for a certificate is refused, in whole or in
part or where a certificate is issued for a modified or substituted description of use
from that described in the application to which the certificate relates, the notification
of the decision must –

(a) state the reasons for the decision,

- (b) specify that there is a right of appeal to the Planning Tribunal against the decision under section 68 of the Law on the ground that the Authority made a material error as to the facts of the case, and
- (c) give brief particulars of the period within which and the manner in which an appeal must be made.

Revocation of certificate of lawful use.

5. (1) The Authority may, subject to subsections (2) and (3), revoke in whole or in part a certificate issued under section 3 if, on the application for the certificate –

- (a) a statement was made or document used which was false in a material particular, or
- (b) any material information was withheld.

(2) Before revoking a certificate under subsection (1), the Authority must give notification of the proposed revocation to –

- (a) the owner of the land affected,
- (b) the occupier of the land affected, and
- (c) any other person who in its opinion will be affected by the revocation.

(3) A notification issued under subsection (2), must invite the person on whom the notification is served to make representations on the proposed revocation to the Authority within 14 days starting from the date of service of the notification and the Authority must not revoke the certificate until all such periods for making such representations have expired.

(4) The Authority must give notification of any revocation under this section to every person on whom notification of the proposed revocation was served under subsection (2).

PART III APPEALS

Right of appeal against decision in relation to a certificate of lawful use.

6. (1) Where the Authority –

- (a) refuses, or refuses in part, an application for a certificate of lawful use, or
- (b) issues a certificate of lawful use for a modified or substituted description of use from that described in the application to which the certificate relates,

the applicant may appeal to the Planning Tribunal on the ground that the Authority made a material error as to the facts of the case.

(2) In accordance with section 68(3) of the Law, the right of appeal referred to in subsection (1), is for all purposes under the Law, an appeal under section 68 of the Law.

PART IV
CONSEQUENTIAL AMENDMENTS TO PLANNING LEGISLATION

Consequential amendments to the Law.

7. (1) The Law is amended as follows.

(2) After section 48(8) (issue, service and withdrawal of compliance notice), add the following subsection –

"(8A) It is a defence for a person charged with an offence under the repealed enactments in respect of a breach of planning control occurring before the date of the commencement of this Law, to prove that a valid certificate has been issued under section 22, evidencing the lawfulness of anything alleged in the proceedings to be a breach of planning control."

(3) After section 57(3) (unlawful development and breach of the building regulations), add the following subsection –

"(4) It is a defence for a person charged with an offence under subsection (1) to prove that a valid certificate has been issued under section 22, evidencing the lawfulness of anything alleged in the proceedings to be a breach of planning control."

(4) For section 63(4) (evidential presumptions) substitute -

"(4) Without prejudice to subsection (3), the date when a material change in the use of any land occurred need not be proved except in the case of an appeal under –

- (a) section 70(1)(c), or
- (b) section 68 against a decision of the Authority on an application for a certificate of lawful use where the material error alleged relates to the date when a material change in the use of land occurred."

(5) In section 68(4) (time within which appeal must be made) –

- (a) in paragraph (a), at the beginning insert "in the case of an appeal under subsection (1)", and
- (b) at the end of paragraph (a), omit "or", and after paragraph (b) insert –

"or,

- (c) in the case of an appeal under this section against a decision on an application for a certificate of lawful use, the period of 3 months beginning with the date on which the Authority makes its decision."

(6) In section 69(1)(a) (determination by Planning Tribunal of appeals under section 68), after "section 68(1)" insert " or under section 68 against a decision on an application for a certificate of lawful use".

(7) In section 84(1)(b)(i) (entry on land for authorised purposes), for "any permission or approval" substitute "any permission, approval or certificate".

(8) In section 91(1)(a) (general offences: false information and obstruction), for "licence or consent" substitute "licence, consent or certificate".

(9) In Schedule 2 (interpretation), after the definition of "**building regulations**" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by the Authority under section 22 of the Law,".

Consequential amendments to provisions relating to the register of planning applications.

8. (1) The Land Planning and Development (General Provisions) Ordinance, 2007^d is amended as follows.

(2) For the heading to Part III substitute "REGISTRATION AND PUBLICITY".

(3) For the heading to section 9 (register of planning applications) substitute "**Register of applications for planning permission and certificates of lawful use etc.**".

(4) After section 9(2) insert the following subsection –

^d Ordinance No. XXI of 2007 as amended by Ordinance No. IX of 2016.

"(2A) The Authority shall also keep on the register to be maintained by it under section 21 of the Law the following information in relation to any application for a certificate of lawful use duly made to the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019 –

- (a) the applicant's name and address,
- (b) the date of the application,
- (c) the address or location of the land to which the application relates,
- (d) the description of the use included in the application,
- (e) brief particulars of any decision made by –
 - (i) the Authority on the application,
 - (ii) the Planning Tribunal concerning a decision of the Authority on the application, and
 - (iii) the Royal Court in relation to a decision of the Planning Tribunal on the application,

and the register may contain such other information and documents in relation

to such applications and any decisions in relation to them as the Authority considers appropriate."

- (5) In section 9(3), for "(1) and (2)" substitute "(1) to (2A)".

Consequential amendments to the Land Planning and Development (Appeals) Ordinance, 2007.

9. (1) The Land Planning and Development (Appeals) Ordinance, 2007^e is amended as follows.

- (2) In section 2(3)(a)(v) (notice of appeal) –

(a) after item (A) omit the word "or",

(b) after item (B) add –

"or,

(C) an application for a certificate of lawful use, the certificate of lawful use, if any, issued in relation to that application,".

(3) In section 21(1) (interpretation), after the definition of "**building regulations**" insert the following definition –

""**certificate of lawful use**" means a certificate of lawful use issued by

^e Ordinance No. XXVII of 2007 as amended by Ordinance No. XLI of 2008, No. XVIII of 2011 and Nos. IX and XI of 2016.

the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,".

Consequential amendments to the Land Planning and Development (Fees and Commencement) Ordinance, 2008.

10. (1) The Land Planning and Development (Fees and Commencement) Ordinance, 2008^f is amended as follows.

(2) After Part IIA insert –

"PART IIB

FEES TO ACCOMPANY APPLICATIONS AND APPEALS IN RELATION TO
CERTIFICATES OF LAWFUL USE

Fee to accompany application for a certificate of lawful use.

4F. (1) An application for a certificate of lawful use must be accompanied by a fee of £250.

(2) The Authority may by regulations amend subsection (1) so as to substitute the fee payable.

Fee to accompany an appeal in relation to an application for a certificate of lawful use.

4H. (1) A notice of appeal under section 68(5) of the Law in relation to an appeal referred to in section 6 of the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019, must be

^f Ordinance No. XLI of 2008 as amended by Ordinance No. XVIII of 2011, No. IX of 2016, G.S.I. No. 6 of 2010, Nos. 11 and 47 of 2012, No. 15 of 2015 and No. 29 of 2017.

accompanied by a fee of £250.

(2) The Planning Tribunal need not take any further action in relation to the appeal until the whole of the fee is paid including, for the avoidance of doubt, publication of the notice of appeal under section 14 of the Appeals Ordinance.

(3) The Committee for the Environment and Infrastructure may by regulations amend subsection (1) so as to substitute the fee payable."

(3) In sections 9A and 9B (relating to reduction, waiver or refund of appeal fees) for each reference to "Part IIA" substitute "Part IIA or IIB".

(4) In section 13 (interpretation), before the definition of "Chairman of the Planning Panel" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,".

Consequential amendments to the Land Planning and Development (Appeals) Regulations, 2008.

11. (1) The Land Planning and Development (Appeals) Regulations, 2008^g are amended as follows.

(2) In regulation 1(a) (refusal by appellate body to hear appeals), for subparagraph (i) substitute –

^g G.S.I. No. 8 of 2008 as amended by Ordinance No. IX of 2016.

"(i) with respect to an appeal under section 68 or 70 of the Law in accordance with –

(A) the Law and the Appeals Ordinance,
and

(B) the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019, in the case of an appeal under section 68 of the Law against a decision on an application for a certificate of lawful use,".

(2) In regulation 9 (interpretation), after the definition of "**building**" insert –

""**certificate of lawful use**" means a certificate of lawful use issued by the Authority under the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,".

PART V

GENERAL PROVISIONS

Interpretation.

12. In this Ordinance, unless the context requires otherwise –

"**the Law**" means the Land Planning and Development (Guernsey) Law, 2005,

"**lawfulness**" is construed in accordance with section 22(3) and (4) of the Law,

"**notification**" means notification in writing, and

"**owner**" includes a usufruitier or a person with a droit d'habitation.

Citation.

13. This Ordinance may be cited as the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019.

Commencement.

14. This Ordinance shall come into force on the 6th May, 2019.

SCHEDULE

Section 3(3)(e)

CERTIFICATE OF LAWFUL USE

The Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019,
section 3(3)

CERTIFICATE OF LAWFUL USE

The Development & Planning Authority hereby certify that on [*insert date of application for certificate*] the use[s]* described in Appendix 1 to this certificate in respect of the land specified in Appendix 2 to this certificate and edged/hatched/coloured* [*insert colour*] on the plan attached to this certificate, was/were* lawful within the meaning of section 22(3) and (4) of the Land Planning and Development (Guernsey) Law, 2005 for the following reason(s):

.....
.....
.....

Signed.....(for and on behalf of the
Development & Planning Authority)

Date.....

Appendix 1

[*insert full description of the use, if necessary, by reference to details in the application or submitted plans, including a reference to the use class, if any, specified in the Land Planning and Development (Use Classes) Ordinance, 2017, within which the use referred to in this certificate falls.*]

Appendix 2

[*insert address or location of the site.*]

Notes

1. This certificate is issued solely for the purposes of section 22 of the Land Planning and Development (Guernsey) Law, 2005 ("the Law") and section 3 of the Land Planning and Development (Certificates of Lawful Use) Ordinance, 2019.
2. It certifies that the use[s]* specified in Appendix 1 taking place on the land described in Appendix 2 was/were* lawful within the meaning of section 22(3) and (4) of the Law on the date of the application to the Authority for the certificate and, therefore, a compliance notice may not be served in respect of those use[s] under Part V of the Law on that date.
3. This certificate applies only to the extent of the use[s]* described in Appendix 1 and to the land specified in Appendix 2 and identified on the attached plan. Any use[s]* which is/are* materially different from that/those* described or which relate/s* to other land may render the owner or occupier liable to enforcement action.
4. This certificate does not certify the lawfulness of any use arising from a material change of use within the meaning of the Building (Guernsey) Regulations, 2012^h.

* = delete where appropriate

^h G.S.I. No. 11 of 2012 as amended by Ordinance No. IX of 2016.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

HEALTH AND CARE REGULATION IN THE BAILIWICK

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Health and Care Regulation in the Bailiwick', dated 7th January 2019, they are of the opinion:

1. To agree that there should be a phased establishment of a structured, independent and proportionate statutory regulatory regime of health and care for the Bailiwick of Guernsey, which includes the following elements:
 - a) a regulatory regime overseen by an independent Commission;
 - b) provisions of the existing Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012 (which would be repealed and replaced); and appropriate provisions to save the effect of Ordinances and subordinate legislation made under or referred to in that Law or otherwise relating to the medical and health professions;
 - c) Ordinances and other subordinate legislation to regulate persons, premises and systems involved in providing health and care services within the Bailiwick; and
 - d) consultation with the relevant committees of the States of Alderney and the Chief Pleas of Sark, as appropriate;
2. To agree that the regulatory regime of health and care for the Bailiwick of Guernsey shall be implemented by and under a Bailiwick-wide enabling Law;
3. To direct the Committee *for* Health & Social Care to begin work on a prioritised programme to develop regulatory standards and/or identify designated accreditation schemes for health and care services as appropriate, in consultation with providers, service users and other relevant stakeholders;
4. To agree that the Committee is to report back to the States in due course with proposals to direct the preparation of Ordinances made under a general

enabling Law to give effect to regulatory standards and designated accreditation schemes in respect of particular services, and to otherwise regulate these services (persons, premises and systems as appropriate);

5. To agree that all reasonable opportunities should be pursued to achieve a joint Commission with Jersey;
6. To agree that the Commission should be established by the Committee *for* Health & Social Care on a 'shadow' basis until it is fully constituted in law, and to direct the Policy & Resources Committee to take account of the costs of operating the Commission when recommending Cash Limits for the Committee *for* Health & Social Care for 2020 and subsequent years;
7. To rescind the resolutions from Article XI of Billet d'État XX 2007 in respect of Residential and Nursing Homes and to direct the Committee *for* Health & Social Care to establish suitable and effective regulatory standards for care homes and care agencies under the Law described in Proposition 1 pursuant to its prioritised programme of work; and
8. To direct the preparation of such legislation as may be necessary to give effect to the above Propositions.

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 HEALTH & SOCIAL CARE

HEALTH AND CARE REGULATION IN THE BAILIWICK

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

7th January, 2019

Dear Sir

1. Executive Summary

- 1.1 People who use health and care services¹ within the Bailiwick of Guernsey – at home or in a care home, in a hospital or at their GP surgery, at the opticians or the dentist, or anywhere else they may receive treatment or care – should reasonably expect to be kept safe and free from avoidable harm. Through sensible and proportionate regulation of health and care providers² it is possible to support all islanders in receiving treatment and care of the best quality that the Bailiwick can offer.

¹ “Health and care services” is a term given in this document which includes “Health Care” and “Social Care”. Health Care includes all forms of health care (including nursing care) provided to individuals whether relating to physical or mental health, and also includes procedures that are similar to forms of medical or surgical care but are not provided in connection with a medical condition”. Social Care includes all forms of personal care and other practical assistance, and all forms of personal support, provided for individuals who by reason of their age, illness, disability, pregnancy, childbirth, dependence on alcohol or drugs, or by any other reason, are in need of such care, assistance or support. Nursing Care means services that, by reason of their nature or circumstances, including the need for clinical judgement, should be provided by a nurse, including – (a) providing care; (b) assessing, planning and evaluating care needs or the provision of care; and (c) supervising or delegating the provision of care. Personal care means assistance in daily living that does not need to be provided by a nurse, being – (a) practical assistance with daily tasks such as eating, washing or dressing; or (b) prompting a person to perform daily tasks. Personal support includes supervision, guidance, counselling (other than counselling that is health care) and other support in daily living that is provided to an individual as part of a programme of such support.

² “Provider” means the person or organisation that operates a health or care service (effectively the business owner).

- 1.2 The single most important thing for Islanders is receiving the service that they need. Regulation must not stifle service provision by tying it up in bureaucracy nor make practitioners so wary of punishment that they are afraid to try anything new or engage positively with those who may be responsible for investigating incidents or practices that may be a cause for concern.
- 1.3 People who use services need to know what they can expect, and providers of services know what is expected of them. It is vital that regulation works to promote quality and minimise harm within the health and care system, that regulators can take action to prevent things from going wrong, and step in to address concerns or make changes where needed, and that it strengthens patient and public trust in health and care services.
- 1.4 The Committee *for* Health & Social Care (“the Committee”) in its Partnership of Purpose Policy Letter (Billet d’État XXIV of 2017), committed to *“improving health outcomes through effective commissioning and independent regulation”* and is determined to develop a system of health and care regulation for the Bailiwick that is proportionate and fair. The development of comprehensive regulation for health and care is part of the ‘H&SC Regulatory & Support Policy’ priority of the Policy & Resource Plan. To support this, the Committee commissioned Professor Dickon Weir-Hughes to work with its staff to review options for health and care regulation based on different systems around the world.
- 1.5 The approach recommended by Professor Weir-Hughes would, in his opinion, allow the Bailiwick to become a world leader in terms of regulating health and care. The Committee endorsed his report (which can be found in Appendix 1) and its officers have worked these proposals into a more detailed set of recommendations, as set out in this Policy Letter.
- 1.6 Professor Weir-Hughes’s report recognised that Guernsey need not reinvent the wheel when it comes to setting standards for health and care services. There are a whole range of internationally-accepted schemes for evaluating and accrediting best practice among various services, such as the CHKS scheme already used among Primary care practices; the Royal College of Psychiatrists’ Accreditation Scheme used for mental health services; or the Magnet® recognition scheme for acute and community nursing.

- 1.7 The Committee will identify best practice evaluation and accreditation schemes for each service and profession to be regulated in Guernsey. The schemes which it thinks are a good fit for Guernsey and will deliver the quality care expected, will be established as 'designated accreditation schemes' through Ordinances or subordinate³ legislation. Providers will be required to sign up to the scheme and keep their accreditation up-to-date. This closely reflects the process already in place for nurses, doctors and other allied health professionals, who are required to be registered with their professional body in the UK in order to be registered to practice in Guernsey.
- 1.8 The Committee will choose proven and effective recognition schemes from around the world – schemes which set high quality standards for providers and schemes which are backed by evidence demonstrating that they really do improve performance among those who use them.
- 1.9 In some instances, however, there may not be a ready-made scheme that is a good fit for Guernsey, or the schemes that exist may require some adaptation. Where this is the case, the Committee will be able to set its own regulatory standards.
- 1.10 There will be an independent Commission which is responsible for the regulation of health and care across the Bailiwick. The Commission's role and powers will be defined under an Enabling Law. Putting the Commission on a statutory footing helps to ensure that it is able to do its job without inappropriate political interference and, where necessary, equally holding public sector and private sector health and care providers to account.
- 1.11 The model is sufficiently similar to that in Jersey that the two Bailiwicks should be able to share resources and support each other – perhaps ultimately moving to a single Channel Islands regulator. There is renewed enthusiasm for this approach following the 2018 General Election in Jersey, and other senior officers in both islands are exploring how this could be done.
- 1.12 The Commission's role will principally involve monitoring providers' compliance with standards and schemes, rather than active inspections of providers. However, the Commission will have the power to step in and investigate, or take regulatory action, if it has reason to believe that a provider is not

³ For the avoidance of doubt, subordinate legislation includes Regulations made by the Committee *for* Health & Social Care

complying with required standards or schemes. This would happen, for example, if an accreditation process highlighted concerns about their practice, or if the Commission became aware of concerns from other sources.

- 1.13 The health and care services to be regulated by the Commission are very diverse, and staffing the Commission with experts from every area would result in a very large team. However, this would be disproportionate to the size of the Bailiwick and its health and care services, and would result in the team being severely under-utilised for most of the year. Instead, it is proposed that the Commission should have only a small core, permanent staff, with the ability to draw on agreed external expertise to support investigations into different areas, where needed.
- 1.14 As in Jersey, it is proposed that the new regulatory regime will be introduced gradually. Through this Policy Letter, the Committee is seeking the States' approval to draft a new Enabling Law (similar in scope to the Regulation of Care (Jersey) Law 2014⁴) which will establish the general scope of health and care services regulation and allow the Commission to be formed. In order to regulate health and care services holistically, this Enabling Law should incorporate the provisions of the Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012, which should be consequentially repealed.
- 1.15 Enforcement powers of the Commission, such as improvement notices, enforcement notices and fines, will also be introduced on a gradual basis, following consultation. Standards, schemes and sanctions alike will be introduced through Ordinances and subordinate legislation.
- 1.16 The Committee will introduce designated accreditation schemes or regulatory standards on a priority basis – beginning with the areas of highest risk (which are not currently regulated) – after consultation with the new Commission and those affected. Based on its analysis of risks, the Committee considers that the first area for which regulation should be developed include the unregistered workforce (that is, healthcare assistants and carers who look after people within their own home) and acute hospital services. Other areas of concern are health care premises, including hospitals and dental surgeries; psychotherapists, counsellors and alternative therapists; and those providing clinical cosmetic procedures. In each case a key consideration for the

⁴ <https://www.jerseylaw.je/laws/revised/Pages/20.820.aspx>

Committee is the level of risk posed to vulnerable people if these services are not regulated.

- 1.17 These priorities should be seen in the context that some of the highest risk services and professions such as doctors, nurses, pharmacists, care home providers and others – are already regulated by their respective professional bodies (e.g. the General Medical Council, Nursing and Midwifery Council and the General Pharmaceutical Council) and/or within extant local legislation. It should be noted that where effective statutory professional regulation already exists, this system will not add another layer of bureaucracy, as the existing statutory regulation will where possible simply be brought under the auspices of the new Enabling Law.
- 1.18 In some cases, although there is statutory regulation already in place, the existing regime is inadequate and needs to be strengthened. This is especially true of the regulation around residential and nursing care homes, where the current regime lacks any statutory powers of enforcement. In developing this new comprehensive regulation system, the Committee recommends replacing those areas of local law with provisions made under the new Enabling Law.
- 1.19 The Committee hopes that the drafting of the new Enabling Law and proposals for Ordinances under it will commence in 2019. This will include working up a detailed operational plan and consulting with health and care providers in respect of fees and charges: as with most regulators, it is anticipated that the Commission will raise a proportion of its income from a States' grant and the remainder from regulated services. This will enable the Committee to include a full funding request in respect of the Commission in its 2020 Budget submission, with a view to establishing the Commission from, or as soon as possible after, 1 January 2020.⁵
- 1.20 The Committee is mindful that the cost of regulation, like its scope, must also be proportionate to a small Island community, and has included anticipated figures in this Policy Letter based on the most up-to-date information available to it. These figures will be finalised in the course of 2019.

⁵ The Commission may initially be established in 'shadow' form, until the relevant parts of the new Enabling Law and subordinate legislation come into force. This is discussed further in the body of the Policy Letter.

- 1.21 The Committee believes that the overall cost of the Commission will be £368,000 per annum. This will not all be new expenditure: for example, HSC already employs an Inspections Officer and a Registrations Officer to oversee nursing and residential care homes – roles which could be incorporated into the Commission in due course. After factoring in these existing costs the additional cost of Regulation of Health and Care is estimated to be £272,000 per annum. Some of this cost will be offset by fees from regulated providers, such as the £78,000 per annum already collected from care homes. It is proposed that the current fees and charges will be revised and will include other providers of health and care services, after prior consultation with the relevant stakeholders.
- 1.22 The approach to regulation set out in this Policy Letter is consistent with the core principles of the Partnership of Purpose for health and care – **user centred care**, where people are valued and listened to; **proportionate governance** with clear boundaries between provision and regulation; a **focus on quality**, understanding the impact of services on health outcomes, patient safety and patient experience; and a **partnership approach** which recognises the value of public, private and third sector organisations in meeting the Bailiwick’s health and care needs.

2. Regulation in the Bailiwick – What do we have now?

- 2.1 Regulation in Guernsey, as in many other places, has developed gradually over many years – a combination of reflecting developments in the United Kingdom and responding to local circumstances with proactive initiatives, including both statutory and voluntary regulation.
- 2.2 Over recent years, the Nursing and Midwifery Council (NMC) and the General Medical Council (GMC) have called on the Bailiwick to build on these foundations and introduce a full independent and robust regulatory regime. The implementation of a new Target Operating Model for health and care in the Islands, through the Partnership of Purpose, provides an opportunity for the Committee to do so, with a regime which is proportionate to the size, resources and requirements of the Bailiwick.
- 2.3 The UK, especially England, has one of the most complex health and care regulatory frameworks in the world. There is even a regulator of regulators, the Professional Standards Authority for Health and Social Care. Replicating this

web of regulation in a small island community would not be possible, desirable or proportionate. For this reason, this Policy Letter explores regulatory solutions that look far beyond the shores of the UK, aiming to put the Bailiwick in a position where Islanders benefit from a complete, proportionate and world-class system of protection from harm.

Types of Regulation

- 2.4 Statutory regulation of health and care in other jurisdictions normally takes two distinct forms: systems regulation and professional regulation. Health Inspectorate Wales is a systems regulator, which protects the public by regulating all healthcare facilities and services in the Welsh health system. The NMC is a professional regulator, which protects the public by regulating all members of the nursing and midwifery professions in the UK and the Crown dependencies.
- 2.5 A small number of statutory regulators have legislation that enables them to protect the public by regulating both systems and professionals. An example of this type of integrated regulator would be the General Pharmaceutical Council, which regulates pharmacists, pharmacy technicians, pharmacy premises and pharmacy training facilities in Great Britain. There is an emerging view amongst regulators worldwide that the public could benefit from more integrated regulation of this type and this is a recommendation of the (UK) Professional Standards Authority for Health and Social Care.

Systems regulation in Guernsey

- 2.6 In Guernsey, some statutory systems of regulation currently exist for community pharmacies, private nursing and residential homes and pharmaceutical manufacturing and wholesaling. There is also a regulatory regime in respect of children's nurseries and early years services, although that is outside the scope of this Policy Letter.
- 2.7 Community pharmacies, for example, are regulated by the Chief Pharmacist, whose role is defined in the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008, and who has extensive inspection and enforcement powers in respect of the safety of drugs and medicines. In terms of the misuse of drugs, this is a matter for criminal law. The Regulator would only become involved in terms of situations where a health and care professional's fitness to

practise was called into question as a result of the misuse of drugs. This investigation would be separate to any criminal proceedings.

- 2.8 The Nursing Homes and Residential Homes (Guernsey) Law, 1976, establishes a regime of registration and inspection for local care homes. However, the regime lacks meaningful regulatory powers to improve services or enforce sanctions where needed. The weakness of this regime has been of concern to successive States, with resolutions in 2007 directing the (then) Health and Social Services Department to bring this more in line with modern regulatory standards. This Policy Letter aims to discharge those resolutions.
- 2.9 There are also a range of regulatory powers attached to the Medical Officer of Health role, mostly related to hygiene and infectious diseases. This is a role which the States agreed to disband in December 2017, and the Committee is carrying out a review of relevant legislation to ensure that any important powers are transferred to other officers. The majority of those powers are likely to go to the Director of Public Health, Medical Director or Office of Environmental Health & Pollution Regulation – however, if the review identifies powers which fit best within a comprehensive approach to the regulation of health and care, those may be translated into regulatory standards and powers under this new regime.
- 2.10 In addition to the existing statutory regimes, there have also been some positive steps in respect of voluntary accreditation locally, such as the adoption of CHKS by local primary care (GP) practices. However, there are a number of forms of health and social care provision which are not covered by any form of regulation in Guernsey, including (but not exclusively):
- Advertisements for services⁶;
 - Agencies;
 - Chiropody & Podiatry practices;
 - Dental practices;
 - Psychotherapy and Counselling Practices;
 - Physiotherapy Practices; and
 - A number of States of Guernsey provided services.

⁶ With the exception of medicines and pharmacies, which are regulated under the Medicines Law 2008 in respect of advertisement, and use of titles or false representations as various medical or health professionals.

Professional regulation in Guernsey

2.11 In terms of professional regulation, the following regulatory bodies are among those that regulate individual care practitioners in Guernsey:

- General Chiropractic Council (GCC);
- General Dental Council (GDC);
- General Medical Council (GMC);
- General Optical Council (GOC);
- General Osteopathic Council (GOsC);
- General Pharmaceutical Council;
- Health and Care Professions Council (HCPC)⁷;
- Nursing and Midwifery Council (NMC).

2.12 Current Bailiwick legislation generally does not set out separate regulatory regimes for health professionals, but instead requires them to be registered with their professional body in the UK before they are allowed to practice in the Bailiwick. Judgments made by these UK bodies (such as whether a professional should be suspended from practice or struck off the register altogether) also have effect in Guernsey or in Alderney or Sark as the case may be.

2.13 The process for registration of doctors has recently been strengthened by the introduction of "revalidation" – a scheme created by the GMC to assess doctors' ongoing fitness to practise. To support this approach, the role of the Responsible Officer was created under the Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015. This role is held by a senior doctor and is responsible for overseeing and making recommendations about local doctors' fitness to practise. There is a further layer of oversight by the Registration Panel, which has a responsibility to review decisions made by the Responsible Officer where necessary. The Nursing and Midwifery Council also carries out revalidation on registered nurses and midwives.

⁷ Health and Care Professions Council (HCPC) regulates: arts therapists, biomedical scientists, chiropodists/podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists/orthotists, radiographers, social workers in England (due to change to Social Work England in 2018/19) and speech and language therapists.

2.14 The following practitioners are not regulated in Guernsey:

- Aesthetics (although some are regulated by GDC, GMC or NMC, this is not statutory);
- Carers working for care agencies and domiciliary/residential support workers;
- Complementary Therapists (e.g. Sports Injury and Rehabilitation, Acupuncture, Hypnotherapy, Herbal, Homeopathy, Bowen therapists or 'Bonesetters');
- New 'professions'⁸;
- Psychotherapists and counsellors; and
- Visiting services (by various private providers).

2.15 While health and care professionals within the Bailiwick are well-regulated by their UK regulatory bodies where these exist, there are acknowledged gaps and inconsistencies there, too. In the UK, for example, dental assistants (who rarely work unsupervised by a dentist) are regulated, whereas care support workers (many of whom work alone in the community with vulnerable people) are unregulated. This mismatch of regulation and risk is replicated in Guernsey at present.

A fragmented and deficient system

2.16 While some services and professions are well-regulated, the overall approach to regulation locally is fragmented and complex. There are significant gaps where services may operate without any monitoring of their safety, standards or quality of care. These are also instances where regulation does exist, for example in respect of residential and nursing homes, but the framework has become out of date, and does not reflect modern regulatory good practice or the renewed emphasis on proactive encouragement of incremental improvement.

2.17 Some concerning deficiencies in the current system include:-

⁸ New professions are new roles and professions which develop as the health and care sector evolves its scientific knowledge, understanding and practice. New professions can also evolve through reorganisation of health and care economies.

- **The absence of regulation for the domiciliary care agency system (home care sector)**

There is no legal requirement for agencies which provide care in people's own homes to ensure that their workers are trained or even police checked. This means that care may be provided without any oversight in place to ensure that staff are safe, competent and suitable to provide care.

People receiving care at home are especially vulnerable: not just for reasons connected directly to their health or care needs but also because they can be tremendously isolated behind their front door. This makes it all the more urgent to establish a regulatory framework for health care support workers and nursing assistants with suitable quality standards which will also reduce opportunities for individuals without the necessary skillset to move between employers undetected.

- **The absence of regulation for the majority of States of Guernsey services**

Most States-operated services are not regulated, although many of the professionals working within them are. While the Committee strives to deliver high quality services and ensure appropriate clinical governance arrangements are in place, the lack of independent standards and oversight is a risk. This lack is felt especially keenly when things go wrong, as they inevitably do from time to time.

In addition, the Committee wishes to establish a genuine partnership approach across the health and care system and it is an act of good faith to demonstrate that its own services will be subject to the same level of independent scrutiny as those provided by others. The States has already resolved in debate on the Committee's Partnership of Purpose Policy Letter that health and care services and facilities provided directly by the States (such as Hospital Services, Community Services and Children's Services) should be subject to clear Service Standards and inclusion in the regulatory regime would support this.

- **Lack of flexibility to respond to evolutions in health care provision**

Health and care services evolve gradually. From time to time, new roles are defined and new activities become routine. Current regulatory standards

have developed slowly and do not have the flexibility to adapt as services change. A modern regulatory framework would allow the States to introduce clear definitions for regulated activities as these emerge and to put in place tailored care standards reflecting Island life as the need arises.

- **Insufficient emphasis on safeguarding**

All care providers have a role to play in ensuring that their service users are safe and protected from abuse or exploitation. However, there is little statutory requirement to safeguard adults from harm or abuse at present. Although there are multi-agency safeguarding arrangements already in place, a modern regulatory regime would help to ensure that all providers have robust procedures in place to support those arrangements.

- **Lack of regulatory independence**

The various regulatory functions created under existing Guernsey legislation are currently discharged through the Office *of the* Committee for Health & Social Care, which also has a role as provider and commissioner of services. This lack of separation has caused concern locally for some time and the Partnership of Purpose Policy Letter reinforced the importance of clear boundaries between the provision of services and their regulation.

2.18 The absence of a consistent and trusted regulatory regime means that it is difficult both to demonstrate areas of existing excellence in health and care services and to rebuild confidence when things go wrong. Most importantly, the absence of robust standards of care and governance arrangements in certain areas of the health and care system leaves people who require care critically vulnerable in certain areas.

2.19 The risks associated with a lack of effective regulation have been demonstrated in other jurisdictions, sometimes with tragic consequences. These proposals are, therefore, a proactive step to ensure that people who use health and care services in the Bailiwick are kept safe and that those services continue to be delivered to the high standards that islanders rightly expect.

3. New Commission – Structure and Powers

- 3.1 In line with the strategic vision and direction of the Partnership of Purpose Policy Letter, the Committee is recommending that an independent statutory Commission should be set up as the body responsible for regulation of health and care services in the Bailiwick. This would include the regulation of persons, premises and systems.
- 3.2 As in Jersey, the Commission will be created through the proposed Enabling Law. The Committee would normally request and obtain advice from the Commission on the standards and schemes that are considered appropriate to regulate particular sectors of health and care services. The Committee would in turn recommend the most appropriate standards and schemes and a regulatory regime for the particular sector, for approval by the States. Ordinances would then be drafted to give the Commission powers to regulate health and care providers (including public sector services) in accordance with those standards and schemes. This statutory role will give the Commission a degree of independence from the States which will allow it to hold both public- and private-sector providers to account impartially.

Regulatory Standards

- 3.3 The first step is to draft and enact an Enabling Law that establishes the Commission as an independent statutory body and gives the States the power by Ordinance to prescribe or authorise the adoption (e.g. by subordinate legislation) of designated accreditation schemes or local standards and other appropriate regulatory measures. Subject to approval of this Policy Letter, the Committee will progress this during 2019.
- 3.4 The next step is then to determine suitable standards for each service, activity or profession which is to be regulated. This will be done gradually, starting with the areas of highest risk that are not presently regulated. Standards will be set through enactment of Ordinances or making of regulations by the Committee under the new Enabling Law. Once a standard is introduced for a particular type of service, the Commission will be responsible for regulating those services in accordance with it. The Committee will be responsible for bringing these standards forward, in accordance with its policy-making function, but will do this with the advice of (where appropriate) and in consultation with the

Commission, and in consultation with stakeholders in the sector to be regulated.

- 3.5 In some cases, the Committee may need to develop specific local standards which reflect the constraints of providing care in a small island environment. But, wherever possible, standards will be drawn from best practice in other jurisdictions – that is, standards which are transparent and proportionate, which ensure good quality while holding providers to clear and straightforward requirements.

Designated accreditation schemes

- 3.6 The Committee's general approach will be to identify existing voluntary systems of accreditation (such as CHKS for primary care, or Magnet® for hospital nursing) which set good standards for health and care services. It will be a regulatory requirement for local services to participate in their designated accreditation scheme, and the Commission will provide oversight – ensuring compliance with the process, stepping in to investigate where concerns are highlighted and sharing best practice among providers.
- 3.7 There will also be a backstop of statutory regulation which clearly identifies the circumstances in which the Commission can intervene to require improvement or take enforcement action. This should only be needed in the most serious breaches of acceptable practice as participation in designated accreditation schemes should generally provide an effective and proportionate way to promote standards and demonstrate best practice.
- 3.8 An example of a well-established, international accreditation scheme for high quality care is Magnet® Recognition, which is specific to nursing. Originally developed in the 1980's from research into the characteristics of leading hospitals, recognition is achieved by demonstrating adherence to a series of evidence-based, outcome focused standards. The standards are updated every four years and made more challenging and contemporary, recognizing the rapidly changing nature of health care. Research indicates that hospitals who have achieved Magnet® Recognition and even those working towards it can demonstrate improved patient outcomes, mortality and morbidity rates⁹ plus

⁹ McHugh, M. D., Kelly, L. A., Smith, H. L., Wu, E. S., Vanak, J. M., & Aiken, L. H. (2013). Lower Mortality in Magnet Hospitals. *Medical Care*, 51(5), 382–388. <http://doi.org/10.1097/MLR.0b013e3182726cc5>

higher patient and staff satisfaction¹⁰. A number of studies have noted that Magnet® organisations lead the way in developing high quality nursing care and are characterised by excellent leadership, nurses with advanced education, a track record of innovation and improved recruitment and retention¹¹. Whilst the scheme is likely to require certain adaptations for local context and other options will also be considered, this is one way in which Guernsey could set clear standards for excellent nursing and provide significant reassurance to islanders that the care they could expect to receive is externally scrutinised and recognised as world class.

Inspection Arrangements

- 3.9 The Commission's primary assurance in relation to safe practice will come from overseeing health and care providers' compliance with designated accreditation schemes. However, in order to have any credibility, the new Enabling Law, and any Ordinances or subordinate legislation made under it, must also provide for the Commission to have inspection and enforcement powers where these are needed.
- 3.10 The Commission cannot afford to staff up to have an inspector who is expert in every area of health and care provision – Guernsey's health and care system is as diverse as that of any large nation but its scale is very much smaller. Expert inspectors would be seriously under-utilised, except in case of emergencies: a situation which would not only be wasteful of resources, but would carry the risk of the regulatory regime ballooning to fill the time available.
- 3.11 Instead, the Committee proposes that the Commission should have a small core staff, complemented by arrangements with larger oversight and inspection bodies (which might include statutory regulators or approval bodies for designated accreditation schemes) to provide some routine or *ad hoc* support to the Commission in respect of the specific service area, activity or profession in which they have expertise.

¹⁰ Kelly, L. A., McHugh, M. D., & Aiken, L. H. (2011). Nurse Outcomes in Magnet® and Non-Magnet Hospitals. *The Journal of Nursing Administration*, 41(10), 428–433. <http://doi.org/10.1097/NNA.0b013e31822eddbc>

¹¹ Stimpfel, A. W., Rosen, J. E., & McHugh, M. D. (2014). Understanding the Role of the Professional Practice Environment on Quality of Care in Magnet® and Non-Magnet Hospitals. *The Journal of Nursing Administration*, 44(1), 10–16. <http://doi.org/10.1097/NNA.0000000000000015>

- 3.12 In its inspection role, the Commission will not simply be expected to detect poor quality through its oversight of regulatory standards and designated accreditation schemes but actively to work with health and care providers to support quality improvement. This is critical in ensuring that the Bailiwick maintains and develops the services it needs to meet Islanders' growing health and care needs. However, despite a focus on improvement, the Commission may from time to time need to take enforcement action against providers. This is discussed further in Section 6 below.

Services to be regulated

- 3.13 Regulatory standards and designated accreditation schemes will be introduced gradually over a period of years. The Committee will prioritise these on a risk basis and will respond as necessary to evolving circumstances. In the long term, it is anticipated that the Commission will regulate the vast majority of local health and care services and activities for adults and children; from hospitals and care homes to community hubs and dental practices; from cosmetic procedures to care at home; and the provision of social work.
- 3.14 The regime will cover services provided on-island by established providers, but also by visiting professionals. Visiting health and care professionals fall into a spectrum of arrangements. There is already robust governance in place for the visiting medical practitioners who work under defined arrangements with HSC. However, there is a serious concern in respect of health care services (for example dental and health screening consultations) which are currently being offered by private providers in hotel rooms and other unregulated environments. This is an area in which the public require much more effective protection from potential harm than currently exists.

Registration of Providers

- 3.15 The new Enabling Law will authorise Ordinances or subordinate legislation to be made to set out general conditions relating to the registration of services, activities or professions with the Commission. Details of any specific registration requirements for different kinds of service provision will be introduced through Ordinances or subordinate legislation at the same time as designated accreditation schemes or other regulatory standards are introduced for those services.

- 3.16 It is expected that registration criteria will include requirements as to the qualifications and suitability of those managing care services, as well as obligations on providers to ensure that these services are well conducted, demonstrating high standards of care and a safe and appropriate environment within proper facilities. There will be requirements as to record keeping and the employment of sufficient appropriately qualified and competent staff.
- 3.17 It is also expected that the new Enabling Law will authorise Ordinances or subordinate legislation to be made to allow the Commission to put conditions on registrations, or even for registrations to be refused or cancelled by the Commission on certain grounds. These are discussed further in Section 6 on Enforcement.

Commission Structure

- 3.18 The Committee is recommending the creation of a Commission made up of a team of people who may have a breadth of regulatory knowledge between them, rather than an individual Regulator operating as a single statutory official, whose technical competence is likely to be limited to a specific area of expertise. The operational organisation structure of the Commission is discussed further in Section 10 and at Appendix 2.
- 3.19 Although the Commission will have statutory independence from the Committee, it will remain accountable to the States, with a requirement to produce annual reports and accounts, and to demonstrate its compliance with the principles of good governance and its effectiveness and value for money.
- 3.20 Ultimately, it is hoped that a joint Commission would be set up for the Channel Islands to support the common aims of both Guernsey and Jersey, prove cost effective and be reflective of the mutual political will for collaborative working. The Committee is keen to avoid artificial barriers to achieving this and it, therefore, proposes that any legislation which is drafted to implement the proposals set out in this Policy Letter is as similar as possible to Jersey's to provide a common operating framework for the regulation of care in both islands.
- 3.21 Although there are distinct differences of approach between the two Islands (Jersey has made a much bigger commitment to inspection, and each Island has different priorities for the development of standards), the Committee believes

that the different needs of the two Bailiwicks could be managed pragmatically within a pan-Island Commission. This option continues to be explored at officer level and through the ongoing work of the Channel Islands Joint Working Group for Health and Care.

- 3.22 A joint approach would require a common process for appointing Commissioners and agreement on their terms of office and remuneration. It would also be likely to require a reorganisation of staff and functions. At this stage, the two Islands have agreed, where possible, to try and appoint regulatory staff to split roles, part in Guernsey and part in Jersey, so that common working practices are established from the beginning.
- 3.23 It is possible that the Committee will be able to make definitive plans for working together with Jersey from the beginning of the new regulatory regime, and every opportunity to make this happen will be explored alongside the drafting of the new Enabling Law and any Ordinances and other subordinate legislation made under the Law.

4. New Enabling Law, Ordinances and Regulations

Enabling Law

- 4.1 The proposed new Law will be a Bailiwick-wide Enabling Law. It will establish the Commission itself, as well as the concept of regulated activities. It will contain Ordinance and Regulation making powers which may be used in a phased manner to introduce regulatory standards and designated accreditation schemes as discussed above. The Enabling Law, Ordinances and subordinate legislation will as far as possible be aligned to the Regulation of Care (Jersey) Law, 2014¹².
- 4.2 There will be four key areas to the new legislation. It will:
- 1) Establish an independent commission for the purpose of regulating health and care provision in the Bailiwick;
 - 2) Describe how the commission will be appointed;
 - 3) Enable Ordinances and subordinate legislation to be enacted under the Law to regulate health and care services;
 - 4) Provide for registration, accreditation, inspection and enforcement powers, and appeals, under the regulatory regimes.

¹² <https://www.jerseylaw.je/laws/revised/Pages/20.820.aspx>

- 4.3 This approach will provide sufficient flexibility to tailor regulatory requirements to each different part of the health and care system. The regulatory standards and designated accreditation schemes that will be put in place through Ordinances and subordinate legislation are discussed further in Section 5.

Incorporation of Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012, within new Law

- 4.4 Under the proposals The Regulation of Health Professions (Enabling Provisions) (Guernsey) Law, 2012, would be incorporated into the new Enabling Law and/or, Ordinances or subordinate legislation made under the Law.

Management and Sharing of Information and Data Protection

- 4.5 At set out above, regulation seeks to promote quality and minimise harm within the health and care system. This relies not simply on the care being directly provided to service users but just as importantly to the underlying processes in place to inform and guide service provision. Central to this, as set out in the Partnership of Purpose, is the appropriate sharing of health and care information (including where appropriate, personal data) in order to optimise the care delivered and provide a seamless, integrated service. Effective data management and data sharing will be a fundamental requirement for all regulated bodies, making clear their duty to share information with the regulator in support of the regulatory regime itself and their duty to share with other regulated bodies in accordance with the policies of their professional bodies to support the best interests of patients and service users.

Acknowledging the importance of a data sharing model which complies with relevant legislation and which provides flexibility to respond both the transformation of health and care in the Bailiwick and the increasing adoption of technology, it is recommended that the primary legislation provide for specific provisions to be made regarding the management of health and care information.

- 4.6 In addition, the Enabling Law should also authorise Ordinances or subordinate legislation to provide for information sharing (where appropriate) between the Commission and other bodies, such as accrediting organisations, government departments, law enforcement agencies, and other regulatory bodies.

5. Setting Standards – How will we choose them? How will it work?

- 5.1 The first step towards regulating health and care services in the Bailiwick is to carry out a risk analysis and identify the areas where Islanders are most at risk due to a lack of regulation (or its ineffectiveness). An initial risk analysis has been conducted and is included in Professor Weir-Hughes' report at Appendix 1. This identified four high priority areas for the development of regulation: i) the unregistered health and care workforce; ii) health care premises; iii) psychotherapists, counsellors and alternative therapists; and iv) those who provide clinical cosmetic procedures.
- 5.2 Once the need for regulation has been identified, the Committee will establish desired outcomes appropriate for the services being provided, for example: What quality do we expect of these services? What harms should regulation prevent? It will work with the Commission and with service providers in the area to be regulated to identify whether there are any existing voluntary schemes which help to secure these outcomes. If so, it may recommend that one of these schemes becomes the 'designated accreditation scheme' under the new Enabling Law, Ordinances or subordinate legislation, for this service area. Services will then be required to sign up to and demonstrate compliance with this scheme.
- 5.3 Whilst the Committee believes there are many effective voluntary schemes which will prove adaptable to the Bailiwick, if this is not the case for a particular sector, the Committee will work with the Commission and regulated providers to design a Guernsey-specific set of regulatory standards which are proportionate to the Island's needs and draw on best practice wherever possible., the Committee intends this to be its approach of last resort as locally-designed standards are likely to require a much higher overhead in terms of compliance monitoring and inspection than designated accreditation schemes.
- 5.4 On an ongoing basis, the Commission will monitor the effectiveness of regulatory standards in securing quality health and care services and assess whether they remain appropriate and proportionate to the needs of the Bailiwick. It will work with the Committee to support a risk-based approach to developing new areas of regulation and improving existing regimes where these are demonstrably inadequate.

5.5 Designated accreditation schemes or regulatory standards will be introduced through Ordinances and subordinate legislation made under the Enabling Law. This gives the States oversight of the whole process, with the opportunity to withhold approval for Ordinances or annul regulations if need be should it feel that they were not appropriate to the size, scale and nature of the Bailiwick's health and care economy.

5.6 Standards will be designed to complement existing regulatory arrangements, where these exist, and to provide a publicly accessible framework of acceptable care levels.

6. Functions and Powers – what can the Commission do?

Functions

6.1 The Commission shall discharge the functions conferred on it by or under the Enabling Law and any other enactment.

6.2 Effective enforcement powers are essential for the credibility of the regulatory regime and proportionate powers are necessary for it to have a constructive impact locally. The Enabling Law should authorise Ordinances or subordinate legislation to be made conferring adequate and appropriate enforcement powers.

Power to inspect premises and obtain information

6.3 It is envisaged that the Commission will be able to inspect premises and obtain information in respect of health and care providers and professionals within the Bailiwick.

Granting and refusal of applications to register

6.4 It is envisaged that the Commission will have the power to refuse an application for a provider to register with it, where that provider falls short of the basic criteria for registration, as discussed in Section 3 above.

Improvement notices, enforcement notices, fines, and revocation of registration

- 6.5 It is envisaged that where the Commission finds that a provider is falling short of the relevant regulatory standards or designated accreditation scheme, it should have powers to require improvement within a given timeframe (e.g. through improvement notices) and ultimately, if no improvement is made, to sanction the provider by issuing an enforcement notice or a fine. The Commission may also be able to place specific conditions on a provider's registration.
- 6.6 As a last resort, if a health or care service poses a real risk of harm to the public and no improvement can be made, the possibility of revoking a provider's registration or closing it down directly must exist. However, there are many sole providers of services in Guernsey (there is, for example, only one acute hospital and only one mental health centre), and there are issues around capacity and impact on patients and service users even in instances where there are multiple providers, for example, a person who has lived in a nursing home for several years, and for whom it is really "home", would be profoundly affected if it were to close. The needs of Islanders in respect of access to services and continuity of care must, therefore, be balanced carefully against the risks posed by that service.
- 6.7 It is envisaged that the Commission should have the power to recommend to an appropriate authority (which may be a democratically elected body, such as the Committee, or a judicial body, such as the Royal Court) that a service should be deregistered or closed down. This would apply to all providers of health and care. The authority will be responsible for weighing where the balance of public interest sits between the management of risks associated with the ongoing operation of the service and the need to ensure islanders have continuing access to health and care services.
- 6.8 It is envisaged that there will also be a process in place for providers to appeal against deregistration, or against conditions being placed on their registration.

Fitness to Practise

- 6.9 It is envisaged that the Commission will also have a limited power to act in respect of health and care professionals whose fitness to practise has been questioned, where their continued practice would place at immediate and

serious risk the health and wellbeing of patients or service users. This includes situations where:

- A health and care professional has been impaired due to alcohol or drugs during practise;
- There are allegations of serious misconduct or incompetence by a professional which had led to user harm;
- There are allegations of serious misconduct or incompetence which may put patients at immediate risk and for which regulatory action by a regulatory body is likely to be taken; or
- A health and care professional experiences health problems which makes their practice potentially unsafe.

6.10 In those instances, it is envisaged that the Commission would have the power to suspend registered health and care professionals from the Guernsey register (effectively removing them from practice) for a limited period while a formal referral is made to their UK regulatory body (e.g. the General Medical Council or the Nursing and Midwifery Council). The Committee also envisages conferring powers on either the Commission or a panel of some kind to set further conditions on or effect the suspension of a registered health and care professional. This is already in place for doctors.

6.11 A flowchart in Appendix 3 sets out the proposed process for Fitness to Practise concerns.

7. Priority areas for regulation and future areas of work

7.1 The Committee proposes to develop new regulation for the unregulated health and care workforce (healthcare assistants and carers who look after people in their own homes), and providers of home-based care, in the first instance. This will be followed by regulation of acute hospital services.

7.2 Based on the risk analysis included in Professor Weir-Hughes' report (Appendix 1), the Committee considers that subsequent priorities for new regulation should include healthcare premises, such as hospitals and dental surgeries, psychotherapists, counsellors and alternative therapists and those providing clinical cosmetic procedures.

- 7.3 Additionally, the existing regulation regime for nursing and residential care homes is in urgent need of updating and will take a high priority for the Committee. The Medicines Law will also need to be reviewed in light of changes to the regulatory framework, both in Guernsey and in the UK.

Unregistered Health and Care Workforce

- 7.4 The unregistered health and care workforce includes domiciliary carers (that is, carers who visit people with significant care needs at home, in order to provide care) and health care assistants (who work in a variety of environments, including the community, residential and nursing care homes and hospital).
- 7.5 One of the biggest concerns is domiciliary (home) care, where carers are generally working by themselves, in an environment where they cannot be observed and with people who often have significant needs who may struggle to communicate if things are going wrong.
- 7.6 Healthcare assistants working in residential homes present a similar level of concern because their work is generally not overseen by a Registered Nurse. In nursing care homes and in hospital, the risks are mitigated by the presence of qualified senior staff and clinical assessment of the people being cared for.
- 7.7 It is nevertheless a concern that domiciliary carers and healthcare assistants do not have a regulatory body (such as the GMC or the NMC); are not required to demonstrate their competence through qualifications or any other means and are not required to have an enhanced police check to carry out the job, unless that is a condition of their particular employer. Although the kind of care they provide should not require extensive medical training, the fact that they are caring for very unwell or disabled people should require them to meet a basic professional standard of conduct and competence.
- 7.8 At a minimum, regulation should require that people working in this sector have an enhanced police check, are registered with the Commission and undertake mandatory training. In addition, standards should set out expectations around information sharing, record keeping, training and supervision and processes for the development and review of care and support plans. Specific standards governing domiciliary care agencies and other similar provider organisations will also be developed.

- 7.9 Regulation in this area will only apply to people who are carers on a professional basis. It will not include people who are caring voluntarily for a family member or friend although the Committee acknowledges that, even in those circumstances, people receiving care can sometimes be badly mistreated, and it has adult safeguarding procedures in place to offer some protection.

Acute Hospital Services

- 7.10 The fact that services in the Princess Elizabeth Hospital (also known as the acute hospital) are delivered in an unregulated physical environment (i.e. premises and systems) has been a concern, from time to time, of the Nursing and Midwifery Council and the General Medical Council.
- 7.11 This has its roots in the fact that there is no separate regulatory body locally: the Committee is responsible for providing hospital services (or commissioning them from organisations such as the Medical Specialist Group and the Guernsey Therapy Group) and for setting standards and governance.
- 7.12 This is counterbalanced in part by the fact that acute hospital services are highly professionalised delivered by qualified doctors, nurses and allied health professionals, who are registered with and regulated by their professional bodies on an individual basis. This is essential in ensuring that patients in Guernsey receive the quality of care they rightly expect.
- 7.13 However, the kinds of services provided in the acute hospital are generally significant, specialised medical procedures which could have a major impact on the wellbeing or even the survival of patients if they go wrong. For this reason, the Committee considers it a high priority to develop effective regulation around acute hospital services premises and systems. It should be noted that this includes the provision of mental health services.

Premises – Alternative Therapists – Cosmetic Procedures

- 7.14 Professor Weir-Hughes's report identified specific concerns in relation to a lack of premises regulation on Guernsey (meaning that, for example, private clinics or dental surgeries can be established anywhere and that there are no official guidelines for the storage of medicines and use of X-rays in dental practices); the number of unregulated psychotherapists and alternative therapists practising in Guernsey (who, in some cases, work one-to-one with extremely

vulnerable people); and the risks associated with beauticians carrying out clinical cosmetic procedures which should only be undertaken by registered health professionals.

- 7.15 In respect of psychotherapists, alternative therapists and of beauticians, there are UK-based registration schemes which could be adopted as designated accreditation schemes in Guernsey. In respect of premises, there are models of voluntary regulation already in use locally (such as the approach used by Specsavers for its opticians' branches), as well as statutory regulation of piercing and tattoo studios. Further work could be done with the Office of Environmental Health & Pollution Regulation to draw up suitable regulatory standards for a wider range of health and care-related premises.
- 7.16 These are all areas which the Committee will pursue, in consultation with the services to be regulated, once it has made progress on developing and implementing standards and schemes for the unregulated health and care workforce and for acute hospital services.

Residential and Nursing Care Homes

- 7.17 There has been an outstanding States Resolution, since 2007 (Art XI, Billet d'État XX), to improve the quality of the regulatory regime governing nursing and residential care homes. The current regulatory regime is set out in the Nursing Homes and Residential Homes (Guernsey) Law, 1976. Although it provides for homes to be registered with the States and inspected from time to time, the Inspector has virtually no powers to act if they identify a need for improvement.
- 7.18 The States have already given direction that the new regulatory regime should include:
- An expanded definition of “care home” to include both independent and States’ operated services and clarifying the meaning of both “personal care” and “nursing care” and the creation of care standards;
 - A regulatory regime for domiciliary care and nurses’ agencies;
 - The inclusion of the voluntary sector where personal and/or nursing care is provided;

- Clarification of the enforcement process, including the authority of the Inspector and allowing the Committee to take emergency action subject to an appropriate appeal process;
- Further aspects to be developed through Ordinance, for example, regarding premises, fitness to manage or work in a care establishment or agency; and
- Various notification requirements.

7.19 These directions fit well with the proposed shape of the new and the proposed powers of the Commission. Revised regulatory standards for nursing and residential care homes will, therefore, be developed in the same manner as the standards discussed above and the 1976 Law will be repealed in due course.

7.20 Due to the fact that most people who live in residential or nursing care homes need high levels of care, that there is likely to be growing demand for these homes in light of the ageing population and that the need to improve regulation in this area has been known for well over a decade, this will be treated as a high priority by the Committee.

Medicines Law

7.21 The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 developed a long-standing system of pharmacy regulation which includes not only community pharmacy and the staff working within that system but also the industry around supply and marketing of medicines.

7.22 The Law includes regulatory and other provisions relating to medicinal products, their manufacture and licensing; Guernsey's relationship with the Medicines and Healthcare products Regulatory Agency (MHRA); licensing procedures and the claims which may be lawfully made; the operation of pharmacies and rules around the packaging, identification and promotion of medicinal products.

7.23 The Law is already in need of review following changes made in the UK through the Human Medicines Regulations 2012, which implemented a series of EU directives into domestic law and consolidated existing UK provisions. As well as ensuring alignment with the UK, the Committee also wishes to review the enforcement powers in the current Law and the roles of the Chief Pharmacist and Inspector.

- 7.24 The introduction of a new approach to the Regulation of Health and Care provides an ideal opportunity to do this. There is some uncertainty in this area at present, both due to the effect of the UK's withdrawal from the EU on the cross-border medicines market and due to emerging proposals for the revalidation of pharmacy professionals. Nevertheless, the Committee hopes to progress a review of the Medicines Law during this term.

8. Health and Care Governance – The Commission in Context

- 8.1 The proposed Commission and new Enabling Law, Ordinances and subordinate legislation will be important in setting standards for, and helping to improve the quality of, health and care in the Bailiwick. But there are also some functions that sit outside of its scope for example, the management and resolution of individual complaints will continue to be handled by service providers, perhaps backed up in future by some form of Ombudsman; while adult safeguarding and child protection cover a range of concerns which cannot easily be regulated for but for which providers should have effective processes and policies in place.

Complaints handling and Ombudsman

- 8.2 If a person is unhappy with the treatment they have received at the hands of a health or care provider, their first step is usually to complain directly to that organisation using its internal complaints process. There may then be various levels of appeal to more senior or more independent bodies.
- 8.3 There is some overlap between regulation and complaints handling in that a complaint may reveal a concern about fitness to practise or about the quality of services provided by the organisation which may need to be referred to the Commission. The existence of a good complaints handling process and general data on complaints and compliments are also likely to be requirements of most regulatory standards.
- 8.4 However, the regulator would not normally be involved directly in the resolution of individual complaints. If there is to be an independent body involved in hearing complaints and helping the parties to them to find resolution, this is more normally the role of an Ombudsman. (The

complementary roles of the Guernsey Financial Services Commission and the Channel Islands Financial Ombudsman are an example of this).

- 8.5 The Committee's Partnership of Purpose Policy Letter suggested that a health Ombudsman might be useful for the Bailiwick. The Committee is aware that work is being done across the States to consider the possible need for a general public sector ombudsman and is supportive of this approach. Pending the outcome of that work, the Committee is not bringing forward any recommendations for the creation of an ombudsman for health and care services only, but may return to this in due course.

Safeguarding of Adults and Children

- 8.6 All providers have a duty to ensure that children and adults (especially adults who are vulnerable because of ill health or disability) are kept free from harm. Child protection responsibilities are set out in the Children (Guernsey and Alderney) Law, 2008. It is expected that responsibilities towards adults who may lack mental capacity will be set out in Capacity Law which the Committee intends to bring to the States during 2019.
- 8.7 Child protection and adult safeguarding responsibilities are wide-ranging – health and care providers have a responsibility to keep people safe through the services they provide but also to report concerns if they believe a child or a vulnerable person is being harmed by people close to them (such as friends or family). This may initially be dealt with through 'multi-agency' groups which draw together the various different providers and professionals involved in a person's care, to put in place a plan for their protection but may ultimately be a matter for law enforcement and the criminal law.
- 8.8 It is envisaged that the proposed new Enabling Law, Ordinances and subordinate legislation will reinforce providers' responsibility in respect of child protection and safeguarding of vulnerable adults by requiring, in relevant regulatory standards and designated accreditation schemes, that providers:
- have in place an appropriate safeguarding policy supporting local guidelines;
 - take steps to identify risks and preventing abuse occurring;
 - respond to allegations of abuse;
 - ensure care workers have safeguarding training;

- participate in investigations;
- prevent care workers who pose a risk of harm from contact with those receiving care;
- avoid employing anyone who is on a barred list or who has been cautioned or convicted for an offence against someone receiving care.

8.9 The obligation to share information with other providers, regulatory bodies, law enforcement agencies or other bodies and agencies where this would assist in safeguarding people who are receiving care, will also be reinforced. Data sharing is critical to ensure that people receive effective support from health and care services. The Committee and the Commission will work within the framework of the Data Protection Law to ensure that a patient-centred approach to data sharing is established, and providers can work together confidently to tackle important safeguarding issues.

9. Strategic fit

9.1 The States of Guernsey has already established Health and Care Regulatory and Support Policy as one of the key priorities of the Policy & Resource Plan. This will require the development of appropriate, proportionate and robust standards across health and care through an effective regulatory regime.

9.2 As well as being prioritised through the Policy & Resource Plan, the development of effective regulation is a core part of the Committee's work on the Partnership of Purpose for Health and Care, recognising the close links between work to improve health and wellbeing and the regulation of services and professionals.

9.3 Under the Partnership of Purpose, the model of care provided across the Bailiwick will evolve with more integrated and user-centred care and an ever increasing emphasis on enabling people to receive care closer to home. While this is responsive to the preferences of individual islanders and will have significant benefits in terms of outcomes, the inevitable increase in domiciliary care and the invaluable, but unregistered, role of healthcare assistants and care workers in delivering it makes the need for effective regulation in these areas all the more urgent.

9.4 Steps need to be taken alongside the transformation of health and care to ensure that all islanders whether being cared for in their own home, within

Health & Social Care premises or within the private sector are adequately protected.

10. Organisation Structure, Cost and Funding

- 10.1 The proposed organisation structure for the new Commission's secretariat is enclosed at Appendix 2. As discussed above, the Commission is expected to have a small core staff with access to external expertise where this is required. In order to facilitate joint working with Jersey, it is hoped that some of the Commission's permanent staff can be appointed to a split role, half in Jersey and half to serve the Bailiwick.
- 10.2 The Committee recognises that it would be helpful to have the Commission (or at least some of its membership) in place early on in the development of the Enabling Law, Ordinances or subordinate legislation, particularly in order to advise on the creation of standards and to begin engaging with health and care providers. The Committee is therefore proposing to establish the Commission in 'shadow' (or non-statutory) form initially, until the Enabling Law, Ordinances or subordinate legislation comes into force.
- 10.3 The Committee proposes to lay the groundwork for the Commission during 2019 recognising that, due to States' budgeting processes, it will not be possible to fully establish the Commission until 2020 at the earliest. It intends to work with the Policy & Resources Committee to include a funding request for the Commission in the 2020 Budget.
- 10.4 However, the Committee has worked out, as far as possible, the likely running costs of the Commission and anticipates that the total cost will be £368,000 per annum once the Commission is fully operational. There are a small number of regulatory posts within the Committee which may be transferred to the Commission in due course and some income associated with the regulation of residential and nursing care homes, which would also contribute towards the Commission's operating costs.
- 10.5 The Commission will be supported by regulatory fees, including fees to cover the initial application, continued registration or variation of licensing conditions and administrative fees where necessary, for example, for replacement registration certificates. These will be developed in line with the States' Fees and Charges Policy to reflect the size and complexity of the regulated activity. It

should be noted that, in some cases, providers will have to pay to participate in their designated accreditation scheme and the Committee is keen to ensure that the additional cost of registering with the Commission is not overly burdensome.

- 10.6 It is therefore unlikely that fees will cover the full running costs of the Commission – certainly not initially - when only a small number of services will be regulated, and, based on the experience of other jurisdictions, probably not in the long term either. The balance of the cost will need to be funded by a States' grant.
- 10.7 This is common practice in other jurisdictions. For example, the States of Jersey agreed to fund approximately 45% of the cost of its Care Commission, with fee income accounting for the remaining 55%. In the UK, the Care Quality Commission receives 34% of its funding through governmental grant and the Scottish Care Inspectorate some 65%. A particularly high level of public subsidy in Northern Ireland means that the fees charged by their Regulation and Quality Improvement Authority are significantly lower than elsewhere in the United Kingdom.
- 10.8 In the first year of operation, the running costs of the Commission are expected to be £368,000 (including the two existing staff posts). The net additional cost to the States would, therefore, be £272,000 after these posts are factored into the calculation. This would be further offset by £78,000 in fee and charges income (based on 2018 figures). The total additional cost in the first year to the States would, therefore, be £194,000. Over a period of five years, the balance will adjust as new regulation and fees and charges are introduced and the Commission is fully established.
- 10.9 The anticipated costs for a Guernsey Regulatory regime are outlined below. Establishing the exact costs this early is difficult as these are dependent on further negotiation with Jersey. However, projected costings have been obtained from Jersey in relation to the cost to the island of the new regulatory regime and have been used to inform local calculations.
- 10.10 Based on these calculations, if the States wished to establish a balance of 50% grant funding for the Commission and 50% funding through fees and charges, the Commission would need to raise £106,000 more per year in fees than the Committee currently collects from registered providers. This may be feasible in

the long term, once the Commission is regulating a sufficiently broad range of services, but will not be achieved immediately. The level of fees and charges will be the subject of further consultation with providers in order to ensure that the fees charged are reasonable and proportionate, and will be as prescribed by subordinate legislation.

- 10.11 The Committee would seek to make reasonable steps to accommodate the costs within its existing Cash Limit, and will submit a bid as part of the 2020 Budget.

Table 1: Anticipated Costs – Projected Expenditure (comparison with Jersey)

Expenditure	Jersey Proposed Per Annum	Guernsey Anticipated Costs (Estimates) Per annum
Regulation of Care functions	£600,000- 620,000	£368,000
Breakdown of expenditure		
• Commissioner (Fees, Travel, Training)	£37,000	£16,000 ¹³
• Staff costs (salaries/training)	£530,000	£274,000 ¹⁴
• Legal costs	£10,000	£10,000
• Rent, IT equipment, etc.	£14,000	£12,000 ¹⁵
• Stationery, PR, etc.	£6,000	£6,000
• External Consultancy (i.e. continued development of Regulation and external inspectorate expertise.	N/A	£50,000

¹³ £16,000 is based on 3 Commissioners on joint Commission with Jersey at pro rata of Jersey cost, with allowance for up to 50% share of Chair of Commission in addition. Please note that this may, subject to negotiation, be adjusted to reflect the size of the respective Bailiwick populations.

¹⁴ £274,000 staff costs. This also includes provision based on 0.5 Full Time Equivalent (FTE) share joint Head of Regulation with Jersey.

¹⁵ No rent if based in current HSC premises and access to meeting rooms. Calculation factors in £10k one-off cost for IT equipment and £2k for furniture.

Table 2: Projected Income (comparison with Jersey)

Income	Jersey Proposed Per Annum	Guernsey Anticipated Costs (Estimates) Per annum
Income projections		
• Care homes	£220,000 ¹⁶	£78,000 ¹⁷
• Home care new registration	£25,000	Subject to future consultation
• Home care annual	£36,000	Subject to future consultation
• Adult day new registrations care	£10,000	Subject to future consultation
• Adult day care annual	£9,000	Subject to future consultation
• Laser clinics	£1,500	Subject to future consultation
• Dentistry/Yellow Fever, Piercing and Tattooing	£14,000	Subject to future consultation
• Medical practitioners and health care registration	£16,000	Not applicable – currently charged and offsets Responsible Officer roles.
Total Fee target (Income)¹⁸	£300,000	£184,000
States Grant	£300-320,000	£184,000

11. How will we assess outcomes?

11.1 This Policy Letter sets out the Committee's intent to establish an independent, robust and proportionate regulatory regime for the Bailiwick's health and care

¹⁶ Of which £180k is annual fees as opposed to provider registrations.

¹⁷ Based on 2018 income (Rounded down). Annual fee per home (19 x £362), annual fee per place in home (587 x £110). Note that fees for the medical practitioners (doctors) and in pharmacy offset the Responsible officer roles and so cannot be factored into these calculations. It also factors in a projected £6,710 in additional income as bed numbers increased subject to planning application.

¹⁸ Represents 45-50% of total forecast cost of Commission (Jersey), 50% in Guernsey.

economy. As ever, the test will be how this translates into a culture of safe, person-centred care with a commitment towards continuous improvement and learning for the benefit of Islanders' health and wellbeing.

- 11.2 The introduction of regulation is expected to shape providers' behaviours in terms of providing health and care services; support consistent, high quality care; and lead to improved health and wellbeing outcomes. Regulation which is effective in avoiding episodes of poor care and the trail of negative consequences that follow may even at times help to reduce the costs of health care provision.
- 11.3 Thus, assessing the success of a regulatory regime is not about box-ticking or simply measuring providers' compliance with its standards. Regulation which is really focused on the needs and context of the Bailiwick can serve as a true enabler: working with providers to foster a learning culture where ideas and insights on how practice may be improved are encouraged and shared. It can sustain an ethos of promoting quality, safety and improved patient experience at all times which is of benefit both to providers and to the public.
- 11.4 The Commission may also prove a valuable link in the development of future health and care policy. Through engaging with providers and the public, the Commission is bound to gather invaluable information and evidence about the expectations and experiences of people who use health and care services and those who provide them which can be used to inform strategic goals. The Commission's work may reveal areas where there is variation in the care delivered, highlight areas in which interventions through revised standards could improve care and monitor the impact of these changes.
- 11.5 Although some aspects of the Commission's work will be fairly intangible (at least in the short term), the Committee will also draw up a number of Key Performance Indicators for the regulation of care which will be publicly available to ensure transparency. Nowhere is the saying "measure what you value, don't value what you measure" more apt than in a health and care setting and this will be central to the information collected. This will be as much about demonstrating what is going well in the health and care system, to encourage public confidence where it is deserved as it will be about evidencing the case for change where things are not working well.

11.6 These Key Performance Indicators will relate to health and wellbeing outcomes in the Bailiwick but also to patient experiences and perceptions of health and care services. In drawing up KPIs for the Commission, the Committee will draw on the governance arrangements it has put in place for its own services since the NMC Review of Nursing and Midwifery. These include a performance management framework based around a balanced scorecard of Safety; Service Quality, Staff and Spend as well as various initiatives (the Care Values Framework and Safer Everyday initiatives) which are based around the Institute for Healthcare Improvement¹⁹ model and framework for healthcare quality improvement.

12. Views of stakeholders

12.1 In developing the proposals set out within the Policy Letter, the Committee has engaged widely. A full list of consultees is enclosed at Appendix 4. As HSC further develops the regulatory framework, continued engagement and consultation will include:

- People who use health and social care services
- Carers and relatives of people who use such services
- Providers of care services
- Voluntary and community organisations
- Existing health and social care regulatory and professional bodies

12.2 Providers of health and care locally have anticipated the introduction of increased regulation for some time and most have been supportive of the Committee's plans.

12.3 The proposals were presented to CareWatch which was positive about the proposals. Feedback included concerns around the priority given to Mental Health Services in terms of the development of regulatory standards. CareWatch Members were reassured that regulation of Mental Health would be given a high priority and included under the work around Acute services.

12.4 In response to questions around the timescales for the drafting and implementation of the necessary enabling legislation, CareWatch was assured

¹⁹ www.ihl.org

that the Committee would be setting it as a high priority in terms of its legislative programme and that aspects such as the shadow Commission could be formed whilst the necessary legislative drafting was underway.

- 12.5 There was particular emphasis around the importance of user-centred consultation as part of the ongoing consultation and engagement with service users, their families and carers as the work stream continued to evolve and develop. This would include consultation over the setting of regulatory standards and provider fees and charges. Accreditation Schemes such as Magnet and Planetree designation also had a strong emphasis on patient/person centred care based on evidence and standards and ensuring excellent patient outcomes.
- 12.6 The Committee has formally consulted with the Policy & Resources Committee and the Committee *for* Employment & Social Security in respect of the full breadth of the Policy Letter. The Policy & Resources Committee asked that the Committee took reasonable steps to accommodate the costs associated with the proposals within its existing Cash Limit and submit a bid as part of the 2020 Budget. The Committee has included a commitment to this within section 10.11 of this Policy Letter and altered proposition 6 to direct the Policy & Resources Committee to take account of the costs of operating the Commission when recommending Cash Limits for the Committee for 2020 and subsequent years.
- 12.7 In addition, the Policy & Resources Committee also commented that *“it has welcomed the policy approach taken by the Committee for Health & Social Care and notes:*
- *the proportionate approach to regulation and the Committee for Health & Social Care’s intent for pan-island working which is supported by the Committee for Employment & Social Security; and*
 - *the Committee for Health & Social Care’s commitment in the policy letter (paragraph 10.11) to make reasonable steps to accommodate the full costs within its existing Cash Limit, and submit a bid for any shortfall as part of its 2020 Budget submission. The additional costs of the new regulation model will be £194,000 in the first year; reducing to £88,000 as the balance between States’ grant and fee income adjusts as the Commission is fully established and new fees and charges are introduced.”*

- 12.8 The Committee for Employment & Social Security has confirmed its broad support for the proposals contained within this Policy Letter, in a letter dated 22nd November, 2018. The letter states that:

“The Committee discussed the benefits of the regulatory framework in that it increases protection for vulnerable individuals, safeguards against incompetent service providers and assists customers with a path to redress their claims. An independent scrutiny and oversight body is a beneficial method to ensure compliance. However the Committee would like to highlight the need for the framework to be proportionate to Guernsey’s needs, and for the regulatory Commission’s enforcement powers to be limited to only what is necessary. The Committee supports the regulatory framework to strengthen the existing regime, rather than add another layer of bureaucracy.

The Committee agreed a cost to care providers to implement the regulation was warranted and providing it was immaterial they would have no objection to it. However, the Committee would like to stress their reluctance to widen the regulatory framework to include alternative or even holistic therapies. While the regulatory framework is compatible for care service providers in the home, the Committee is unable to recognise how regulating holistic providers would succeed in practice.

The Committee would like to take this opportunity to remind HSC that partial coverage of regulatory powers exists in care homes through Health and Safety regulation. The Committee agreed that joint working with Jersey, as far as possible, and sharing resources was a good and reasonable plan.”

- 12.9 The Committee is pleased to note the broad support for these proposals. A proportionate approach is one of the key themes of this Policy Letter and the Commission’s functions and enforcement powers will be limited to only what is necessary. This Policy Letter also commits to ensuring that any proposals in terms of fees and charges are consulted on widely with providers and people using those services prior to the setting of any tariffs.
- 12.10 Complementary and Alternative Medicine is a term used to describe a diverse range of health care practices that fall outside of mainstream medicine. There has been a rapid growth of this sector during the 21st century. The Committee notes the concerns of the Committee for Employment & Social Security in respect of the proposed regulation of this sector.

- 12.11 Mindful that the primary purpose of the regulation of health and care is to ensure public safety, the growth in this sector of the health and care economy signals a pressing need to ensure that those using these therapies are sufficiently protected from unscrupulous and incompetent practitioners who can prey on a patient's desire for hope and control over often serious health conditions. Indeed, complementary and alternative therapies was one of the areas assigned priority as a result of the risk-based analysis in Professor Dickon-Weir Hughes's report (see also paragraphs 1.16, 5.1, 7.2, 7.14 and 7.15 of this Policy Letter).
- 12.12 There are the risks associated with complementary therapies and medicines (as with any form of healthcare), especially if they are delivered inappropriately.
- 12.13 During the consultation exercise three complementary and alternative therapies emerged as being of particular concern to health and social care practitioners and leaders in the Bailiwick. None of these examples are regulated in the Bailiwick, either in terms of the practitioner involved or the premises in which the activity might take place. These were:
- i. **Bowen therapy**, which is an alternative type of physical manipulation named after Australian, Thomas Ambrose Bowen (1916–1982). Despite there being no clear evidence that the technique is a useful intervention it is advertised in Guernsey to treat a wide range of conditions including muscle and skeletal injuries, breast 'problems', infant colic, fertility issues and irritable bowel syndrome. The risks of Bowen therapy are largely undocumented in the literature. However, it could be argued that such treatments give false hope to vulnerable people with hard to manage chronic conditions.
 - ii. Whilst **Aesthetic Medicine** is well defined as a medical speciality, aesthetics more generally is less well defined. Collectively, this area covers a wide range of therapies and treatments from major cosmetic surgery to a simple procedure like eye lash tinting. There are a number of clinics in Guernsey who operate to UK and internationally accepted high standards and employ registered medical doctors, registered dentists and registered nurses. However, in all cases the premises are unregulated and with some it is difficult to tell from the advertising whether it will be a registered health care professional or an unregulated beautician who is providing the treatment. They offer a

wide range of treatments from Botulinum toxin injections to highly invasive vaginal rejuvenation to teeth whitening. The General Dental Council are clear that teeth whitening is practising dentistry (not medicine or nursing) and state that dentists cannot delegate this procedure.

- iii. **Counselling and psychotherapy** can overlap. A therapist can provide counselling with certain situations and a counsellor can use psychotherapy in their approach. Whilst a psychotherapist is qualified to provide counselling services, a counsellor may or may not have the training and skills to provide psychotherapy. Education for counsellors and psychotherapists comes from a wide range of providers including short weekend courses and distance learning programmes to 'gold standard' highly supervised Master's degree and Doctoral degree programmes at leading universities. The titles and training are not regulated and nor are the premises and yet these practitioners deal with some of the most vulnerable people in society. However, the plethora of qualifications are highly confusing to the consumer and practitioners in the Bailiwick with a very wide range of qualifications offer to consult with people with everything from relatively straightforward natural human responses, such as bereavement, to highly complex mental health problems such as Asperger's Syndrome.

12.14 Other risks include how complementary therapies are advertised and marketed and how patients can be easily misled.

12.15 There are also issues relating to informed consent²⁰ which is an essential prerequisite when offering tests, treatment or therapies.

12.16 The Committee is also mindful that there is evidence that many of these therapies can be used alongside conventional or mainstream medicine to the holistic benefit of the patient. The Committee believes that where someone is treating a person for a medical condition and making a claim that their therapy will improve health outcomes for that person, then this has to be evidence-based. In this sense, the Committee is of the view that as with other health care providers, there is a role for the regulator to oversee these activities and ensure that they meet appropriate standards. As with any other health care sector, the

²⁰ Informed consent from a healthcare provider's viewpoint means that the provider must make every effort to be sure that the patient understands, the purpose, benefits, risks and options of the test or treatment. The provider then must get the patient's consent before commencing any test, treatment or therapy.

Committee would consult with Complementary and Alternative Medicine and Therapies providers as part of its development of regulatory standards and accreditation for this sector.

- 12.17 Finally, the Committee notes that some regulatory power exists in Health and Safety legislation and regulation, and would not propose to duplicate this. Instead standards might require providers to ensure compliance with the relevant health and safety legislation and regulatory standards, approved codes of practice, etc.
- 12.18 The Committee has further consulted with the Committee *for* Education, Sport & Culture. In a letter dated 23rd October 2018 the President of the Committee *for* Education, Sport & Culture said that the Committee had no issues with the matters covered, and comments or advice to put forward at that time.
- 12.19 The Committee has further liaised with both Alderney and Sark in respect of the application of the Enabling Law, Ordinances or subordinate legislation. While the Committee is keen for the Commission to have statutory standing across the Bailiwick, it is clearly recognised that the needs of the respective Islands are likely to differ significantly based on the services available. Quite simply, the range of services available in Guernsey could not be replicated across the other Islands and where such services do exist, they are being delivered in a way which reflects the distinctiveness of very small insular communities. This uniqueness of care provision is, in many ways, to be celebrated for capturing the true essence of patient-centred care and therefore it is vital that the regulatory regime retains the flexibility to respond directly to this, while maintaining at its very core the ability to ensure high quality services.
- 12.20 To this end, the Committee recommends that the designated accreditation schemes or proposed local standards to be established under the Scheme should be capable of applying either to the Bailiwick as a whole or to specific Islands within. This approach would allow the development of proportionate and transparent standards which best support the needs of Islanders.
- 12.21 The Committee undertakes that before introducing any standards, or schemes by way of Ordinances or subordinate legislation under the proposed primary legislation, it would consult with the relevant committees of the States of Alderney, and the Chief Pleas of Sark, where those standards or schemes are to have effect in Alderney or Sark respectively.

13. Conclusion and next steps

- 13.1 The Committee is proposing a robust, independent and proportionate regulatory system for health and care in accordance with the aims of the Partnership of Purpose Policy Letter and the goals of the Policy & Resource Plan.
- 13.2 Regulation has a key role in promoting good governance arrangements in health and care providers and improving health and wellbeing outcomes for islanders. This Policy Letter proposes that this is done through the use of globally recognised accreditation schemes and the implementation of regulatory standards. This will allow Guernsey to put in place a regulatory system which draws on best practice from around the world, while remaining proportionate to the needs of a small island community.
- 13.3 Subject to the agreement of the States Assembly and in accordance with the Implementation Plan set out in Appendix 5 (subject to the States-wide prioritisation of legislation process currently in place), the Committee now intends to pursue the following key work streams relating to Regulation of Health and Care:
- To assist the Law Officers in preparing and drafting the necessary Enabling Law to give effect to the proposals in this Policy Letter;
 - To commence work on setting up the Commission (in 'shadow' or non-statutory form) during 2019, with a view to launching it fully from the beginning of 2020;
 - To continue exploring opportunities to work more closely with Jersey on the regulation of health and care;
 - To continue its engagement with providers of health and care services on the operation of the regulatory regime; and
 - To commence work on the establishment of regulatory standards and schemes, starting with the unregistered workforce and the domiciliary or home-care sector, in order to bring proposals before the States to direct the preparation of Ordinances to implement these standards and schemes.
- 13.4 The Committee will report back to the Assembly through the annual updates to the Policy & Resource Plan in respect of the Commission's implementation and development.

14. Compliance with Rule 4 of the Rules of Procedure

- 14.1 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 have the unanimous support of the Committee.
- 14.2 In accordance with Rule 4(5), the Propositions relate to the primary duty of the Committee to protect, promote and improve the health and well-being of individuals and the community.
- 14.3 Also in accordance with Rule 4(5), in developing these proposals, the Committee has consulted with the Policy & Resources Committee, the Committee *for* Employment & Social Security and the Committee *for* Education, Sport & Culture.

Yours faithfully

H J R Soulsby
President

R H Tooley
Vice President

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The Regulation of Health & Social Care in Guernsey

Progress report and case for change

Professor Dickon Weir-Hughes
Healthcare Regulation Consultant
October 2017

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Introduction

The regulation of Health and Social Care within the Bailiwick of Guernsey (islands of Alderney, Guernsey, Herm, and Sark) (referred to as the Bailiwick throughout the remainder of this paper) is a fundamental element of the new Target Operating Model (TOM) and essential to the prevention of harm to users and for the promotion of high quality care.

One of the outcomes of the recent NMC Review into Nursing and Midwifery was the development of a robust and independent regulatory framework across the Bailiwick of Guernsey.

Indeed, a key part of any piece of work focused on improving health and wellbeing is how services and professionals are regulated. No element of health or social care is completely risk free but the ultimate purpose of regulation is to protect the public from harm and this principle objective should be borne in mind whilst considering the content of this paper and the recommendations.

As in some other jurisdictions, Health and Social Care regulation in the Bailiwick has developed iteratively over many years with some developments following in the footsteps of the United Kingdom (UK) and others being implemented reactively to local circumstances. However, there are also several great examples of proactivity amongst health care leaders in the Bailiwick, for example: the implementation of a system of voluntary regulation, known as CHKS, in Primary Care; the use of The Royal College of Psychiatrists (UK) accreditation scheme in mental health; and the huge enthusiasm for external voluntary scrutiny by Specsavers franchisees in the Bailiwick.

One of the prompts for this piece of work was concerns raised by the Nursing & Midwifery Council about the regulatory landscape in the Bailiwick, specifically in relation to Revalidation and midwifery. Whilst those concerns have been ameliorated and indeed the Bailiwick is now held up as a beacon of best practice in Revalidation it was agreed that a more comprehensive piece of work should be undertaken. One of the key issues is the volume of regulatory gaps within the Bailiwick. For example, the premises of the Princess Elizabeth Hospital and associated services are not regulated. The Bailiwick lacks an independent system of regulating health and social care. This is a serious gap in the protection of the public in the Bailiwick.

More recent work on the Target Operating Model (TOM) also indicates the need to embark upon this project as it is one of the pillars of the health and social care system.

The subject of regulation, in any sector, often gives rise to concerns about cost and proportionality, especially amongst tax payers. However, one of the key benefits of providing health and social care in a relatively contained island community that is not

burdened by the bureaucracy of larger jurisdictions is the opportunity to develop regulatory approaches that are both world leading and proportionate.

The Bailiwick has an exciting opportunity to lead the way in health and social care regulation by designing a regulatory framework that not only provides robust public protection but is also innovative, cost effective, sustainable and leads to measureable improvements in service user outcome.

The purpose of this paper is to provide a progress report on the fact finding first stage of the work and to set out a case for change including structures, processes, priorities and next steps. Ultimately, the aim is to ensure that Islanders are protected from harm and receive exceptional care in line with the 2020 Vision to promote, improve and protect health and wellbeing. The Review of the regulation of health and social care in the Bailiwick is also strategically aligned to HSC's transformation vision of providing "High quality services jointly designed by our communities and staff, enabling access to healthy lifestyles and social wellbeing for all of the Bailiwick".

It is important to emphasise that the principle of proportionality has been foremost throughout this phase of the work and it is hoped that this is evident from the report and the proposed approach.

I would like to acknowledge the support of numerous health and social care professionals, third sector leaders, the financial regulators, colleagues from the States of Jersey and of course Professor Juliet Beal, Mr. Martin Gavet.

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October 2017

Executive summary

The regulation of health and social care is a complex topic in any jurisdiction but the challenge of achieving the optimal balance between proportionality and protecting the public is magnified in a smaller community.

A key driver in initiating this work was the Nursing & Midwifery Council's focus on midwifery and revalidation the Bailiwick in 2015 and whilst those issues are resolved a wider concern was the overall regulatory framework for health and social care in the Bailiwick.

Like the States of Jersey, this report recommends an independent Commissioner Model with underpinning legislation that focuses on the key issues in the Bailiwick, which differ somewhat from the priorities in other jurisdictions. Whilst legislation is required that enables the Commissioner to take robust regulatory action to protect the public if necessary, the model recommends that the Commissioner will normally receive assurance that services are safe by requiring organisations to demonstrate best practice by using a range of internationally accepted sources of best practice evaluation and recognition. This avoids the need to set up an expensive and unwieldy inspection mechanisms in all but the most extreme of circumstances. This approach has been supported by stakeholders and validated by a senior regulator with many years of experience in the Channel Islands.

Regulatory priorities for the Bailiwick include developing a regulatory framework for the unregistered health care workforce, the regulation of health care premises including dental practices and a framework of assurance to better protect the public who use the services of psychotherapists, counsellors and alternative therapists. These priorities are set against the backdrop of an independent regulatory function.

There are number of co-dependencies related to this project that are out with the scope of the work but which do require resolution. An example is the legislative framework and resourcing in Early Years services.

Stakeholder engagement has been a major part of developing this report and will continue to be a key facet of the work as it moves into the developmental phase.

The principles, background and benefits of health and social care regulation

Principles

This paper has been written in accordance with the following guiding principles which it is suggested should be the cornerstone of health and social care regulation in the Bailiwick.

Health and social care regulation must:

- Protect citizens, residents and visitors.
- Be proportionate and cost effective.
- Be open, transparent and understandable to all.
- Be world class.
- Be focused on the needs of small Island communities.
- Aim to be evidence-based.
- Promote equality.

Statutory health and social care regulation is normally divided into two distinct areas or work streams, namely systems regulation and professional regulation.

- An example of a statutory systems regulator would be Health Inspectorate Wales, which protects the public by regulating all health care facilities and services in the principality.
- An example of a statutory professional regulator would be the Nursing & Midwifery Council, which protects the public by regulating nurses and midwives in the UK and the Crown dependencies.
- A small number of statutory regulators have legislation that enables them to protect the public by regulating both systems and professionals. An example of this type of integrated regulator would be the General Pharmaceutical Council, which regulates pharmacists, pharmacy technicians, pharmacy premises and pharmacy training facilities in Great Britain (i.e. the UK minus Northern Ireland). There is an emerging view amongst regulators worldwide that the public could benefit from more integrated regulation of this type and this is a recommendation of the (UK) Professional Standards Agency (2016).

These examples provide an insight into the complexity of regulation. Replicating this web of regulation in a small island community would not be possible, desirable, proportionate or cost effective and this paper proposes alternative solutions. The UK, especially England, has one of the most complex health and social care regulatory frameworks in the world. There is even a regulator of regulators, the Professional Standards Agency. For this reason, the recommendations contained within this paper seek to explore regulatory solutions that look far beyond the shores of the UK and aim to put the Bailiwick into a position where Islanders benefit from a truly world class, proportionate system of protection from harm.

Background

Health professional regulation

Health care professional regulation is quite a complex maze of mechanisms that is difficult for the public to navigate, especially if they wish to raise a concern. In almost all jurisdictions worldwide regulation has developed iteratively and hence may appear to be unwieldy. The systems may not always appear to be logical or proportionate either. Taking the UK as one example, scanning the scope of professions and occupations that are regulated and those that are not is an interesting activity and indicates that the principles of proportionality and public protection have not always been applied. For example, a dental practice team consists of various people, including dental assistants, who rarely work unsupervised by a dentist, are regulated. However, care support workers, especially those who work in the community, almost always work alone and with some of the most vulnerable people in our society. Care Support Workers are unregulated. This is clearly undesirable and presents significant levels of risk to the most vulnerable islanders in receipt of care.

Social care regulation

Social Workers only became registered professionals in 2001 with the title 'Social Worker' only becoming protected as recently as 2005. Social work regulation in England has been in a state of flux ever since the UK Government opened the first regulator, the General Social Care Council, in 2001 only to close it in 2012 and devolving regulation to each country of the UK and in England moving regulation into the Health and Care Professions Council (HCPC). Since 2016 the UK Government has been looking at reforms around Children and Social Work Regulation as part of its Children and Social Work Bill. Any work around the future regulation of health and social care in Guernsey and Alderney will therefore need to take developments in this area into account.

Systems regulation

Health care systems regulation is also a recent development. For example, in England, the Commission for Health Improvement (now the Care Quality Commission or CQC) was the first ever organisation to assess the clinical performance of NHS hospitals less than 20 years ago in 1999. However, other jurisdictions have been more forward-thinking and as long ago as 1951 The Joint Commission in the USA started to write and promote standards of care in hospitals and conduct inspections of health care facilities. Founded by the American College of Surgeons, the Joint Commission is now a not-for-profit regulator with multiple registration options including acute care, long-term care, laboratories and specific patient pathways. In theory, it is a voluntary regulation scheme but such is the strength of its quality mark that many funders of health care (such as the Federal health insurance systems Medicare and Medicaid in the USA) will only authorise care to be funded in a Joint Commission approved setting. Outside of the USA, Joint Commission International now operates in over 100 countries and seeks to improve patient safety and quality through accreditation which provides assurance to statutory regulators, the public and professionals.

The European Partnership of Supervisory Organisations (EPSO)¹ has different approaches to regulation across the membership. Some countries such as The Netherlands have very well developed regulatory systems and processes whilst others have what one would call a regulation light approach that rely on a combination of self-evaluation and independent scrutiny.

The concept of organisations striving for excellence and being able to assure funders, regulators and the public through systems of ostensibly voluntary regulation demonstrates a level of professionalism and responsibility that should be applauded and removes the need for a ‘big brother’ approach in all but the most extreme cases. This is, as previously stated, is the model from which Islanders in the Bailiwick benefit in primary care and mental health, for example. However, the CQC in England is now in a difficult position. Many people assert that its inspection regime is overly burdensome and disproportionate and yet inspectors continue to unearth failings in a wide range of care settings. The inspection regime is indeed a huge operation with, in some cases, 70-80 inspectors descending on an organisation. Even with this number there will be gaps in speciality coverage. However, whilst organisational failures continue it is difficult to imagine a change of policy. It could be argued that in a smaller jurisdiction, a more positive and less burdensome regulatory regime based on speciality expertise maybe more appropriate.

There are several pieces of interrelated systems legislation in the Bailiwick that the Committee will also need to consider (or is already due to do so) alongside the regulation of health and social care. For example, The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015, the Medicines Law (2008) and associated ordinances and the Health Benefits Law which needs to be updated to enable non-medical prescribers to better care for patients.

Guernsey’s current regulatory environment

The following professional bodies regulate health and social care professionals in Guernsey:

- General Chiropractic Council (GCG).
- General Dental Council (GDG).
- General Medical Council (GMC).
- General Optical Council (GOC).
- General Osteopathic Council (GOsC).
- General Pharmaceutical Council.
- Health and Care Professions Council (HCPC) - Arts therapists, biomedical scientists, chiropodists / podiatrists, clinical scientists, dieticians, hearing aid dispensers, occupational therapists, operating department practitioners, orthoptists, paramedics, physiotherapists, practitioner psychologists, prosthetists / orthotists, radiographers, social workers in England and speech and language therapists.
- Nursing and Midwifery Council (NMC).

¹ www.epsonet.eu - seeks to improve the quality of health care and social care in Europe, to connect between supervisory organisations and their individual members to improve exchange of ideas, outcome of research, information and good practice; to promote co-operation on topics such as education and dissemination of knowledge.

Care practitioners not covered by regulation in Guernsey include:

- Aesthetics (some covered by GDC and GMC, et al).
- Care Agencies.
- Carers & Domiciliary/Residential Support Workers.
- Complimentary Therapists (e.g. Sports Injury & Rehab, Acupuncture, Hypnotherapy, Herbal, Homeopathy, etc.)
- New professions.
- Psychotherapists and counsellors.
- Visiting services (variety of different providers).

Care practices/premises which are regulated/accredited in Guernsey include:

- Community Pharmacies.
- Nurseries.
- Nursing and Residential Homes.
- Primary Care Practices (CHKS).
- Pharmaceutical manufacturing & wholesaling.

Care practices, and other aspects of health and social care provision not covered by regulation in Guernsey include:

- Advertisements for services.
- Agencies.
- Chiropody & Podiatry practices.
- Dental practices.
- Psychotherapy and Counselling Practices.
- Physiotherapy Practices.
- States of Guernsey provided services.

The States of Jersey regulatory developments

Since 2006, colleagues in the States of Jersey have developed a new regulatory regime which follows an Independent Commissioner model, underpinned by a traditional inspection team. It is not yet clear how a small team of inspectors will have all the specialist expertise required to inspect such a wide range of services.

The Regulation of Care (Jersey) Law 2014 is the primary legislation which enables a new framework for the regulation of health and social care in Jersey.

The law seeks to ensure:

- All providers meet the required standards (both public and private sector).
- Protection of vulnerable individuals.
- Establishment of an independent Health and Social Care Commission to implement the ethos of the law and support and encourage service improvements.
- Transparency of inspection reports.
- A skilled and knowledgeable inspectorate.

There are **6 key areas** to the 2014 Law:

1. Transfer of responsibility for regulating health and social care from the Minister for Health and Social Services to an independent commission.
2. Sets out how the Health and Social Care Commission will be appointed.
3. Requires providers of care services to be registered by the commission.
4. Enables regulations and standards to be enacted under law about the quality of care services.
5. Describes the commission's powers of inspection.
6. Explains the enforcement procedures and appeals process.

Diagrams 1 and 2 below illustrate how the Jersey law works and its governance.

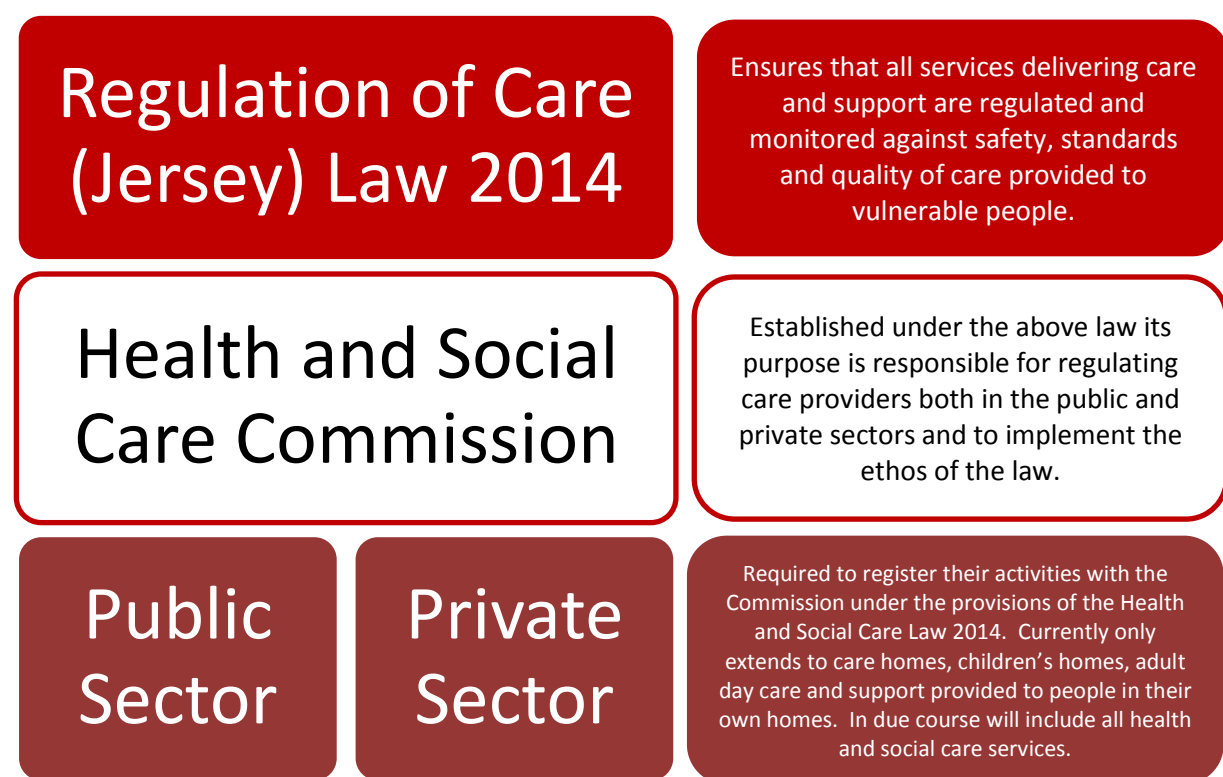


Diagram 1: The Regulation of Care (Jersey) Law 2014

Jersey Health and Social Care Commission

Independent of the Minister for Health and Social Services and Chief Minister and the States of Jersey.

Income: Grant and Fees. Exempt from income tax.

Body Corporate with perpetual succession.

4 (minimum) to 8 (maximum) Commissioners.

Appointed for 3-5 years can serve more than one term of office. Initially for 3 years with a formal review after 6 months.



Informs

- Annual Reports and Accounts to States of Jersey.
- Reports to Chief Minister on aspects relating to Health and Social Care, and/or advice.
- Advice and information to the public.

Regulation/Compliance

- Regulate and inspect all care providers.
- Enforcement Action – through improvement notices, etc.
- Creates regulations through States of Jersey Legislature.

Diagram 2: The constitution of the Jersey Health and Social Care Commission and role.

There are some differences in the priorities identified in the Bailiwick's stakeholder work when compared to Jersey. As in the Bailiwick, colleagues in Jersey identified care homes, domiciliary care and dentistry as priorities. However, Jersey colleagues have also identified cosmetic procedures, tattooing and body piercing as a priority. In the Bailiwick, these procedures are separately regulated under Environmental Health Law.

In the Bailiwick of Guernsey, the highest levels of risk to public safety centre around domiciliary care and the unregistered workforce (Care Support Workers). Other areas included psychotherapy and certain alternative therapies, such as Bowen therapy due to the vulnerable nature of the users. Jersey colleagues have made it clear that they do not wish to regulate alternative therapies, psychotherapy or homeopathy.

Whilst the States of Jersey face different immediate operational challenges to the Bailiwick with the opening of a new health care facility and the Independent Jersey Care Inquiry 2017², which will inevitably be time consuming, it will be important to continue to work in collaboration with the Commissioner and his team as the work progresses in the Bailiwick, even though our priorities are different. Moving forward, it would be possible to collaborate with colleagues in Jersey to develop joint standards for certain areas. For example, the Commissioner in Jersey is focusing on community care and it might be possible for these standards to be shared across the Channel Islands. Similarly, work done in the Bailiwick could be shared.

² <http://www.jerseycareinquiry.org/>

Benefits of health and social care regulation

Statutory regulation

The benefits of statutory health and social care regulation are frequently assumed and whilst there is much written about regulation there is a paucity of good quality research evidence to support specific approaches. Cox and Foster (1990) studied the Costs and Benefits of Occupational Regulation on behalf of the Bureau of Economics of the US Federal Trade Commission. Whilst this study is somewhat historical, their work is interesting because in the USA occupational regulation is within the gift of State legislature and it is for this reason that it is so variable. For example, California has 132 regulated occupations and Iowa has just 52. They studied all occupations and not just health care occupations but, in part, from the perspective of cost benefit and with the view that costs of occupational regulation may be passed onto the consumer. They explored some interesting issues in relation to the fact that some professionals seek to gain financially from being regulated especially when they have a dual role of diagnostician and provider of treatment and the associated potential for conflict of interest. This has been an issue in private medical and dental practice in the UK.

They also explored the desire of many consumers for increased regulation to prevent various sorts of market failure. Overall, they concluded that regulation was especially beneficial in health care where consumers do not have the technical expertise to evaluate a provider's skills or abilities. However, they called for a system that protects the consumer from conflicts of interest.

Proportionality of statutory regulation

Proportionality has been outlined as a key principle of this piece of work but what is proportionality in the context of health and social care regulation and how do regulators achieve proportionality. It should be noted that regulations are often put into place because of the negative actions of a few and then become a burden for many. These are sometimes politically motivated actions aimed to reassure the public that action has been taken but these initiatives have far reaching consequences and often add to the burden of regulation on the tax payer and individuals with little evidence that the initiative is proportionate. There are numerous examples of such actions in the UK.

In considering proportionality, it is important to weigh up the level and impact of certain risks and whether a proposed system will effectively mitigate those risks. An example of a risk stratification table can be found in Appendix 3.

New Zealand has a reputation for proportionality in health and social care regulation where the standards that the public can expect are explicit and transparent, particularly in relation to the licensing of hospitals and care homes.

<http://www.health.govt.nz/our-work/regulation-health-and-disability-system/certification-health-care-services>

As this work continues in the Bailiwick it will be important for the Commissioner to horizon scan internationally and to continually reflect on proportionality and whether each initiative proposed is indeed proportionate and adheres to the principles agreed by the Committee.

Voluntary regulation shows more promise

In contrast, there is good evidence to suggest that certain forms of voluntary regulation do make a statistically significant difference. Possibly one of the most researched is the international recognition scheme for high quality nursing known as Magnet® Recognition. Magnet® was started in the late 1980's with a large-scale piece of research looking at the characteristics of leading hospitals in relation to nursing. It is now a recognition scheme that requires hospitals to work towards and then adhere to a set of standards that is made more challenging every 4 years. There are only about 550 Magnet® recognized hospitals worldwide, with many others on the journey but research indicates that even those who are on the journey has improved patient outcomes. One of the many studies was conducted by the Centre for Health Outcomes at the University of Pennsylvania and included examining 508 non-Magnet hospitals and 56 Magnet® hospitals. The study included over 600, 000 surgical patients and found that patients in Magnet® hospitals were significantly less likely to die and suffer a life-threatening complication with 'failure to rescue'. The study noted that the Magnet® hospitals had developed high quality nursing care and were characterised by excellent leadership, nurses with advanced education and a track record of innovation. It is important to point out that even when researchers used several controls to eliminate the variations in mortality one might expect to see in complex versus minor surgery and issues such as academic medical centre versus a district general hospital they still found that it was the differences in the quality of nursing that explained the significant Magnet® advantage (McHugh, D et al, 2013).

The McHugh et al study links to a one that was conducted closer to home in 9 European countries and involving over 400, 000 patients and 26, 000 Registered Nurses and found a direct link between levels of nurse education and mortality and morbidity and found that hospitals with higher numbers of Bachelors or Master's prepared nurses (as opposed to diploma) educated nurses had significantly lower mortality and morbidity. They also discovered that hospitals with higher numbers of health care assistants had significantly higher mortality and morbidity and worse re-admission rates (Aiken, L et al, 2015)

There is also evidence to suggest that doing the morally right thing to improve care by engaging with systems of voluntary regulation like Magnet® can also save money. Work at Oxford University Hospitals has suggested that bringing nurse-sensitive indicators (like falls with harm, pressure injuries and nurse turnover) into line with typical Magnet® hospitals will save in the region of £3.7 million per annum (Weir-Hughes, 2017).

In summary, it appears that an innovative mixture of statutory and voluntary systems of regulation could be a proportionate and cost effective way forward for the Bailiwick. There will always be a requirement for a robust scheme of statutory regulation, including enforcement action, with a tight legal framework but this should only be needed in extreme circumstances.

Stakeholder engagement, findings and recommendations

Methodology

The methodology for this piece of work included literature review and a series of semi-structured interviews. Participants were initially drawn from a list of stakeholders agreed with the Chief Nurse / Director of Governance but by using a 'snowball' technique the list grew as themes emerged. Participants were enthusiastic to help and to be involved and consensus or data saturation on many of the main issues was achieved rapidly, meaning that there appears to be a shared understanding of the issues and possible solutions.

Participants included health and social care professionals, third sector leaders, financial regulators and colleagues in the States of Jersey. With very few exceptions there was genuine appetite for the Bailiwick to be a world leader in innovative approaches to health and social care regulation.

High level findings

There were several high-level findings and risks identified with the existing systems including:

- Participants were positive about a Commissioner led model, distanced from The States of Guernsey Health & Social Care Department geographically and structurally, underpinned with enabling legislation plus a series of Ordinances to be developed from a prioritised list from 2018-2021. This would include reorganising relevant, existing staff into the new, more independent function;
- Participants felt that the system by which the Commissioners receive assurance of safe practice should be by using specialist accreditation or recognition schemes as this was felt to be more proportionate and contemporary than developing an inspection regime although it was acknowledged that the legislation must support an inspection regime using specialist inspectors from other jurisdictions with enforcement actions should the need arise;
- The Bailiwick has a partly unregulated acute and community care system, including the hospital in terms of premises and unregistered staff (e.g. Care Support Workers). However, all professional staff are regulated by UK based health care professional regulators (such as the General Medical Council) and this does provide the public with protection;
- The Bailiwick has a partially regulated nursing and residential care home sector. This is because whilst there is a robust inspection regime, legislation does not enable the inspector to issue enforcement action. There is also a regulatory issue in relation to the designation of certain homes and there is no clinical overview in residential homes;
- There is a long-standing system of pharmacy regulation but one that is dependent on one individual who is potentially conflicted given that he is the chief pharmacist, the

inspector and the enforcer of the legislation. This exposes a degree of vulnerability in the system in terms of reliance on one individual and the risks that poses, particularly in respect of succession planning and continuity;

- An unregulated domiciliary care agency system, meaning that there are no legal requirements for agencies to require their workers to be trained or police checked. There was great enthusiasm from all stakeholders to resolve this matter;
- A lack of a regulatory framework for health care support workers / nursing assistants, which means that there is a lack of consistency in training and that individuals who are incompetent in one environment can easily move to different employers within the Bailiwick undetected. There was great enthusiasm from all stakeholders to resolve this matter;
- A lack of premises regulation means that dental surgeries and various private clinics can be developed anywhere. There was consensus that premises regulation should be explored and that premises regulation should include arrangements for the proper storage of medicines;
- A lack of premises regulation coupled with a weak system of managing certain visiting health care professionals from outside the Bailiwick, means that health care services are being offered in hotel rooms and other unregulated environments (for example, dental and health screening consultations). There was great enthusiasm from stakeholders to resolve this matter;
- The Responsible Officer role has been well embedded into medicine but doesn't exist in dentistry or any other profession. This is a major issue for Social Workers who are Approved Mental Health Practitioners (AMP);
- A very complex system of for managing concerns about children and young people out with the control of the Children's Convenor results in duplication and perhaps a lack of clarity about referrals. This area has already been the subject of an external report³ but stakeholders felt that further work was required and in particular to explore Local Safeguarding Board requirements;
- There was widespread concern about the number of unregulated psychotherapists and alternative therapists practising in the Bailiwick;
- The issue of beauty parlour employees providing medical treatments which should only be carried out by a registered doctor, dentist or nurse has also been widely discussed;
- There are significant issues in terms of the extant legislation, resourcing and governance arrangements related to regulation of Early Years provision and most notably The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015 which need to be resolved;

A range of social and equality issues emerged from the work including access to health care for migrant workers and their families; and there were significant issues in relation to drug

³ Guernsey Children Law Review – Kathleen Marshall (November 2015)

and alcohol consumption, including prescription opiates. The linkages between substance misuse and domestic violence/poor mental health and wellbeing were also of note. It was noted that there are separate Domestic Violence and Drug and Alcohol strategies in this respect. Whilst it is strictly outside of the scope of this piece of work, this feedback has been included as they are both key public safety issues. Regulation does have a role to play in ensuring that there is efficient and effective governance structures between health and social care providers and other agencies and timely intervention which helps to prevent instances of abuse and/or promote best outcomes for victims.

High level findings and recommendations

Findings	Stakeholder / s	Recommendations
1. Stakeholders felt that the Commissioner model was appropriate for the Bailiwick	All	The Commissioner model should be developed as part of a business case once the Committee have given approval in principle. It should be independent from The States of Guernsey Committee for Health & Social Care both geographically and structurally. The Commission could be set up under primary enabling legislation (similar to Jersey) followed with a series of secondary legislation (regulation standards introduced through Ordinances) to be developed from a prioritised list from 2018-2021, based on risk-level. This would include reorganising relevant, existing staff into the new, more independent function. Whilst Jersey's priorities are currently different, embedding the Commissioner Model would be relatively easy. The two Bailiwicks could bring the two Commissions together into a single Channel Island regulator in years to come (subject to appropriate legislation and political consensus). The cost of the Commissioners to Jersey is estimated circa £30k per annum (not including existing inspection staff). Unlike Jersey, the Bailiwick has no Head of Regulation to run the service so consideration will need to be given as to how this is managed and a fully costed appraisal will need to be developed as part of a business case. This and indeed all the recommendations in this report are consistent with the Target Operating Model (TOM).
2. The Commissioner should seek assurance that services are safe by using specialist recognition schemes, this would include the underpinning evidence to support licensing the hospital	All	In parallel with developing the Commissioner model and business case a study should be undertaken of all the relevant specialist recognition schemes. The cost of participating would be met by the relevant provider with the scheme being approved by the Commissioners. However, some infrastructure costs will need to be met by the States.
3. A range of concerns about healthcare provision and regulation in Alderney were raised	Multiple stakeholders	The Committee is asked to consider an approach to ensuring that islanders in Alderney receive high quality, safe care in consultation with stakeholders from Alderney

High level findings and recommendations (continued)

Findings	Stakeholder / s	Recommendations
4. An inspection regime should be developed with a directory of suitable specialists for use in the unlikely event of a significant event OR if a specialist recognition scheme cannot be identified for a service	All	In parallel with developing the Commissioner model and business case this work should be undertaken. Job descriptions, terms of engagement and a small budget for fees will also need to be identified
5. Nursing and residential homes will be required to assure the Commissioner that they are safe and effective but the current legislation needs to be updated to enable the Inspector to use enforcement action when required. In addition, provision should be reviewed.	Nursing and residential home leaders, users, carers and the Inspector	In parallel with developing the Commissioner model a suitable recognition scheme will be identified and piloted. Amendments to the current legislation should be drafted. The inspector should move from HSC to the office of the Commissioner.
6. The relevant legislation will need to be reviewed and updated to disaggregate the management and leadership of pharmacy with inspection and enforcement.	Chief Medical Officer, Chief Nurse / Director of Governance, Chief Pharmacist, Community Pharmacists	In parallel with developing the Commissioner model, amendments to the current legislation should be drafted and operational disaggregation arrangements put in place in order that the pharmacy inspection and enforcement function moves to the office of the Commissioner.
7. The domiciliary care agency system is unregulated, meaning that there are no legal requirements for agencies to require their workers to be trained or police checked.	Office of the Commissioner and industry partners	Further consultation is required in parallel with developing the Commissioner model but the enthusiasm for resolving this risk by almost everyone consulted should be noted. As detailed in recommended in 2 it is proposed that this group of workers is subject to some form of regulation.

High level findings and recommendations (continued)

Findings	Stakeholder / s	Recommendations
8. A lack of a regulatory framework for health care support workers / nursing assistants, which means that there is a lack of consistency in training and that individuals who are incompetent in one environment can easily move to different employers within the Bailiwick undetected.	Office of the Commissioner, the Chief Nurse / Director of Governance, industry and third sector partners	Further consultation is required in parallel with developing the Commissioner model but the enthusiasm for resolving this risk by almost everyone consulted should be noted. An options paper should be developed for the Committee on models of regulation for a) Domiciliary care workers and b) health care assistants in the acute, community and long-term care sectors.
9. A lack of premises regulation means that dental surgeries and various private clinics can be developed anywhere. There was consensus that premises regulation should be explored and that premises regulation should include arrangements for the proper storage of medicines and the use of X-Ray in dental practices	Office of the Commissioner, the Chief Nurse / Director of Governance, industry and dentistry partners, Environmental Health, the Chief Pharmacist and Radiation Protection Advice	Further consultation is required in parallel with developing the Commissioner model but the enthusiasm for resolving this risk by almost everyone consulted should be noted. A model of premises inspection already exists in high street optics, Specsavers specifically and this could be built upon with the support of Environmental Health.
10. There is an inconsistent system of managing visiting health care professionals from outside the Bailiwick	Office of the Commissioner, Chief Medical Officer, Chief Nurse / Director of Governance	Whilst many visiting health care professionals (such as those accompanying sports teams) are well managed, existing legislation needs to be strengthened to better protect Islanders from unmanaged practitioners offering clinical services from hotel rooms and other unregulated premises.
11. The Responsible Officer (RO) role needs to be extended to other health care professionals outside of Medicine	Office of the Commissioner, Chief Nurse / Director of Governance, Dentist and Social Work representatives	In the UK, the RO role is statutory for GMC registrants but not for other health care professionals. However, the extension of the RO role to others is a 2016 recommendation of the Professional Standards Agency (England) so this is an initiative in which the Bailiwick could lead the way. Consultation and subsequent Ordinance drafting would be required to make it mandatory in the Bailiwick.

High level findings and recommendations (continued)

Findings	Stakeholder / s	Recommendations
12. The Westminster Government proposed the opening of a new Agency for Social Workers registration. This has now been overturned meaning that registration in England is in a state of flux	Chief Nurse / Director of Governance and Social Worker representatives	It is recommended that the Committee review the situation with Social Worker regulation in England as it unfolds. A paper will need be prepared for the Committee suggesting a way forward. The decision may need to be included in a relevant Ordinance.
13. The complex system for managing concerns about children and young people out with the control of the Children's Convenor results in duplication and a lack of clarity.	Children's Convenor, Chief Nurse / Director of Governance initially	This area has also been the subject of an external review by Professor Kathy Marshall but it is suggested that a further review and / or a robust action plan is required. This work is outside of the immediate scope of this report and accountabilities will need to be agreed by the Committee. The original report can be found at: https://www.gov.gg/CHttpHandler.ashx?id=103201&p=0
14. There was widespread concern about the number of unregulated psychotherapists and alternative therapists practising	Office of the Commissioner	In parallel with developing the role of the Commissioner, the Professional Standards Agency (England) registration scheme should be evaluated in more detail and professionals consulted with subsequent recommendations to the Committee to adopt the scheme (which would be at no cost). An Ordinance would be required.
15. There is an issue related to beauty parlour employees providing treatments which should only be carried out by a registered doctor, dentist or nurse.	Office of the Commissioner	In parallel with developing the role of the Commissioner, the Professional Standards Agency (England) registration scheme for Cosmetics should be evaluated in more detail and professionals consulted with subsequent recommendations to the Committee to adopt the scheme (which would be at no cost). An Ordinance would be required.
16. There are issues in terms of the extant legislation related to regulation of Early Years provision and most notably The Children (Child Minders and Day Care Providers) (Guernsey and Alderney) Ordinance, 2015 which need to be resolved	To be confirmed	It is recommended that further work, including legal advice is sought in terms of the existing issues in this respect, inter-departmental governance arrangements and possible legislative change, before any firm recommendations are brought to Committee about the future regulation of Early Years providers.

Conclusion

This report marks the beginning of a complex series of tasks and activities which aim to better protect the Islanders of the Bailiwick by creating a proportionate yet world leading system of health and social care regulation. The individuals who participated in this consultation sessions that helped to build this report all had useful contributions to make but towards the end of the process we consulted another experienced regulator with significant experience of Financial Services regulation in the Bailiwick, in Jersey and in UK. He strongly supported the approach detailed in this paper. This was an important step in validating the recommendations.

This is a legacy piece of work which will have far reaching implications beyond the life of the existing committee and many of the employees who will be involved in the next few years and it is with this in mind that the Committee are respectfully asked to consider:

- The principles of health and social care regulation for the Bailiwick detailed in this paper.
- The Commissioner Model and the advent of independent health and social care regulation in the Bailiwick.
- The concept of the use of specialist recognition schemes to provide assurance to the Commissioner.
- The need for robust legislation including mandatory inspection and enforcement options that can be used in situations where there is no other more proportionate option to protect the public.
- The other recommendations contained within this paper.
- The approval of a budget of £50k for the financial year 2018/19 to pursue these recommendations.

Next steps

Subject to Committee's approval of this paper, the next steps include:

- Writing a detailed project plan, commencing initial discussions with legal experts and commencing some of the initial planning work to set up the Office of the Commissioner and scoping several of the more straightforward recommendations, such as options for adopting specialist recognition schemes and the Professional Standards Agency (England) licensing arrangements for certain health workers. This can be delivered within existing financial resources during 2017 / 2018. The project plan will be presented to the Committee on a date to be agreed.
- The business case will include a funding model but the costs of professional regulation in the Bailiwick are already met by individual health and social care professionals through paying their own fees. In the main, these fees are not passed onto the consumer because most health care and social care professional in the Bailiwick do not work on a fee for service basis. This would include nurses, midwives, social workers and most allied health professionals, such as paramedics. The costs of participating in specialist recognition schemes will need to be assessed but it is suggested that these would be met by providers. There will be some additional costs to running the Office of the Commissioner and this needs to be quantified for the Committee once the overall direction is agreed but some of this can be off-set against premises and other sorts of license fees, many of which already exist, such as nursing and residential home fees and pharmacy licence fees. Overall the model of funding which will be proposed will be a blended approach underpinned with the key principle of proportionality and assessment of risk.
- A Green paper will be prepared to deliver the other recommendations, including a public consultation, which will be presented to the Committee.
- An Equality Impact Assessment also needs to be undertaken, subject to the Committees approval of these recommendations.

References

Aiken, Linda H; Sloane, D; Bruyneel, L et al (2014) Nurse staffing and education and hospital mortality in nine European countries: a retrospective observational study. *The Lancet*, Volume 383, Issue 9931, 1824 - 1830

McHugh, M. D., Kelly, L. A., Smith, H. L., Wu, E. S., Vanak, J. M., & Aiken, L. H. (2013). Lower Mortality in Magnet Hospitals. *The Journal of Nursing Administration*, 43(10 0), S4–10. <http://doi.org/10.1097/01.NNA.0000435145.39337.d5>

Weir-Hughes, D (2017) The business case for Magnet® Recognition at Oxford University Hospitals
<http://www.ouh.nhs.uk/about/trust-board/2017/march/documents/TB2017.36-magnet-recognition-programme.pdf>

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Appendix 1: Stakeholder Engagement – Phase 1 List of Consultees

Internal to HSC

- Alastair Richards, Head of Radiology and Clinical Services Director (Interim)
- Carolyn Barrett, Manager, Prison Healthcare
- Chris Guy, Head Biomedical Scientist
- Dom Bishop and Jenny Cook, Community Adult Mental Health Service
- Ed Freestone, Chief Pharmacist, Assistant Director and Registrations Officer (Health Professionals)
- Elaine Burgess, Deputy Chief Nurse
- Elaine Torrance, Head of Midwifery
- Jan Coleman, Director of Hospital Services
- Julie Barnes (Fostering and Adoption)
- Juliet Beal, Chief Nurse / Director of Governance
- Kristina Willis, Programme Manager, Target Operating Model
- Leon Le Cras, Head of EBME
- Madeleine Dunn, Multi Agency Support Hub (MASH)
- Mark de Garis, Chief Secretary
- Mary Carré, Theatres Manager
- Matt Jones, Senior Operating Manger
- Myfanwy Datta, Dietetics
- Nick Phipps, Supported Living (Grand Courtil)
- Nicky Gallienne, Assistant Director, Children and Family Community Services
- Oberlands Nursing Staff on Tautenay Ward
- Peter Rabey, Medical Director
- Rachel Stevenson (Duty and Brief Intervention)
- Ruby Parry, Locum Consultant Social Care
- Sarah Lyle, Head of Service, Children's Dental Services
- Theresa Prince, Community Nursing
- Vanessa Penney, Registration & Inspection – Nursing and Residential (HSC)

External to HSC

- Bob Gallagher/Paul Williams and Ed Partridge, Primary Care Practices
- Commissioner of Health and Social Care, Jersey
- Dr John Curran, Aesthetic Skin Clinic, Former president and Fellow of BCAM, British College of Aesthetic Medicine
- Emily Litten, Guernsey MIND
- Felicity Quevatre, Catalyst
- Hayley Jordan, Senior Aesthetic Nurse Practitioner & Director of Medical Governance, Aesthetic Skin Clinic
- Jo Boyd, Director, Les Bourgs Hospice

- Jon Beausire, Chief Officer, St John Ambulance and Rescue Service
- Karen Brady, Children's Convenor
- Karen Le Page, Guernsey Cheshire Home
- Keith Otty, Guernsey Dental Association
- Linda Edwards, Early Years Team Manager
- Nick Hynes, Director of Learning, Performance & Intervention, Education Services
- Nick Trott, CI Healthcare (Domiciliary Care and Residential/Nursing Homes)
- Paula Burbridge, Connie's Carers
- Peter Neville, former Chief Executive Guernsey Financial Services Commission and current Board member, Channel Islands Competition Regulatory Authority (CICRA)
- Philippi Trust
- Rob Platt MBE, Guernsey Disability Alliance
- Rodney Gregg, Physiotherapist
- Roy Lee, Law Officers of the Crown
- Dan Ormesher and Sarah Burchett, Specsavers Opticians
- States of Jersey Health and Social Services Department (Regulation)
- Sue Fleming, Matron, St. John's Residential and Nursing Home

Appendix 2: Examples of voluntary regulation schemes

The following schemes are examples of the ‘best practice’ specialist recognition schemes that could be used to provide assurance to the Commissioner. It should be noted that if the Committee approved this model as a way forward that further work will be required to evaluate each scheme, consult with stakeholders and to make recommendations to the Commissioner.

Scheme	Area	Notes and website link
Magnet® recognition	Acute and community nursing	See notes on pages 11 and 12 http://www.nursecredentialing.org/Magnet
Joint Commission International	Hospital services	See notes on page 7 https://www.jointcommissioninternational.org
Planetree	Nursing and residential homes	The focus of Planetree is person-centred care. Whilst some acute hospitals have pursued recognition it is particularly suited to longer-term care environments, especially when coupled with robust health and safety and premises regulation http://planetree.org/reputation/
Imaging Services Accreditation Scheme (operated by the Royal College of Radiologists and the College of Radiographers)	Radiology	This well-established scheme is designed to promote best practice in radiology and provide assurance of a safe and effective diagnostic radiology service. https://www.rcr.ac.uk/clinical-radiology/service-delivery/imaging-services-accreditation-scheme-isas
CHKS	Primary care	CHKS is the scheme of voluntary regulation already used within Primary Care http://www.chks.co.uk
Royal College of Psychiatrists Accreditation Scheme	Mental health in-patient wards	Mental health inpatient wards are high risk environments. This scheme has already been used in the Bailiwick to provide assurance of safe care. http://www.rcpsych.ac.uk/workinpsychiatry/
Royal College of Nursing Advanced Practice Credentialing	Advanced Nurse Practitioners, Nurse Specialists and Nurse Consultants	This robust scheme offers independent assessment of nurses in advanced roles and provides assurance to their public and employers that those with the credential are indeed competent to practice safely at an advanced level. https://www.rcn.org.uk/professional-development/professional-services/credentialing/credentialing-model
Professional Standards Authority Accredited Registers	Occupations not statutorily regulated	The PSA accredited registers scheme offers the public protection by providing a platform for accredited registers for occupations that are not regulated by statute such as alternative therapists and counsellors. http://www.professionalstandards.org.uk/what-we-do/accredited-registers

Appendix 3: Example of an occupational risk stratification decision-making tool to guide decision making about the proportionality of regulation

Occupational group	Intervention risk (1)	Context of care risk (2)	Typical level vulnerability of users (3)	Notes
Domiciliary care workers	Low	High	High	Domiciliary care workers work alone with vulnerable people who are not clinically assessed in their own homes unsupervised
Health Care Assistants (HCA's) (Nursing Homes)	Low	Medium	High	Nursing Homes based HCA's are supervised by a Registered Nurse who is accountable for their work and this reduces the level of risk
Health Care Assistants (Residential Homes)	Low	High	High	Residential Home HCA's do not have access to a Registered Nurse and residents are not clinically assessed. This increases risk.
Health Care Assistants (Hospital)	Medium	Medium	High	Hospital based HCA's are supervised by a Registered Nurse or Midwife who is accountable for their work and this reduces the level of risk
Health Care Assistants (Community)	Medium	High	High	Community HCA's work alone with vulnerable people but do have immediate access to a Registered Nurse who is accountable for their work, which reduces the contextual risk
Psychotherapists and Counsellors	High	High	High	These individuals work with highly vulnerable individuals in unregulated premises usually one-to-one without a chaperone
Emergency Medical Technicians (EMT's)	High	High	High	EMT's aren't regulated but there is a proposal that they should be able to administer a range of drugs without prescription, hence the high-risk score for intervention
Dental Team members (other than Registered Dentists)	Low	Medium	Low	Dental team members are already registered by the General Dental even though they do not present a risk, although this isn't mandatory in the Bailiwick. The context of care risk is medium because dental practices are not regulated

Appendix 4: Brief notes on the history of regulation and underpinning research

Health care professionals were amongst the first professionals to be regulated. The earliest reference to medical regulation dates from 1421 when physicians petitioned parliament to ask that nobody without appropriate qualifications be allowed to practice. Little happened until 1511 when statute placed medical regulation in the hands of Bishops. However, modern health care professional regulation started in 1858 with the passing of the Medical Act and the formation of the General Medical Council. Midwifery followed in 1902 with the passing of the Midwives Act and Nurses in 1919 with the passing of the Nurses Registration Act. In those days, many of the professions we now have didn't exist and, for example, the activities of Social Workers (then known as Almoners), Dieticians and Physiotherapists were part of nursing. In more recent years, multiple professional regulators have been formed to protect the public from the numerous emerging and distinct professions now in existence.

In social care regulation focused more on containment rather than care originally, it could be argued that the systems regulation of social care in England and Wales started with the passing of the Elizabethan Poor Law in 1601. It is only in recent years that Social Workers have been registered and regulated.

Since regulation started, there has been a problem with developing an evidence base for it. Both statutory professional regulation and systems regulation are complex and multi-faceted areas in which to conduct research. It would be a brave or perhaps even cavalier research ethics committee who approved a study that required, for example, the reduction of regulation to assess the impact of various systems on levels of harm amongst members of the public. The only way in which this could be done would be to assess outcomes across different jurisdictions with very similar populations and health systems and yet with different regulatory frameworks but even then, the approach would be plagued by methodological difficulties.

Appendix 5: Benefits Analysis

Outputs	Benefits	Corporate Goals
Inspection against standards and regulations set by law	<p>Better joined-up inspection regime</p> <p>Improved Service User Safety</p> <p>Improvements to Quality of Service (Safe, Timely, Efficient, Effective, Equal, Person-centred)</p> <p>Better Enforcement</p>	<p>Policy and Resource Plan</p> <p>2020 Vision</p> <p>SLAWS</p>
Enforcement	Ability to serve improvement notices and ensure compliance with standards under law.	<p>Policy and Resource Plan</p> <p>SLAWS</p>
Information	Better Information	<p>Policy and Resource Plan</p> <p>2020 Vision SLAWS</p>
Advice	<p>1-stop shop for complaints/feedback</p> <p>Independent ombudsman (re: raising concerns) – see Francis Report Feb 2015</p>	<p>Policy and Resource Plan</p> <p>2020 Vision</p> <p>Raising Concerns</p> <p>SLAWS</p>
Engagement	User involvement – setting of regulations, standards and outcomes.	Policy and Resource Plan

		2020 Vision/CareWatch
Trust and Confidence	Assurance to stakeholders that services provided are safe.	Policy and Resource Plan 2020 Vision, SLAWS



Committee *for* Health & Social Care

Equality Analysis

Section 1 - Summary

1	Title	
2	What are the intended outcomes of this work?	
3	Who will be affected by this work? List your key stakeholders here.	

Section 2 - Evidence

4	What evidence have you considered?	
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5	Age Consider and detail here age related evidence. This can include safeguarding, consent and welfare issues.	
6	Disability Consider and detail here disability related evidence. This can include attitudinal, physical and social barriers as well as mental health/ learning disabilities	
7	Gender Identity (including transgender) Consider and detail here evidence on transgender people. This can include issues such as privacy of data and harassment.	
8	Marriage and other partnerships Consider and detail evidence on marriage or partnerships. This can include working arrangements, part-time working, caring responsibilities.	
9	Pregnancy and maternity Consider and detail evidence on pregnancy and maternity. This can include working arrangements, part-time working, caring responsibilities.	
10	Race Consider and detail race related evidence. This can include information on difference ethnic groups, Roma gypsies, Irish travellers, nationalities, cultures, and language barriers.	

11	Religion or belief Consider and detail evidence on people with different religions, beliefs or no belief. This can include consent and end of life issues.	
12	Sex Consider and detail evidence on men and women. This could include access to services and employment.	
13	Sexual orientation Consider and detail evidence on heterosexual people as well as lesbian, gay and bisexual people. This could include access to services and employment, attitudinal and social barriers.	
14	Carers Consider and detail evidence on part-time working, shift-patterns, general caring responsibilities.	
15	Other identified groups Consider and detail evidence on groups experiencing disadvantage and barriers to access and outcomes. This can include different socio-economic groups, geographical area inequality, income, resident status, etc.	

Section 4 – Engagement, inclusion and valuing people

16	How have you engaged stakeholders with an interest in protected characteristics in gathering evidence or testing the evidence available?	
17	How have you engaged stakeholders in testing the policy or programme proposals?	
18	For each engagement activity, please state who was involved, how and when they were engaged, and the key outputs.	

Section 5 – Summary of Analysis

19	<p>Summary of Analysis</p> <p>Considering the evidence and engagement activity you listed above, please summarise the impact of your work. Consider whether the evidence shows potential for differential impacts, if so state whether adverse or positive and for which groups and/or individuals. How you will mitigate any negative impacts? How you will include certain protected groups in services or expand their participation in public life? Now consider and detail below how the proposals impact on elimination of discrimination, harassment and victimisation, advance the equality of opportunity and promote good relations between groups.</p>	
20	<p>Eliminate discrimination, harassment and victimisation</p> <p>Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).</p>	
21	<p>Advance equality of opportunity</p> <p>Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).</p>	
22	<p>Promote good relations between groups</p> <p>Where there is evidence, address each protected characteristic (age, disability, gender, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sexual orientation).</p>	

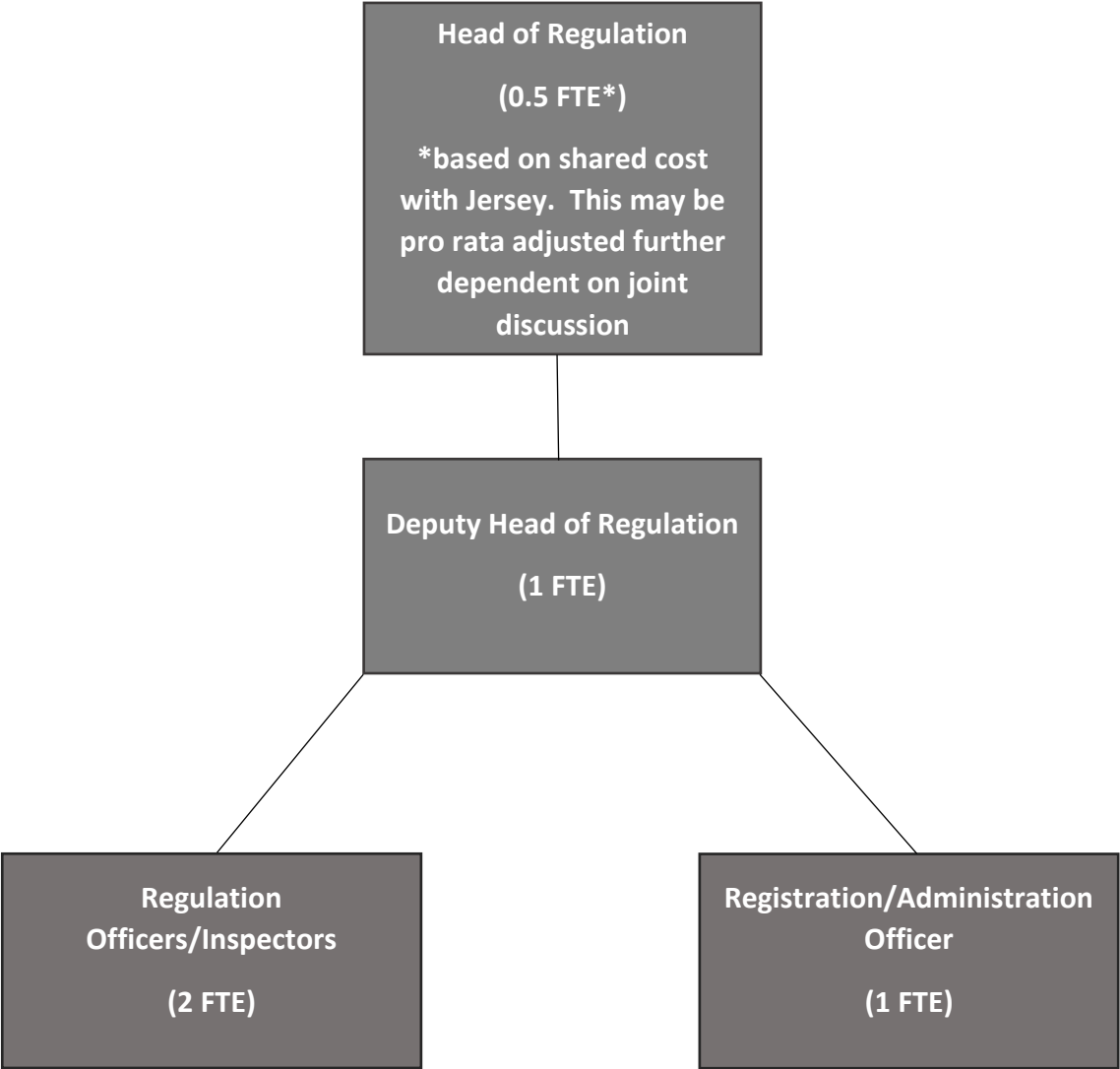
Section 6 – Evidence-based decision making

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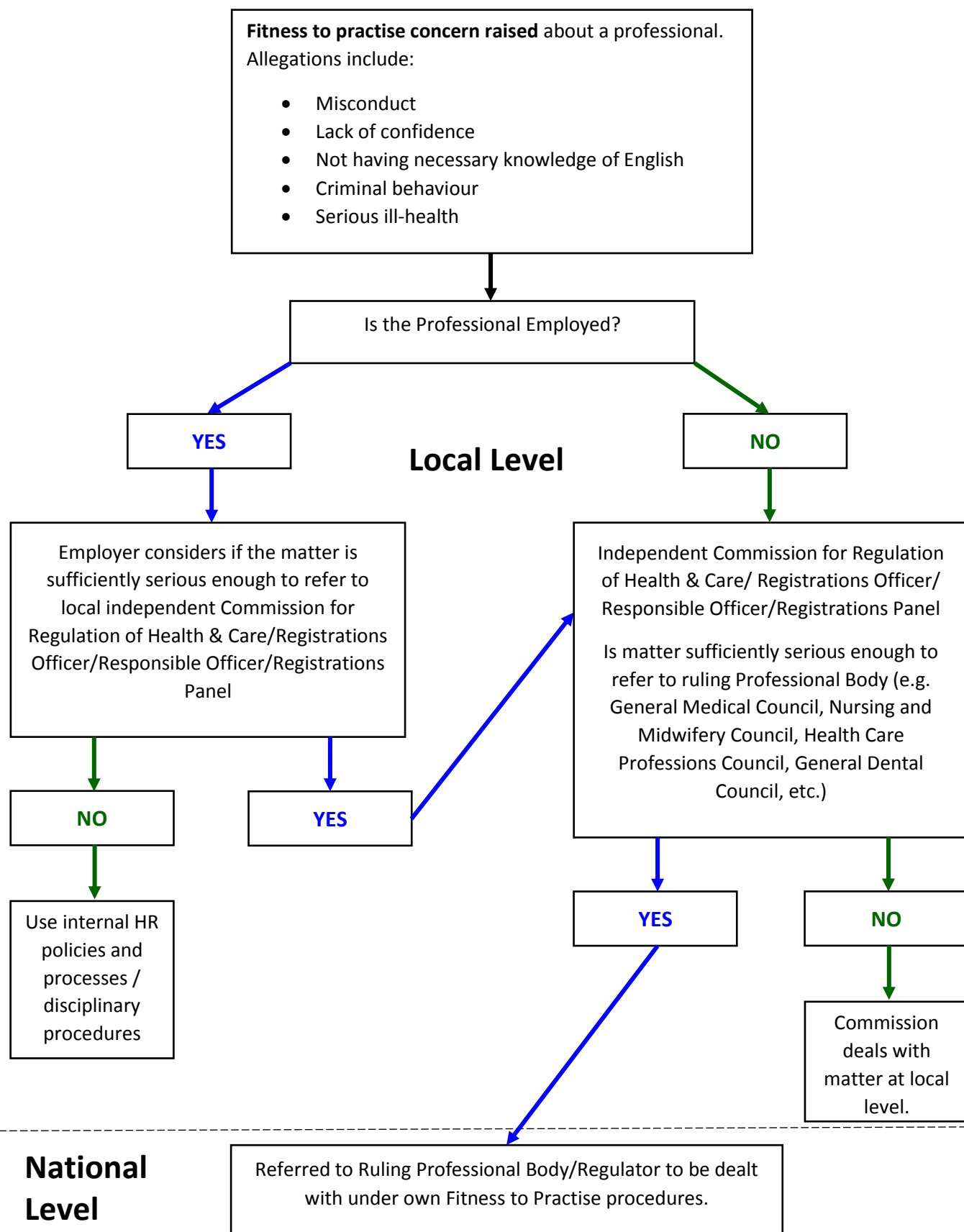
Conclusion

Please give an outline of what you are going to do based on the gaps, challenges and opportunities you have identified in the summary of analysis section. This might include action(s) to eliminate discrimination issues, partnership working with stakeholders and data gaps that need to be addressed through further consultation or research.

Proposed Organisation Chart - Office of the Commission



Regulation - Fitness to Practise Process Flowchart



Consultation

Internal to Health & Social Care

- Head of Radiology and Clinical Services Director (Interim)
- Manager, Prison Healthcare
- Head Biomedical Scientist
- Community Adult Mental Health Service
- Chief Pharmacist, Assistant Director and Registrations Officer (Health Professionals)
- Deputy Chief Nurse
- Head of Midwifery
- Head of Hospital Services
- Fostering and Adoption Service
- Chief Nurse / Director of Governance
- Programme Manager, Target Operating Model
- Head of EBME
- Multi Agency Support Hub (MASH)
- Chief Secretary
- Theatres Manager
- Senior Operating Officer
- Dietetics
- Supported Living (La Grand Courtil)
- Head of Children and Family Community Services
- Oberlands Nursing Staff on Tautenay Ward
- Medical Director (in capacity as Medical Director and Responsible Officer)
- Duty and Brief Intervention
- Locum Consultant Social Care
- Head of Service, Children's Dental Services
- Community Nursing
- Registration & Inspection Officer – Nursing and Residential (HSC)
- HSC CareWatch
- HSC Clinical Reference Group
- HSC Quality Governance Committee

External to Health & Social Care

- Policy & Resources Committee
- Committee *for* Employment & Social Security
- Committee *for* Education, Sport & Culture
- Committee *for* Home Affairs
- States of Alderney
- Sark

- Aesthetic Skin Clinic, Former president and Fellow of the British College of Aesthetic Medicine
- Albecq Foot Clinic
- Avenue Clinic (Physiotherapy, Osteopathy, Podiatry, Acupuncture)
- Catalyst
- Chief Officer, St John Ambulance and Rescue Service
- Children's Convenor
- CI Healthcare (Domiciliary Care and Residential/Nursing Homes)
- CMC
- Commissioner of Health and Social Care, Jersey
- Connie's Carers
- Director of Learning, Performance & Intervention, Education Services
- Director, Les Bourgs Hospice
- Early Years Team Manager
- Falla & Le Page Chiropodists
- First Contact Health
- Former Chief Executive Guernsey Financial Services Commission and current Board member, Channel Islands Competition and Regulatory Authority (CICRA)
- Guernsey Cheshire Home
- Guernsey Chiropractic Clinic
- Guernsey Dental Association
- Guernsey Disability Alliance
- Guernsey MIND
- Guernsey Therapy Group
- Island Ultrasound
- Law Officers of the Crown
- Matron, St. John's Residential and Nursing Home
- Medical Specialist Group
- Neat Feet
- Philippi Trust
- Physio & Rehabilitation Clinic
- Physiotherapists
- Primary Care Practices (Healthcare Group, Island Health & Queen's Road Medical Practice)
- Senior Aesthetic Nurse Practitioner & Director of Medical Governance, Aesthetic Skin Clinic
- Specsavers Opticians
- St Martin's Foot Clinic
- States of Jersey Health and Social Services Department (Regulation)
- The Studio
- Thrive Physiotherapy

Implementation Plan

	2019	2020	2021	2022
Regulation Model Policy Letter				
Prepare draft Primary Legislation				
Projet de Loi to States Assembly				
Projet de Loi to Privy Council				
Shadow Commission formed				
Preparation of Draft Ordinances				

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* HEALTH & SOCIAL CARE

HEALTH AND CARE REGULATION IN THE BAILIWICK

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

8th January, 2019

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* Health & Social Care requests that the propositions contained in its policy letter entitled 'Health and Care Regulation in the Bailiwick' dated 7th January 2019, be considered at the States' meeting to be held on 27th February, 2019.

This request is made on the basis that agreement of the States on the regulatory framework for health and care will enable the Committee to have sufficient time to carry out further consultation and engagement on its proposals and to liaise further with Jersey about the structure of the Commission Office. A timely debate by the States is essential to ensure that the budgetary requirements of the Committee for the year 2020 are fully informed by this additional work.

Yours faithfully,



H J R Soulsby
President

R H Tooley
Vice President

R G Prow
D A Tindall
E A Yerby

R Allsopp

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REFORM OF THE MARRIAGE LAW

The States are asked to decide:-

Whether, after consideration of Policy Letter of the Policy & Resources Committee entitled 'Reform of the Marriage Law', dated 14th January, 2019 they are of the opinion:-

1. To approve the proposals laid out in section 6 of the Policy Letter to reform the marriage law.
2. To direct the Policy & Resources Committee to oversee the preparation of the legislation and supporting policy guidance to implement the reforms as agreed in Proposition 1.
3. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REFORM OF THE MARRIAGE LAW

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

14th January, 2019

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter sets out the findings from the Review into the current law governing how and where couples can marry. It proposes that the current marriage law is repealed and replaced to ensure that it is simpler; fits the needs of a modern society; is inclusive; and maintains sufficient safeguards to prevent illegal, sham or forced marriages.
- 1.2 Amending and modernising the law would bring us in line with jurisdictions such as Scotland and Jersey, and show the Bailiwick as a forward thinking and progressive jurisdiction.
- 1.3 The updated law is intended to cover the whole Bailiwick, bringing greater consistency and clarity to the marriage formalities and requirements across all the islands, making it easier for anyone wishing to hold their marriage ceremony in one of the islands.
- 1.4 A couple's wedding day is often seen as one of the most important days of a person's life that requires a special level of celebration and expenditure by the couple, their friends and family. The ceremony is a solemn undertaking involving a commitment to each other, taken in front of witnesses and in most cases family and friends. It is also a legal transition in which the state has an interest and so it must be clear when it has come into being. Therefore, there must be sufficient scrutiny and steps taken to try to ensure those seeking to marry are legally free to do so and to try and prevent sham and forced marriages.

- 1.5 In December 2015, (Billet d'État XXIII¹) the States directed the then Policy Council to address the issues raised by the work on the Union Civile proposals, which included the need to modernise the formalities of marriage, including procedural ones.
- 1.6 Subsequently, on 27th June, 2017, (Billet d'État XII²) reform of the marriage law was prioritised in the Policy & Resource Plan, to be led by the Policy & Resources Committee, (the Committee) in collaboration with HM Greffier. The Committee approved the Review's terms of reference (Appendix B) in November 2017.
- 1.7 Reform of the marriage law aligns with the Public Service Reform³ agenda by transforming services so that they meet customer expectations.
- 1.8 The stakeholder consultation findings⁴ showed that the community was in the main supportive of the proposals, as set out in section 6.

1.9 **Recommendations:**

The Propositions to which this Policy Letter is attached recommend the States:

1. To approve the proposals set out in section 6 of the Policy Letter to reform the marriage law;
2. To direct the Policy & Resources Committee to oversee the preparation of the legislation and supporting policy guidance; and
3. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

¹ [Billet d'Etat XXIII, 2015 - Same-sex marriage](#)

² [Billet d'Etat XII, 2017 - The Policy & Resource Plan - Phase 2](#)

³ [Public Service Reform](#)

⁴ [Marriage law reform public consultation findings](#)

2. Background

- 2.1 The Guernsey marriage procedures are set out in the “Loi ayant rapport aux Mariages Célébrés dans les Iles de Guernesey, d’Auregny et de Serk”, of 1919, (“the Law”) which replaced a law of 1840. The Law sets out the options available to enter into a marriage today and that HM Greffier is the Registrar General of marriages. Although it has been amended in minor respects, there has been no significant reform of the Law. The Law also applies to Sark although that island has made some amendments in recent years. Alderney has a separate law enacted in 1923, but its terms are similar except for a few differences such as, for example, residency periods (see paragraph 3.12).
- 2.2 The 1840 law introduced the possibility of civil marriages, although Anglican marriages continued, as they do today, governed by a separate set of requirements overseen by ecclesiastical law. Hence, since 1840 there has been provision for civil and religious marriage and a dual system of civil and religious preliminaries.
- 2.3 In most jurisdictions there has been a gradual shift in the past few decades from mainly religious marriages, conducted in religious buildings with significant religious rites, to civil marriages. In Guernsey, civil marriages are conducted at the Office of the Registrar General, the Greffe, in St James’ Assembly Hall or in private residences. In the Bailiwick, the most popular form of religious marriage is Anglican, followed by Roman Catholic and then Methodist ceremonies (Appendix A). Since 2011, around 300 marriages per year have been conducted in the islands of which the majority were civil ceremonies.
- 2.4 The UK’s Marriage Act, 1994 introduced the ability to conduct civil marriages in ‘approved premises’, those being mainly hotels and public buildings. This proved very popular and by 2012, 60% of civil marriages in England and Wales were conducted in approved premises⁵.
- 2.5 In August 1993, (Billet d’État XV) the States resolved to amend the Law to allow one additional building to be licensed for the solemnisation of civil marriages, in addition to the Greffe. St James’ Assembly Hall was licensed on the 3rd October, 1994.

5

<https://www.ons.gov.uk/peoplepopulationandcommunity/birthsdeathsandmarriages/marriagecohabitationandcivilpartnerships/bulletins/marriagesinenglandandwalesprovisional/2014-06-11>

- 2.6 Since 1993, some consideration has been given to allowing marriages to take place in other locations, such as Castle Cornet, but this was not progressed until May 2014 when the then Policy Council established a working party called the Union Civile working party, whose work resulted in the Same-Sex Marriage (Guernsey) Law, 2016. During these discussions the current marriage law was reviewed and some proposals for change were set out. In Alderney, more flexibility in terms of location were introduced in 2005, and likewise in Sark in 2013.
- 2.7 In December 2015, the States agreed (Billet d'État XXIII⁶) -'To direct the Policy Council to bring forward, in a timely manner, separate Policy Letters to address the issues raised by the work on Union Civile including those relating to the procedural formalities relating to marriage, which included but were not limited to notice periods and the time and place that a marriage can be solemnized.'
- 2.8 On 27th June, 2017, (Billet d'État XII⁷) reform of the marriage law was prioritised in the Policy & Resource Plan, in support of achieving the "One Community: inclusive and committed to social justice" outcome.
- 2.9 In November 2017, the Committee approved the terms of reference for the review of the Law (Appendix B) and a working group was established including representation from the Law Officers, Marketing & Tourism and Borders & Immigration.

3. Current position and reasons for change

- 3.1 Over the years, the principles underlying the UK marriage legislation have remained the same, with the exception of Scotland which, for example, has for some time had a different minimum legal age and parental consent for those 16 years and above is not required. However, there have been some recent amendments to the UK legislation to reflect cultural and social changes, including first allowing for civil partnerships and then more recently same-sex marriage⁸. The residency requirements for obtaining a marriage certificate or licence have been removed or reduced and today marriages can take place in many different venues in the UK.

⁶ [Billet d'Etat XXIII, 2015 - Same-sex marriage](#)

⁷ [Billet d'Etat XII, 2017 - The Policy & Resource Plan - Phase 2](#)

⁸ [England and Wales marriage law changes](#)

- 3.2 Since the Law was enacted in 1919, there has not been a thorough review or any substantial changes made to it. It is now considered necessary to modernise, simplify and make it more inclusive, while putting in place effective safeguards to prevent illegal, forced or sham marriages. The methods available to meet these objectives are now more effective than those that were available in the past.
- 3.3 Amending and modernising the Law would show that the Bailiwick is a forward thinking and progressive jurisdiction and bring us in line with changes made in other places, such as Scotland and Jersey⁹. It is also desirable to have Bailiwick-wide legislation that provides a consistent approach throughout the islands.
- 3.4 At present, to apply for an authority to marry, for all except Anglican marriages, notice of marriage needs to be given by one of the couple intending to marry, in person, to the Registrar General at the Greffe¹⁰. The Ecclesiastical Court¹¹ issues licences for Anglican marriages.
- 3.5 There are three types of authority for civil marriage: certificate, licence or special licence, and the residency requirements and notice periods differ for each authority.
- 3.6 The notice period (the period between notice being given and the certificate or licence being issued) is used to carry out the necessary checks such as immigration checks and, for a marriage by certificate, to make the details about the planned marriage public, by displaying the Notice on the noticeboard at the Greffe, for 21 days. These requirements are unduly complicated and inconsistent, as set out in paragraph 3.5 and their rationale is uncertain. The requirements to apply for an authority to be married need to be simplified and removed where they no longer serve a purpose.
- 3.7 Any immigration checks are carried out once notice of marriage has been given which, depending on the type of authority, could be between one clear day and one month before the date of the marriage. Non-European Economic Area (EEA) nationals seeking to get married in Guernsey must have the appropriate immigration permission in accordance with the Immigration Act, 1971 as extended to the Bailiwick of Guernsey.

⁹ https://www.jerseylaw.je/laws/enacted/Pages/L-19-2018.aspx#_Toc515632857

¹⁰ [Guernsey Royal Court](#)

¹¹ [Ecclesiastical court website](#)

- 3.8 In the UK, the notice period can be extended from 28 days to 70 days should additional time be needed to carry out immigration checks on non-EEA nationals. In Jersey, immigration checks are now carried out before notice of marriage can be given. The step to ensure appropriate immigration permission has been granted, before issuing an authority to marry, is a recognised measure that provides greater protection against sham¹²¹³ and forced marriages being formed to gain an immigration advantage, which is a particular issue in the UK. There is a need to review Guernsey's approach to these safeguards to ensure alignment with other jurisdictions and in particular the UK legislation.
- 3.9 Notice of marriage can presently be given no more than three months prior to the intended marriage date and the authority, regardless of type, ceases to be valid following three calendar months from the date of giving notice. Many couples arrange their marriage years in advance of the marriage date and therefore the current periods for notice and validity of authority do not give sufficient levels of certainty.
- 3.10 To give notice the couple need to provide specific details and documentation so that their identification can be verified and their legal right to marry checked, such as by producing a Certificate of No Impediment or Decree Absolute (proof of divorce). Currently, only one person in the couple who wishes to be married is required to give notice of marriage and a declaration is signed stating that both parties are free to marry and the appropriate notice fee paid.
- 3.11 The preliminaries required for Anglican marriages are different and opportunities to align the pre marriage requirements have been identified through consultation with the Dean of Guernsey. It is proposed that consultation will continue to seek to align the preliminaries undertaken by the Ecclesiastical Court with those of the Registrar General, and for close cooperation going forward.
- 3.12 Marriage details are kept electronically on a database from which certificates have been printed and certified by a Deputy Registrar for marriages since 2005. The technology exists to allow the process of giving notice and receiving a licence to be carried out digitally, which would be especially beneficial for non-resident couples.

¹² 'where the marriage or civil partnership is contracted for immigration advantage by a couple who are not in a genuine relationship'

¹³

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/256257/Sham Marriage and Civil Partnerships.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/256257/Sham_Marriage_and_Civil_Partnerships.pdf)

- 3.13 Both Alderney and Sark have reduced the required residency period to three days to make it easier for couples to fulfil the residency requirement and marry. Jersey has never imposed a residency requirement; it currently has approximately 450 to 500 non-Anglican marriages a year of which about a quarter to a third are non-residents. With the introduction of marriages outdoors (July 2018), Jersey is expecting the number of non-resident marriages to increase further.
- 3.14 It is uncertain why residency was specified in the Law for civil marriages, although it might be that this is a historical aspect of the Law relating to when only religious ceremonies were conducted and where evidence of a qualifying connection to the parish church was required, as part of the preliminaries. It is now recognised that provided that there is a sufficient period between couples giving Notice of Marriage and the issue of an authority to be married, any required checks can be conducted whether or not the couple are resident. By reducing or removing the residency period, it may encourage more marriages to take place in Guernsey by non-residents and help to develop a ‘marriage tourism’ offer, as well as potentially align with changes already made in Sark and Alderney to reduce residency periods.
- 3.15 Those who can legally conduct civil marriages, the ‘celebrants’, are either the Registrar General or one of his Deputies, who are sworn in by the Royal Court. The Registrar General recruits the Deputy Registrars and provides training in-house. Church of England clergy licensed by an ecclesiastical authority carry out Anglican ceremonies. For other religions, where the building is licensed by the Royal Court, celebrants must be nominated by the religious organisation and approved by the Registrar General.
- 3.16 Today, there is a growing demand for an alternative to traditional religious and civil marriage ceremonies, with people who do not follow a religion or who have different religious beliefs wanting the option to personalise their ceremony to reflect their beliefs. Humanist and other non-religious marriages have seen a significant increase in popularity and are now legally recognised in some jurisdictions such as Scotland (2005)¹⁴, and more recently in Jersey (July 2018), where non-religious belief celebrants, such as Humanists can conduct legal marriages. However, these ceremonies are not legally recognised in this Bailiwick, which means couples who wish to have a Humanist or non-religious ceremony also have to undergo a separate, legally recognised, civil ceremony.

¹⁴ <https://www.nrscotland.gov.uk/files/statistics/annual-review-2013/html/rgar-2013-marriages-and-civil-partnerships.html>

- 3.17 Many couples who choose to have a civil marriage at the Greffe, which takes about ten minutes, often do so without great ceremony. This is because they have organised a Humanist or other non-religious ceremony to take place on another day, often at a hotel, where they dress up, exchange vows and host a reception for their guests. In Guernsey, feedback received from celebrants and couples is that they would much prefer to be able to have just the one, legally recognised ceremony, combining the legal requirements and non-religious ceremonies together.
- 3.18 While many couples today decide not to marry at all, others decide to travel to jurisdictions that permit a wider range of choice in terms of types, locations and times. For example, the Greffe issues a number of certificates of non-impediment to residents who are going to be married elsewhere.
- 3.19 At present, a civil marriage can be conducted at the Greffe, St James' Assembly Hall, in a private residence (including Sausmarez Manor) or in appropriate cases in a hospital or care home at short notice. There have been enquiries and requests from couples, celebrants and members of the hospitality and tourism industries to increase the number and type of locations where couples can choose to solemnise their civil marriage.
- 3.20 Allowing more locations to be licensed for civil marriages, such as Castle Cornet, Les Cotils, hotels and outdoor locations, such as beaches and parks, would increase the options for Islanders and visitors who may wish to hold their marriage celebrations in the Bailiwick and could mean that more marriages are conducted here. In both Alderney and Sark, changes to the Law have been made allowing marriages by special licence to take place in any location (building or other place) if approved by the Registrar.
- 3.21 Religious ceremonies may be conducted in Anglican churches and buildings licensed for that purpose by the Royal Court, including the buildings of other denominations, such as Methodist and Catholic churches. Marriages in a licensed building conducted by approved persons can take place without the Registrar General or one of his Deputies being present. At this time, there are no licensed buildings or appointed persons authorised to conduct Islamic, Jewish or Hindu ceremonies. Marriages solemnized by these religions are therefore not legally recognised in the Bailiwick, but there is no legal reason to prevent these or other religious organisations making a request for their buildings to be licensed and celebrants approved. It is more difficult for some groups to comply if they do not have a regular place of worship exclusively used by their worshippers or they do not have enough regular worshippers to qualify, since under Article 27 of the 1919 Law, 20 people are required to confirm the building as their 'ordinary place of worship'.

- 3.22 It is anticipated that if more venues become available the number of civil marriages being conducted at the Greffe would reduce, as people choose to marry in other venues and tailor their marriage ceremony and arrangements to suit how they want to be married, as has been the case in Jersey.
- 3.23 Historically, marriage ceremonies were held in daylight hours to discourage secret or forced marriages. Legally no restrictions exist on the days a ceremony can take place, but civil marriages must be conducted between the hours of 8am to 3pm, which can be extended by special licence. If the ceremony is held at the Greffe, it must take place during the hours of 9am to 4pm, Monday to Friday or on a Saturday morning. This does not necessarily offer the flexibility that many couples would like.
- 3.24 At the moment, there is a legal ban on including any religious content during a civil ceremony conducted at the Greffe. In some other jurisdictions, the approach has been relaxed and some content of a religious nature is allowed, such as hymns and readings.
- 3.25 There is a legal requirement for the building where the ceremony is taking place to be open to members of the public to attend on the day should they wish, including in private residences. It is thought that the requirement to enable members of the public to attend was to prevent illegal marriages, as marriages were meant to be public declarations of commitment and not held in secret. Public access allowed objections to the marriage to be made in the days when many people were illiterate. However, in Guernsey, there are no known instances of an objection being made in a ceremony. If an objection were to be made there is no provision in the Law for such an objection to be effective and prevent the marriage proceeding. It is intended that the marriage details will continue to be published and made accessible, so any legal objection to the marriage can be made before the ceremony, by lodging a written, signed 'caveat' with the Greffe, as currently.
- 3.26 In terms of safeguards in place to prevent illegal, forced and sham marriages, the historical means are no longer deemed the most effective or efficient way to prevent these from taking place. Previously, it was believed that allowing ceremonies to be open to the public and in daylight hours would act as a deterrent, with couples often being known to the communities where they were getting married. However, it is no longer felt that these safeguards are sufficient, in either preventing or managing these instances and they should therefore be removed and replaced with more effective measures.

- 3.27 More effective and efficient means of prevention and identification would include making the information of the intended marriage more accessible to more people before the authority to marry is issued, so that a formal objection to the marriage could be made should a member of the public wish to do so. Currently only the details of a marriage by certificate are published and only on the Greffe noticeboard.

4. Consultation and Review findings

- 4.1 To inform the Review those who are directly involved in or with the marriage formalities and procedures or representatives of interested groups were consulted (Appendix C). The public consultation¹⁵ was carried out on the outline proposals informed by the earlier work of the Union Civile group and more recent findings.

- 4.2 In the main, the consultation responses were supportive of the majority of the suggested proposals. The summary findings from the public consultation showed there was strong support for –

- Just one authority type, instead of three, as currently;
- Notice of marriage to be permitted to be given up to a year in advance of the marriage date;
- Giving Notice by email and online;
- Requiring confirmation of immigration status before giving Notice of Marriage;
- That non-religious belief celebrants should be authorised to conduct legally recognised marriages;
- Non-religious belief celebrants should meet certain requirements before being authorised to perform marriages, such as standards or qualifications;
- Marriage ceremonies to be permitted in more locations than currently, including in more venues, outside and in territorial waters;
- Freedom of choice in relation to where couples can choose to marry and that buildings did not need any additional requirements other than the existing legal requirements, such as fire and safety regulations and venue capacity restrictions;
- Allowing some religious content to be included in civil ceremonies if wanted but not conducting the ceremony as a religious ceremony; and

¹⁵ [Marriage law reform public consultation findings](#)

- Couples deciding whether the ceremony location is open to the public.

There was also majority support for -

- Details of a planned marriage continuing to be made available to the public, with a preference for the noticeboard at the Greffe and online, on a dedicated webpage;
- Documents continuing to be verified in person; and
- More flexibility in relation to the time a ceremony can take place.

4.3 Further consideration, in consultation with celebrants and religious groups, was given to the authorisation process for celebrants and what, if any, form of registration or licensing for locations was used. It was suggested that the registration of buildings was no longer necessary if outdoor locations were to be allowed and given that the celebrants would be required to approve the location.

4.4 Both Alderney and Sark were consulted at an early stage and in March 2018 the Bailiwick Council agreed that Bailiwick-wide legislation would be preferable as it provides more consistency.

4.5 Alderney and Sark have responded to the Policy Letter to confirm that they are in agreement with the proposals as set out in section 6 of the Policy Letter.

5. Options appraised

5.1 The options were appraised using the desired changes as criteria -

- Fits the needs of a modern society;
- Is simpler;
- Is more inclusive; and
- Maintains safeguards to protect against illegal, forced or sham marriages.

5.2 The results of the appraisal can be seen in full in Appendix D and the preferred options are proposed in the next section.

6. Proposals for change and rationale

6.1 Based on the overall findings of the Review, including the public consultation, the following proposals for change are put forward -

Giving notice of marriage

- 1) **There should be only one type of authority, called a licence, as this is the simplest and most straightforward option**, as opposed to three types of authority, each with a different set of requirements, as currently, as set out in paragraph 3.5.
- 2) **Notice may be given up to one year in advance of the proposed date of marriage**, extended from three months. This will give couples more certainty when planning their marriage and depending on when notice is given could give more time for objections to a marriage to be made should someone wish to.
- 3) **For those in extenuating circumstances to continue to be able to marry at short notice subject to meeting certain requirements**. This would include, for example, those who are terminally ill and who have a certified medical certificate confirming that there is a justifiable medical reason to make an exception and to receive an authority to marry as soon as is practically possible from receipt of the notice. This retains the availability of a quick route to accommodate certain circumstances and so is inclusive, whilst ensuring the necessary checks are conducted safeguarding potentially vulnerable individuals.
- 4) **Notice of marriage and submission of the required documents to be given by both parties and to be possible online as well as in person at the Greffe**. This will make the process of giving notice simpler, especially for non-resident couples and reduce the time it takes to verify and check the provided documentation, whilst ensuring that sufficient safeguards are in place to validate the identity of each person and confirm that each person is free to marry by the checks made when couples are physically present at the Greffe prior to the marriage (proposal 8).
- 5) **All notices of marriage, (except for instances of extenuating circumstances as in proposal 3), will be published immediately after notice of marriage is given and the information will be made available to the public at the Greffe and online up until the marriage takes place**. This could be up to a year in advance of the intended marriage date if proposal 2 is approved and will be for a minimum of 21 days. The information to be published will be sufficient to identify the couple intending to marry and the marriage date and further

details will be made available upon request, as currently. This will enable those who have a valid objection to the marriage to be able to access the necessary information to enable them to do so.

- 6) **A caveat (objection) to a marriage will be able to be placed, as currently, by lodging a written, signed declaration with the Greffe, at any point from the publishing of the notice, up until the ceremony.** If proposals 2 and 4, to extend the notice period to a year and to publish the notice both at the Greffe and online, are progressed, the required information will be more accessible to a wider audience and a caveat will be able to be placed within 21 days, as presently, and up to a year, giving more time to anyone wishing to place a caveat to do so.
- 7) **Where one or both of the couple requires immigration permission they will be required to provide the necessary immigration documentation, such as a marriage visa, before notice of marriage will be accepted.** The proposed change would ensure that the necessary immigration status is confirmed before notice of marriage is given. This would allow time for the other verification checks to be carried out, remove the requirement to prove residency, as in proposal 8, whilst ensuring compliance with immigration requirements, including those UK requirements which apply in Guernsey. The change would reduce any potential delays that might be caused by carrying out immigration checks during the notification period: i.e. if a similar approach to the UK was taken to seek a 70-day extension of the notice period to carry out sufficient checks this could be a potential barrier for marriage tourism if the numbers of non-EEA nationals wishing to marry here were to increase.
- 8) **Couples will continue to be required to attend the Greffe in person for identity checks and review of freedom to marry documentation, a minimum of the day before the date of marriage.** This removes the need to stipulate a residency period, as the couple would need to be present at the Greffe at least one day before the ceremony for the final checks and to collect the licence. The Registrar General will have some discretion in exceptional circumstances, where for example bad weather or illness prevents a couple from attending the Greffe in person the day before the ceremony. However, face to face checks will still be required before the ceremony. This simplifies the process and makes it easier for non-residents to marry here, whilst making sure sufficient safeguards are in place.

This is supported by proposal 7 to confirm immigration status before giving notice.

- 9) **The licence will normally be issued on the first working day after the 21 day notice period has expired, provided that there is no legal impediment to the marriage taking place.** The licence will be valid for one year from the date of giving notice to give couples more certainty when planning their marriage.

Ceremony locations and times

- 10) **Allow the marriage ceremony to be conducted in other buildings and locations than those currently, including outdoor locations, such as on a beach, in a garden of a marriage venue or in territorial waters.** This recognises the growing demand for the marriage ceremony to be held in different types of buildings or locations and gives Islanders and visitors more choice in where their ceremony could be held. This could improve the 'marriage tourism' offer, which could mean that more marriages are conducted here resulting in possible benefits to the economy.
- 11) **To enable a marriage to take place at any time of the day, subject to agreement by the chosen celebrant prior to giving Notice of Marriage.** This will give couples more flexibility and could make it easier for those who are not normally resident in the Bailiwick to marry here.

Location requirements

- 12) **Ceremony locations to be approved by the celebrant with appropriate guidelines to be provided by the Registrar General, as part of the training for new celebrants and guidance on the new formalities and procedures.** For example, where an outdoor location is specified it would be helpful for celebrants to advise couples to seek an alternative location to be identified in case of poor weather conditions and for guidance to be provided on health and safety considerations for locations.
- 13) **Marriages must take place in the Bailiwick, whether on land or in the territorial waters or airspace.**

- 14) **It is no longer seen as necessary to continue to authorise or register premises**, as there are sufficient existing regulations and requirements already in place, such as fire regulations and health and safety legislation. Outdoor locations would equally not be authorised, because it would not be practical to police these effectively.
- 15) **Civil ceremonies including non-religious belief ceremonies cannot be held in places of worship**, as currently. Proposal 14 if supported, removes the requirement for premises to be authorised or registered, which ensures that only authorised persons conduct religious ceremonies in specified religious buildings. This proposal provides clarity around particular locations where it would not be considered appropriate for a civil ceremony to be held.
- 16) **Religious organisations would be free to hold their ceremonies in outside locations if they wished if permitted by their own regulations.**

Privacy of ceremonies

- 17) **Remove the need to make the location of the ceremony accessible and open to the public enabling couples to hold their ceremony in private should they wish to, except for outdoor locations where the public have free access, for example parks or beaches.** The requirement to use public access as a means to prevent illegal, sham or forced marriages is no longer seen as an effective or necessary safeguard. The alternative proposals suggested above (2, 4, 5, 6, 7 & 8), offer greater protection by identifying and acting on any suspected cases before the ceremony.

Ceremony content

- 18) **Provision to be made to allow some limited religious content, in civil and non-religious belief ceremonies, as happens in Scotland and Jersey.** The provision is supported by the majority of local religious groups, so long as it is not to the extent that the ceremony is conducted as a religious ceremony. At present, no religious content or parts of any religious service can be included in a civil ceremony. The specifics of this provision will be determined in close consultation with all stakeholders.
- 19) **There is no intention to make changes to the marriage vows other than to modernise the wording for example changing ‘thee’ to ‘you’,** as suggested in Appendix E.

- 20) **That the wording of the vows will continue to apply to all marriages, as currently**, including religious and non-religious ceremonies, but excluding Anglican ceremonies, to ensure a consistent legal basis is maintained. The specific words used cannot be prescribed for Anglican ceremonies, as the vows are set out in the authorised Anglican forms of service, as prescribed under Canon Law and are phrased slightly differently. However, the intention of Anglican vows is the same as those set out in the 1919 law.
- 21) **To provide clarity within the law the marriage will be deemed to be formed once both parties and witnesses sign the registration form.** At present, there is no provision identifying the moment when a marriage is formed and it is desirable that this should be clarified to avoid doubt.

Celebrants

- 22) **New celebrants to be authorised** by the Registrar General either; on nomination by a recognised religion to conduct a particular ceremony according to that particular religion; or by application to be a civil celebrant. Non-religious belief celebrants, such as Humanists, will be appointed as civil celebrants, similar to the approach taken in Jersey.
- 23) **Grandfather rights will apply to existing religious celebrants**, including Anglican celebrants, and they would automatically be regarded as authorised for the purposes of the new Law, as they have previously been authorised under the current legislation. However, it is envisaged that current celebrants would take part in some training to understand the application of the new legislation. The training would be determined by the celebrant's previous experience and training and will be at the discretion of the Registrar General.
- 24) **The Registrar General will establish a suitable recruitment, registration and training approach** to ensure that new and existing religious, civil and non-religious belief celebrants are suitably experienced, qualified and trained in the new approach and legislation. All celebrants would be required to meet certain requirements, including safeguarding and insurance and registration would be for a set period, such as three years, to be determined in consultation with stakeholders.

- 25) **The Registrar General will have the power, in certain circumstances, to suspend or revoke a celebrant's authorisation, subject to provision for the celebrant to appeal against his decision.**

Other related matters

- 26) **Any duty of Church of England clergy to solemnise marriages, and any corresponding right of any person to have a marriage solemnised by any such member of the clergy, does not apply to the marriage of a person who is divorced and whose spouse is still living.** A similar provision is set out in the Matrimonial Causes Law, (1939) (Art. 63), but it is considered more appropriate for this protection to be incorporated into the new marriage law.
- 27) **The content of marriage certificates will be changed so that should the couples wish both parents, regardless of gender, can be recognised, making the marriage documentation more inclusive.** To capture the information, if required, the marriage registers can be updated manually, which removes the need to re-design and print new registers.
- 28) **The form and content of the certificates will not be set out in the new law.** As currently, the Registrar General will be empowered to prescribe such matters of procedure to keep the law simple and provide flexibility.
- 29) **Any provisions within the current law not specifically mentioned within this Policy Letter will be captured in the new law,** including, but not limited to; persons needing to give consent to marriage of a minor and the requirement for two witnesses to be present.
- 30) **The provisions made for offences will be reviewed and updated to provide appropriate sanctions for the updated Law.**
- 31) **Legal provision will be made for the issuing of a certificate of no impediment to residents who wish to marry elsewhere.** There is no provision currently and the certificates are required in other jurisdictions as a means of proving that there is no legal impediment why the person should not be married.

7. Resource implications

- 7.1 Resources from St James' Chambers will be required to draft the Projet de Loi and subordinate legislation, subject to prioritisation of the legislation.
- 7.2 The transition arrangements to the new procedures and formalities will be managed through existing Greffe resources.

8. Legislative implications

- 8.1 Primary legislation will be required to implement the recommendations in this Policy Letter, including the revised formalities and procedures of marriage.
- 8.2 The Law Officers have advised that consequential amendments to other enactments may be required, such as to the Matrimonial Causes (1939) Law.
- 8.3 The opportunity will be taken to incorporate and modernise provisions relating to the formation of marriage presently contained in other enactments. No substantive amendments are proposed but it is considered that those provisions could usefully be included in the new law. It is envisaged that this would include, but not be limited to, the following provisions –
 - Prohibited degrees of consanguinity;
 - Minimum age a person can marry; and
 - Consent to the marriage of a minor.
- 8.4 Provision will be made for matters of detail to be included in subordinate legislation, such as fees and the form of applications.

9. Operational implications

- 9.1 To implement the proposed changes the office of the Registrar General will draft and prepare the required supporting guidance and documentation and make any necessary changes to processes to align with the legislation drafting work.

10. Timeframe

- 10.1 The date when the new legislation would come into force is dependent on the prioritisation of the drafting of the legislation and is therefore difficult to specify at this time. It would be anticipated that the legislation would be prioritised and drafted in 2019 with a view to being enacted sometime in 2020, at the earliest.
- 10.2 An outline project plan to implement the proposed changes outlined in this document is at Appendix F.

11. Conclusions and recommendations

- 11.1 The findings from the Review were put out to consultation with a range of stakeholders and significant support for the proposed changes was received.
- 11.2 The Committee recommends the States to approve the Propositions to which this Policy Letter is attached.

12. Committee Support for Proposition(s)

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

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

J P Le Tocq
T J Stephens
A H Brouard

APPENDIX A – BAILIWICK MARRIAGE STATISTICS 2011 - 2016

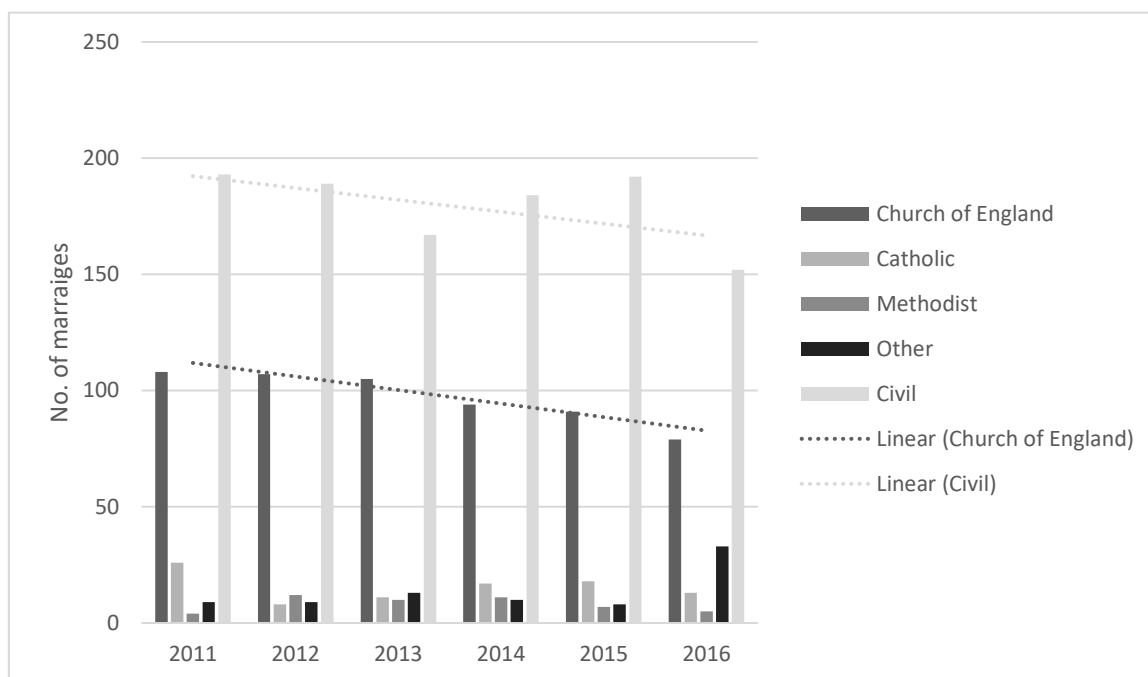


Chart 1. Number of Bailiwick marriages by type, 2011-2016.

	2011	2012	2013	2014	2015	2016
Church of England	108	107	105	94	91	79
Catholic	26	8	11	17	18	13
Methodist	4	12	10	11	7	5
Other ¹⁶	9	9	13	10	8	33
Civil	193	189	167	184	192	152
Total	340	325	306	316	316	282

Table 1. Number of Bailiwick marriages by type, 2011-2016.

¹⁶ Other groups includes all other Christian denominations.

APPENDIX B - TERMS OF REFERENCE

The procedures setting out how couples can be married are set out in the Marriage Law, 1919, (Law). The principal law has been added to and changed over time, but there has been no significant reform of the Law in many years. The Law is based on similar terms to the previous Law of 1840 and has been over complicated in some areas.

Through the work exploring Union Civile and the resulting introduction of Same Sex Marriage, in 2017, it was identified that the procedure for marriages in Guernsey needed to be reviewed in full and updated to meet modern expectations. During this detailed review period, consideration was given to the proposals to change the Law.

In the same sex marriage policy letter, (Billet d'État, XXIII of 2015)¹⁷ it was agreed -

'To direct the Policy Council to bring forward, in a timely manner, separate Policy Letters to address the issues raised by the work on Union Civile including the dissolution of legal partnerships, as set out in section 6 of that Policy Letter; gender recognition, and procedural formalities relating to marriage.'

The Reform of Marriage Law has since been prioritised in the Policy & Resource Plan – Phase Two, in support of achieving the One Community: inclusive and committed to social justice outcome. The Policy & Resources Committee will lead the work stream in collaboration with H M Registrar General. It is expected to be completed by the end of 2018.

The Review will consider:

- The draft changes to policy proposed by the Same Sex Marriage working group including wider options for venues and outdoor locations, times, celebrants, notice and residency periods;
- What other options, not already identified, might be made to modernize and simplify the current civil marriage formalities, whilst ensuring the appropriate controls are in place against illegal, forced and sham marriages;
- Whether to incorporate the elements of who can be married within the revised marriage formalities, such as the age of consent and the restrictions on marrying within prohibited degrees of kinship;
- The impact of the proposed changes on policy, legislation and stakeholders;
- The views of those that will be affected by the changes;
- The legislation changes required to support the proposed policy changes; and
- How the recommended changes will be managed and implemented.

¹⁷ [Billet d'État, XXIII of 2015 Same-Sex Marriage](#)

The following are out of scope of the Review:

- Same sex marriage as this has recently been legislated upon;
- The rights or responsibilities which marriage imparts, such as the financial entitlements of surviving spouses or the consequences of divorce; and
- The grounds on which a marriage may be void or voidable, except in so far as they relate to a failure to comply with the required marriage formalities.

APPENDIX C – MARRIAGE LAW REFORM STAKEHOLDERS

The stakeholders consulted as part of the Review included –

- States Members;
- States of Alderney;
- Sark Chief Pleas;
- Policy & Resources Committee;
- HM Procureur and HM Comptroller;
- Registrar General and Deputy Greffiers;
- Public service areas including; Immigration and Nationality, Marketing & Tourism, Police, Health & Safety, Property Services, Environmental Health & the Greffe;
- Liberate;
- The Ecclesiastical Court (through the Very Reverend Tim Barker, Anglican Dean of Guernsey);
- Religious and belief groups, celebrants and representatives;
- Civil celebrants;
- Chamber of Commerce, Tourism and Hospitality Sub-group members;
- The Citizens' Advice Bureau;
- Wedding planners;
- States of Jersey, social policy team
- Jersey's Superintendent Registrar; and
- The public.

APPENDIX D – OPTIONS APPRAISAL

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
All	Do nothing – keep as is	Not supported	Not supported	<u>Discounted</u> as it does not achieve the desired changes, to be used for comparison purposes
Authority to marry	One type of authority, which will be called a Licence	There should be consistency in some form or another	Yes 275, 87%	Preferred option as it simplifies the procedures and is supported by most stakeholders
	Maintain a separate authority for extenuating circumstances such as terminal illness	Not supported	Not supported	<u>Discounted</u> as it does not fully simplify the process and a separate authority is not needed for this to continue to happen.
	Maintain special dispensation for those who need and wish to marry quickly to do so, such as in cases of terminally ill persons	Not covered directly but support for retaining dispensation	Not covered directly but support for retaining dispensation	Preferred option as it maintains the ability to grant an authority in particular cases and is therefore inclusive. It also removes the need to have more than one authority type.
Licence – period valid for	The licence will be issued the day after the signing of the Marriage Notice Book and will be valid for one year from the date of issue.	That the licence should be valid for longer	Yes 212, 79.7%	Preferred option as it fits with modern marriage preparations and gives couples more certainty
	The licence will be valid for more than three months (as currently) but less than a year from the date of issue	As above	Not covered	<u>Discounted</u> as it does not give as much flexibility to couples

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
Giving notice of marriage – notification period	Notification period for giving Notice of Marriage to be a minimum of 28 days before issuing the authority to marry, extended to up to 70 days to allow immigration checks to be conducted, if needed, as in the UK	Mixed responses received on the notice period	Mixed responses received on the notice period	<u>Discounted</u> as it could lengthen the formalities
	The notification period for giving Notice of Marriage to be 21 days before the authority to marry can be issued, with immigration checks carried out before giving notice	As above	As above Yes, 224, 85.17% to immigration checks before giving notice	Preferred option , as it simplifies, modernises and removes any potential delays caused by immigration checks.
Verification of identity and freedom to marry	Remove in-person verification checks and carry out checks digitally	Some support for	Not supported	<u>Discounted</u> , as in-person checks are seen as an essential safeguard.
	Continue with in-person checks a minimum of the day before, alongside digital submission of documentation when giving notice.	As above Supportive of a shorter residency period if at all	Supported Yes, 241, 90.67% to giving notice online and by email	Preferred option , as it maintains safeguards, through in-person checks and review of hard copies, and removes the need for a residency requirement simplifying the process. See Digitalisation below.
Publishing of the notice	Continue to publish the notice on the noticeboard at the Greffe only	Most opted for information to be publicly available to in some form	Not supported	<u>Discounted</u> as limits public access to the information restricting the effectiveness of the safeguard of the enabling the public to place a valid objection

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	Change where the notice is published and remove from the Greffe noticeboard	As above	Not supported	<u>Discounted</u> as above
	Do not publish the notice anywhere	Not supported	Not supported	<u>Discounted</u> as above
	Publish in more than one format including the noticeboard at the Greffe and online	To have the information made available to the public in some format	173, 54.92% - publishing details Dedicated webpage (130, 62.8%) and Greffe noticeboard (110, 53.14%)	Preferred option as it ensures that the information is accessible to all and supports the ability for a caveat to be placed.
Digitalisation	Use of digital means for all documentation requirements including giving notice, proof of identification and issuing licence.	Not supported	89.26% supported giving notice by email and online	<u>Discounted</u> for all purposes as in-person checks preferred. See the 'Verification of identity and freedom to marry' section above.
	Use of digital means for giving notice and issuing the marriage certificate only such as via a schedule. The relevant information to be collected and submitted to the Greffe for the digital register.	Supportive in general although through various suggested means for some purposes	Yes - 90.67%	Preferred option at this time. Other means for digitalising the process to be explored once the new legislation and approach is in place. Removes the need to re-design and print new marriage registers.
Locations – types of location	More approved buildings only	Not supported	Not supported – other locations preferred	<u>Discounted</u> as limits the type of location to buildings only and therefore does not modernise the law and include outdoor locations.

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	More locations including outdoors, in territorial waters and Bailiwick airspace	Mostly anywhere including outdoors	245, 96.21% for liberalisation Yes, 205, 97.13% - outside locations & Yes, 162, 86.47% in territorial waters	Preferred option as supported by the majority of stakeholders and modernises the law
Locations - registration and requirements	No additional requirement to register for all locations including; public buildings; hotels; and outside locations such as; beaches, fields and at sea. No prior consent required by the celebrant.	Mixed support for some form of licence / registration and no additional requirements needed	1) No other requirements (134, 54.92%). 2) No additional requirements for buildings (129, 52.87%) 3) Celebrants to be able to object to holding a ceremony if they deem it unfit (112, 45.90%)	<u>Discounted</u> as it does not provide a means to ensure safeguards for all locations such as ensuring outside locations are safe and dignified.
	All locations to meet certain, high level, conditions approved by the celebrant. For example, the location is seemly and dignified, safe and secure, or an alternative location to be identified in case of outdoor locations and poor weather conditions	As above	Supported in part - 3) Celebrants to be able to object to holding a ceremony if they deem it unfit (112, 45.90%)	<u>Discounted</u> as all buildings used by the public e.g. hotels and historical buildings would already fulfil any likely criteria e.g. safe and secure. The celebrant will have discretion to object to holding a ceremony if the building is deemed unsuitable.

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	Religious buildings only continue to be licensed i.e. no change	As above	Not covered Additional consultation with religious groups	<u>Discounted</u> , as there is no need if outdoor locations are permitted without registration and if the celebrant will have discretion to decline to hold a ceremony if the location is not suitable.
	All buildings should be licensed and should meet certain additional criteria	As above	Not supported	<u>Discounted</u> as it was suggested that the current legal requirements for buildings accessed by the public, such as fire safety, public liability insurance, is sufficient. Logically, why add additional requirements to buildings only when it would not be possible to apply the same requirements to outdoor locations.
	Venue to be agreed with the celebrant in advance of the ceremony and if a building, to be included on the marriage notice. Other locations will be confirmed by the celebrant after the ceremony for inclusion on the certificate	As above	Supported in part - 3) Celebrants to be able to object to holding a ceremony if they deem it unfit (112, 45.90%)	Preferred option as it is the simplest and most effective of options.
Ceremony times	8am to 7pm, when agreed with the celebrant and venue prior to Notice of Marriage being given	Supportive of some form of extension to the current hours	Not supported	<u>Discounted</u> , as the need to restrict times was not justifiable. It does not give couples as much choice and it could prove to be a barrier for couples not normally resident to marry here.

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	No constraints on when, but the time to be agreed with the celebrant and venue, if used, prior to giving Notice of Marriage	As above	45.31% agreed 'that people should be allowed to marry at whatever time they wish' 43.67% supported 'no constraints'	Preferred option as it is the simplest of options giving couples greater flexibility, subject to agreement with the celebrant and any venue used.
Ceremony content	No religious content of any sort to be included in civil or other ceremonies, as currently	Not supported	Not supported	<u>Discounted</u> as not supported by most stakeholders and does not modernise this part of the current law.
	Some religious content to be allowed in other ceremonies, but for the ceremony not to be conducted as a religious ceremony	The majority were supportive of religious content being included in civil ceremonies.	Yes, 184, 75.1%	Preferred option as most stakeholders were supportive of some religious content being included
Public access to ceremonies	Marriages to be open to the public unless held in private residences or on private land	There was a fairly even split for and against allowing privacy and ensuring public access	Not supported	<u>Discounted</u> as there is no legal reason to give the public access and there would be different approaches taken depending on the venue or location chosen.
	Marriages to be open to the public, including when held in private residences / private land	As above	Not supported	<u>Discounted</u> , as there is no legal reason to give the public access.

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	Ceremonies to remain private regardless of location unless the couple wish for the public to have access. Excludes any outdoor locations where the public have free access	As above	73.88% choose 'couples should decide whether the marriage location is open to the public'	Preferred option as it modernises the approach, giving couples' freedom of choice, while not impinging on any safeguards, as the caveat can be placed before the marriage.
Celebrants – a) additional celebrants	Additional civil celebrants authorised	Supportive of more celebrants being authorised	Not covered	<u>Discounted</u> as not inclusive of non-religious and belief based marriages
	Additional celebrants authorised including Humanist and non-religious, belief celebrants	As above	Yes, 94.09%	<u>Discounted</u> as it does not include all UK recognised religions
	Additional celebrants to be authorised including Humanist and non-religious, belief celebrants and any other celebrants from UK recognised religions ¹⁸ such as Islam.	As above	As above	Preferred option , as most stakeholders were supportive; it is more inclusive and modernises the law.
Celebrants – b) authorisation and controls	Celebrants do not need any form of authorisation or control	Not supported	Not supported	<u>Discounted</u> as it does not support the celebrant led approach being proposed through the other preferred options and it does not provide sufficient safeguards
	New celebrants must pass an interview process and all celebrants	Supportive of some form of	Not supported	<u>Discounted</u> , as without appropriate training and controls it would be difficult

¹⁸ Recognised by the Charity Commission.

Area	Option	Targeted consultees majority view	Public consultation views	Decision and reasons why
	are required to register with Registrar General	standards or accreditation		to support celebrants, ensure consistent service quality and provide safeguards
	New, non-Anglican, celebrants including civil and non-religious celebrants must register and have carried out appropriate training as applicable to previous experience and qualifications.	As above	78.35% supported celebrants meeting certain requirements, such as standards or qualifications	Preferred option as provides sufficient training and support to celebrants to enable them to fulfil their duties, as the suggested proposals enhance the responsibilities of the role to include approval of the ceremony location.

Table 2. Options appraisal table.

APPENDIX E – MARRIAGE VOW CHANGES

“I do solemnly declare that I know not of any lawful impediment why I,, may not be joined in matrimony to”

“I call upon the persons here present to witness that I,, do take you,, to be my lawful wedded wife/husband”.

“I call upon the persons here present to witness that I,, do take you,, to be my lawful wedded wife/husband”.

Previously, ‘you’ was written as ‘thee’.

APPENDIX F – MARRIAGE LAW REFORM TIMEFRAME

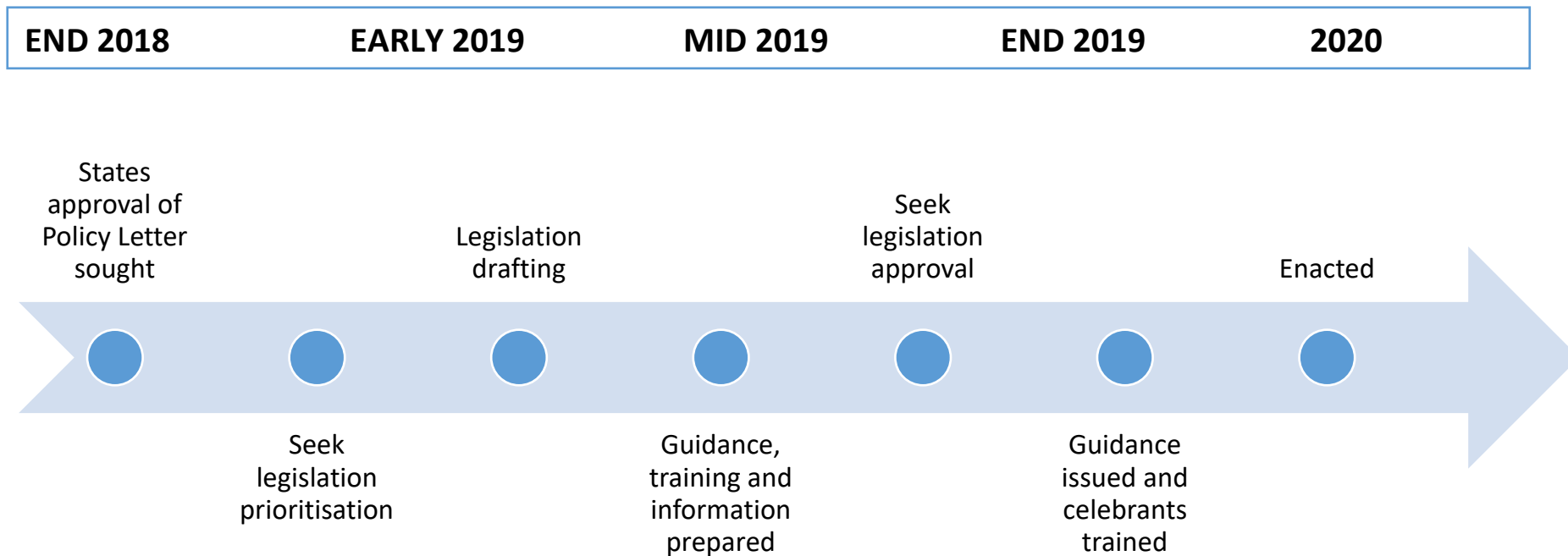


Image 1. Marriage Law Reform timeline

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

ASIAN INFRASTRUCTURE INVESTMENT BANK - ARTICLES OF AGREEMENT

The States are asked to decide: -

Whether, after consideration of the Policy Letter dated 27th November, 2018, of the Policy & Resources Committee, they are of the opinion:-

1. To agree that an Ordinance should be enacted under the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 to implement the required privileges and immunities as set out in Chapter IX of the Asian Infrastructure Investment Bank Articles of Agreement.
2. To direct the Law Officers to prepare such legislation as may be required to give effect to the above.

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

POLICY & RESOURCES COMMITTEE

ASIAN INFRASTRUCTURE INVESTMENT BANK – ARTICLES OF AGREEMENT

Presiding Officer
Royal Court
St Peter Port
Guernsey

27th November, 2018

Dear Sir

1. Executive Summary

- 1.1 The Asian Infrastructure Investment Bank (AIIB) is a multilateral development bank that was launched in 2015 by the Chinese Government, with its headquarters in Beijing. It has been seen as both a rival and, potentially, a complement to the World Bank and the Asian Development Bank, and its focus will be on supporting access to finance for infrastructure projects and to boost investment across a range of sectors in Asia. Since its launch 57 countries have signed the AIIB Articles of Agreement, including the UK, Australia, New Zealand and several EU Member States.
- 1.2 Following consultation from HM Treasury, on 13th December 2016, the Policy & Resources Committee resolved to make a formal application to the UK Government for extension of the AIIB Articles of Agreement. The Policy and Finance Committee in Alderney and the Policy and Performance Committee in Sark agreed that the extension should cover the entire Bailiwick.
- 1.3 A formal request for extension was submitted by the Policy & Resources Committee on 7th August 2018. This followed consultation with the finance sector in Guernsey, which welcomed the proposed extension of the AIIB Articles of Agreement on the basis that it could provide promotional value in demonstrating Guernsey's links with and commitment to Asia, as well as possible business development and investment opportunities for Guernsey businesses. This will also bring Guernsey into line with other international finance centres.
- 1.4 In order for the Articles of Agreement to be formally extended it is necessary for the Bailiwick of Guernsey to adopt legislation to recognise the Privileges and Immunities in respect of the AIIB. Privileges and Immunities are standard for multilateral institutions like the AIIB, and are required to ensure the independent functioning of the AIIB as an international organisation, and the equality of its member states.

2. Background

- 2.1 The AIIB's purpose, as set out in the Articles of Agreement¹, is to:
- Foster sustainable economic development, create wealth and improve infrastructure connectivity in Asia by investing in infrastructure and other productive sectors
 - Promote regional cooperation and partnership in addressing development challenges by working in close collaboration with other multilateral and bilateral development institutions.

- 2.2 In order to achieve its purpose the AIIB will:

“promote investment in the region of public and private capital for development purposes, in particular for development of infrastructure and other productive sectors; utilise the resources at its disposal for financing such development in the region [...] encourage private investment in projects, enterprises and activities in the region [...] and to supplement private investment when private capital is not available on reasonable terms and conditions”.

3. Legislation

- 3.1 In order for the AIIB Articles of Agreement to be extended to Guernsey it will be necessary for legislation to be put in place to recognise the privileges and immunities in respect of the AIIB and its officers and employees. These are set out in more detail in Chapter IX of the Articles of Agreement (see **Appendix 1**), and include immunity from judicial proceedings, freedom of assets from restrictions, privileges for communications and exemption from taxation. Privileges and immunities are standard for multilateral organisations such as the AIIB, and are required to ensure the independent functioning of the AIIB as an international organisation, and the equality of its member states.
- 3.2 There is not a precedent for the UK ratification of Articles of Agreement of other Multilateral Development Banks having been expressly extended to Guernsey. However statutory privileges and immunities were enacted in respect of the European Bank for Reconstruction and Development (EBRD), through the introduction of the European Bank for Reconstruction and Development (Guernsey and Alderney) Law, 1994 and equivalent legislation in Sark. This followed a resolution of the States of 13th November 1991, in relation to Article IV of Billet d'État XXIV of 1991, to enact legislation to give effect to the required privileges and immunities in order for the UK ratification of the EBRD Articles of Agreement to be extended to the Bailiwick.

¹ Articles of Agreement for the Asian Infrastructure Investment Bank: https://www.aiib.org/en/about-aiib/basic-documents/download/articles-of-agreement/basic_document_english-bank_articles_of_agreement.pdf

- 3.3 Similar privileges and immunities were also enacted in respect of the Organisation for Economic Co-operation and Development, although this is not a Multilateral Development Bank. This followed the formal extension of the UK signature of the OECD Convention to Guernsey in 1990, and the required privileges and immunities were introduced through the Organisation for Economic Co-operation and Development (Guernsey and Alderney) Law, 1994.
- 3.4 It has been identified by the Law Officers that the privileges and immunities required by the Articles of Agreement for the AIIB could be implemented by Ordinance made under Section 1 of the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004.

4. Consultation

- 4.1 The Policy & Resources Committee has consulted with the Committee *for* Economic Development. The Committee's view was that, while no direct economic benefits for Guernsey through the extension of the UK's ratification of the Articles of Agreement have been identified, it could provide promotional value in demonstrating Guernsey's links with and commitment to Asia, as well as possible business development opportunities.
- 4.2 The Policy & Resources Committee has also consulted with the Policy and Finance Committee in Alderney and the Policy and Finance Committee in Sark. Both Committees have requested the extension of the AIIB Articles of Agreement and agree with the proposal to implement legislation to recognise the privileges and immunities of the AIIB in the Bailiwick.

5. Recommendation

- 5.1 The States are asked to decide whether they are of the opinion:-
1. To agree that an Ordinance should be enacted under the Privileges and Immunities (Bailiwick of Guernsey) Law, 2004 to implement the required privileges and immunities as set out in Chapter IX of the Asian Infrastructure Investment Bank Articles of Agreement.
 2. To direct the preparation of such legislation as may be required to give effect to the above.

6. Proposition

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

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens

ASIAN INFRASTRUCTURE INVESTMENT BANK – ARTICLES OF AGREEMENT

CHAPTER IX – STATUS, IMMUNITIES, PRIVILEGES AND EXEMPTIONS

Article 44 - Purposes of Chapter

1. To enable the Bank to fulfil its purpose and carry out the functions entrusted to it, the status, immunities, privileges and exemptions set forth in this Chapter shall be accorded to the Bank in the territory of each member.
2. Each member shall promptly take such action as is necessary to make effective in its own territory the provisions set forth in this Chapter and shall inform the Bank of the action which it has taken.

Article 45 - Status of the Bank

The Bank shall possess full juridical personality and, in particular, the full legal capacity:

- (i) to contract;
- (ii) to acquire, and dispose of, immovable and movable property;
- (iii) to institute and respond to legal proceedings; and
- (iv) to take such other action as may be necessary or useful for its purpose and activities.

Article 46 - Immunity from Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process, except in cases arising out of or in connection with the exercise of its powers to raise funds, through borrowings or other means, to guarantee obligations, or to buy and sell or underwrite the sale of securities, in which cases actions may be brought against the Bank only in a court of competent jurisdiction in the territory of a country in which the Bank has an office, or has appointed an agent for the purpose of accepting service or notice of process, or has issued or guaranteed securities.
2. Notwithstanding the provisions of paragraph 1 of this Article, no action shall be brought against the Bank by any member, or by any agency or instrumentality of a member, or by any entity or person directly or indirectly acting for or deriving claims from a member or from any agency or instrumentality of a member. Members shall have recourse to such special procedures for the settlement of controversies between the Bank and its members as may be prescribed in this Agreement, in the by-laws and regulations of the Bank, or in the contracts entered into with the Bank.
3. Property and assets of the Bank shall, wheresoever located and by whomsoever held, be immune from all forms of seizure, attachment or execution before the delivery of final judgment against the Bank.

Article 47 - Immunity of Assets and Archives

1. Property and assets of the Bank, wheresoever located and by whomsoever held, shall be immune from search, requisition, confiscation, expropriation or any other form of taking or foreclosure by executive or legislative action.
2. The archives of the Bank, and, in general, all documents belonging to it, or held by it, shall be inviolable, wheresoever located and by whomsoever held.

Article 48 - Freedom of Assets from Restrictions

To the extent necessary to carry out the purpose and functions of the Bank effectively, and subject to the provisions of this Agreement, all property and assets of the Bank shall be free from restrictions, regulations, controls and moratoria of any nature.

Article 49 - Privilege for Communications

Official communications of the Bank shall be accorded by each member the same treatment that it accords to the official communications of any other member.

Article 50 - Immunities and Privileges of Officers and Employees

All Governors, Directors, Alternates, the President, Vice-Presidents and other officers and employees of the Bank, including experts and consultants performing missions or services for the Bank:

- (i) shall be immune from legal process with respect to acts performed by them in their official capacity, except when the Bank waives the immunity and shall enjoy inviolability of all their official papers, documents and records;
- (ii) where they are not local citizens or nationals, shall be accorded the same immunities from immigration restrictions, alien registration requirements and national service obligations, and the same facilities as regards exchange regulations, as are accorded by members to the representatives, officials and employees of comparable rank of other members; and
- (iii) shall be granted the same treatment in respect of travelling facilities as is accorded by members to representatives, officials and employees of comparable rank of other members.

Article 51 - Exemption from Taxation

1. The Bank, its assets, property, income and its operations and transactions pursuant to this Agreement, shall be exempt from all taxation and from all customs duties. The Bank shall also be exempt from any obligation for the payment, withholding or collection of any tax or duty.
2. No tax of any kind shall be levied on or in respect of salaries, emoluments and expenses, as the case may be, paid by the Bank to Directors, Alternate Directors, the President, Vice-Presidents and other officers or employees of the Bank, including experts and consultants performing missions or services for the Bank, except where a member deposits with its instrument of ratification, acceptance, or approval a declaration that such member retains for itself and its political subdivisions the right to

tax salaries, and emoluments , as the case may be, paid by the Bank to citizens or nationals of such member.

3. No tax of any kind shall be levied on any obligation or security issued by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is issued by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Bank.

4. No tax of any kind shall be levied on any obligation or security guaranteed by the Bank, including any dividend or interest thereon, by whomsoever held:

(i) which discriminates against such obligation or security solely because it is guaranteed by the Bank; or

(ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Bank.

Article 52 - Waivers

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Chapter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

STATES OF ALDERNEY – NEW SINGLE PROPERTY TAX

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'States of Alderney – New Single Property Tax' dated 14th January, 2019 they are of the opinion:-

1. To approve the proposals set out in that policy letter for the preparation of the necessary Guernsey legislation to enable the introduction of a single property tax in Alderney, which was included in the Review of the Financial Relationship agreed in 2016, with effect from the 1st January, 2020.
2. To direct the preparation of such legislation as may be necessary to give effect to the above proposition.

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

POLICY & RESOURCES COMMITTEE

STATES OF ALDERNEY – NEW SINGLE PROPERTY TAX

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

14th January, 2019

Dear Sir

1. Executive Summary

- 1.1 This Policy Letter is recommending approval of the preparation of the necessary Guernsey legislation to enable the introduction of a single property tax in Alderney which was included in the Review of the Financial Relationship agreed in 2016.
- 1.2 Currently under the Alderney (Application of Legislation) Law, 1948, which reflects the arrangements set out in the 1948 Agreement on the Financial Relationship between Guernsey and Alderney, Guernsey legislation relating to tax has effect in Alderney as if the two islands were a single jurisdiction. Guernsey legislation on tax on real property (“TRP”) therefore applies to Alderney and the TRP levied in the two islands is pooled and supports the provision of services in Alderney. For Alderney to be able to levy their own new property tax (which will subsume the occupiers' rate Alderney is currently empowered to levy under the 1948 Law to pay for the domestic services for which they remain responsible) the Guernsey legislation on TRP will have to be amended (for example, to apply a zero rate to Alderney) and the 1948 Law will need to be modified to facilitate the new Alderney legislation, which Alderney will enact separately.

2. Background

2.1. In February 2016 (Billet d'État III, 2016), the States considered a Policy Letter from the Policy Council titled *"The Review of the Financial Relationship between Guernsey and Alderney"* and, agreed in principle, that the financial arrangements be modified such that:

- Guernsey retains responsibility to fund all Transferred Services, and the Social Security Funds, through the pooled income sources of Income Tax and Social Security Contributions;
- The States of Alderney is responsible for funding all other public services in Alderney (including the harbour, drainage (foul and surface water), roads, coastal defence, water and electricity), from all other levies, rates, taxes, permit fees, rents, duties and other income collected from sources based in Alderney (such as tax on real property, occupiers' rates, import duties and excise duties, fees in lieu of Congé, document duty, numismatic and philatelic profits, and company registration fees).

2.2. The 2017 Budget Report (Billet d'État XXVI, 2016) included:

"As the first stage in introducing the modified financial arrangements, the Policy & Resources Committee is intending, subject to the formal approval of the States of Alderney, to propose in the 2018 Budget Report that, with effect from 2018:

- *The Tax on Real Property (TRP) rates in respect of Alderney buildings will be set at £zero. The 2017 budget for this income is £800,000;*
- *The excise duty on Motor Fuel imports into Alderney will be set at £zero. The 2017 budget for this income is £350,000;*
- *The document duty on conveyances of Alderney property which is paid to General Revenue is paid to the States of Alderney. The 2017 budget for this income is £350,000;*
- *A commensurate reduction is made to the recommended 2018 Cash Limit for the States of Alderney. The estimated reduction is £1.5million which would reduce the Cash Limit to £330,000 per annum.*

During 2017, the States of Alderney will develop its existing Occupier's Rates system (which uses the existing Cadastre register) in order to levy one property tax. As part of its 2018 Budget, the States of Alderney will agree the Occupier's Rates and Excise Duty on Motor Fuel it will levy. The States of Alderney considers that these proposals would provide them with greater freedom and flexibility to set tax

and duty rates at such levels they determine will best raise the funds necessary to provide their public services.”

- 2.3. However, at its meeting in September 2017, the States of Alderney agreed that The Occupiers’ Rates will be due from the property owner rather than the occupier from 2019 but did not approve the Law Officers being instructed to prepare the necessary legislation. Therefore, the implementation of the changes to the financial relationship stalled.
- 2.4. In July 2018, the States of Alderney reconsidered and agreed this matter. The Billet included:

“A single property tax will also bring benefits of simplicity, transparency and more efficient administration. It will also allow Alderney to adjust the rates of charge on businesses and domestic properties in a manner that best reflects the needs of the island. There are charges on some property that better reflect the needs of Guernsey and some which are unduly penalistic on certain business types, reflecting a time-past when these were seen as an easy source of revenue. Having said this any reductions in the tax-take from one type of property will have to be met with increases on other types.

The new Property Tax will have some implications for landlords who may have to make some adjustments to leases and rental agreements in advance of the implementation date. The Law Officers have confirmed that this is a private contract law matter.

The Tax Office has also confirmed that a single property tax will not be allowed as a deductible expense cost as it represents a cost of property ownership.”

3. Proposal

- 3.1 The States of Alderney Policy and Finance Committee has requested the Policy & Resources Committee to submit a Policy Letter recommending approval of the necessary Guernsey legislation for the implementation of a new single Property Tax to be in place by 1st January, 2020. This will require an amendment to the Section 3 of the Alderney (Application of Legislation) Law, 1948 in order to provide for the change of incidence from occupier to owner, any other necessary change to that Law or to the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 to accommodate Alderney's legislative autonomy in relation to property taxation, and any other consequential amendments that may be found to be necessary in the course of the legislative drafting process.

- 3.2 The charging of TRP on Alderney property would remain on the statute book but would be levied at nil in future (a change that can be effected by Guernsey Ordinance or regulations under the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007). The property tax raising responsibilities and control over revenues will pass to the States of Alderney together with a commensurate reduction in the States of Alderney Cash Limit. The States of Alderney would enact their own property taxation legislation that would include (it is envisaged) an Ordinance each year to set the annual charge for the registered owner of a property.
- 3.3 This proposal will provide the States of Alderney with greater freedom and flexibility to set property tax rates at such levels as they determine will best raise the funds necessary to provide their public services. If there is a decrease in the level of property tax income received by the States of Alderney, for example as a result of a reduction in rates, the States of Alderney would either have to raise additional income from another source or reduce expenditure.

4. Compliance with Rule 4

- 4.1 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.
- 4.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not to be put into effect.
- 4.3 In accordance with Rule 4(3), the Propositions are not requesting the States to approve funding.
- 4.4 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.
- 4.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop policies relating to fiscal policy and the financial resources of the States, and relations with the other islands of the Bailiwick.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

A H Brouard
J P Le Tocq
T J Stephens