

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

**REVIEW OF THE JURISDICTION OF THE ECCLESIASTICAL COURT IN RELATION TO
GRANTS OF REPRESENTATION REGARDING PERSONAL PROPERTY**

The States are asked to decide: -

Whether, after consideration of the policy letter titled 'Review of the Jurisdiction of The Ecclesiastical Court in relation to Grants of Representation regarding Personal Property', they are of the opinion: -

1. To approve the transfer of the customary jurisdiction in relation to grants of representation for personal property for:
 - (a) the Bailiwick other than Sark, and
 - (b) in the event of an affirmative resolution from the Chief Pleas of Sark, Sark, from the Ecclesiastical Court to the Royal Court on the basis set out in this policy letter.
2. To agree that any changes to the tariff in relation to grants of representation will be recommended by the Policy & Resources Committee as part of the Annual Budget of the States, and the Royal Court will be responsible for setting other fees.
3. To agree that a grant be made from General Revenue to the Social Investment Fund of £400,000 per annum for the first two years that the Royal Court operates grants of representation for personal property, with recommendations for the level of this grant for subsequent years to be included in future Annual Budgets.
4. To direct the Policy & Resources Committee to take into account the financial implications of this policy letter in setting the budget for 2021 and future years.
5. To direct the drafting of such legislation as may be necessary to give effect to the above decisions.

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

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REVIEW OF THE JURISDICTION OF THE ECCLESIASTICAL COURT IN RELATION TO
GRANTS OF REPRESENTATION REGARDING PERSONAL PROPERTY

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

2 March, 2020

Dear Sir

1. Executive Summary

- 1.1 This policy letter recommends the transfer of the customary jurisdiction of the Ecclesiastical Court in relation to Grants of Representation¹ relating to personal property to the jurisdiction of the Royal Court and the enactment of legislation to effect this transfer. For ease of comprehension, the process in relation to obtaining Grants of Representation will be referred to in this policy letter using the more commonly used term of 'probate'.
- 1.2 In March 2016, the former Treasury & Resources Department completed a review on the future funding arrangements of the Ecclesiastical Court. The review concluded that, while there were "no substantial matters of fundamental concern arising from the current funding arrangements associated with the Ecclesiastical Court", it recommended a further review be carried out by the former Policy Council to ascertain whether it remained appropriate for the Ecclesiastical Court to issue Grants of Representation in relation to personal property.² Responsibility for the review was then transferred to the Policy &

¹A Grant of Representation may be required to allow a person to administer personal property in the Bailiwick. Where there is a will and an executor is willing and able to act as such, probate is granted. In any other case, Letters of Administration are granted.

² While personal property (or *meubles*, e.g. a car, a bank account or leasehold property) is dealt with by the Ecclesiastical Court, real property (or *immeubles*, e.g. a house) is dealt with by the Royal Court.

Resources Committee. This policy letter is the result of that review and the work since undertaken with the Dean of Guernsey, together with a working group of representatives which first met in October 2018 to explore and inform the policy proposal for a transfer of the jurisdiction from the Ecclesiastical Court to the Royal Court.

- 1.3 The Bailiwick of Guernsey (referred to in this policy letter as ‘Guernsey’) remains one of the very few jurisdictions outside the Islamic world where the legal jurisdiction to grant probate in relation to personal property is granted and administered by a court for which an ecclesiastical office holder, currently the Dean of Guernsey, has responsibility under the institution of the Ecclesiastical Court.
- 1.4 The Policy & Resources Committee considers that it is an appropriate time to reform these arrangements by transferring the probate jurisdiction to the Royal Court and thereby removing the close links to the Church of England. While the service and operation are considered to be high quality and efficient, it is no longer considered appropriate that probate is administered under these arrangements. The proposals to transfer the jurisdiction and function will ensure the same governance and standards as for similar public legal services, operating as a government led service.
- 1.5 The Ecclesiastical Court’s probate jurisdiction is rooted in customary law, with the only recent statutory intervention being the Ecclesiastical Court (Jurisdiction) (Bailiwick of Guernsey) Law, 1994³ (‘the 1994 Law’). The 1994 Law sets out the jurisdiction of the Ecclesiastical Court for probate and provides for the Royal Court to exercise jurisdiction in disputed cases.
- 1.6 The current customary jurisdiction operates flexibly and efficiently. It is not therefore proposed to introduce a complex statutory framework which may impact upon these standards and practices. The proposal is to transfer the customary jurisdiction to the Royal Court by way of a projet de loi with the plan for the service to continue to be delivered as far as possible in its current form but under the oversight and responsibility of the Royal Court.
- 1.7 The Ecclesiastical Court’s income from probate varies annually according to the value and number of estates for which probate is granted. The probate income derives from a tariff based on the estate value with additional charges made for the provision of documents. The current tariff and document fees structure and levels are considered to be reasonable when compared to similar jurisdictions. The Policy & Resources Committee proposes that the current structure is maintained, at least in the short term, with provision for future tariffs to be set by the States upon recommendation by the Policy & Resources Committee as part of the Annual Budget of the States. If the function is transferred, income from the probate tariff would in future accrue to General Revenue. The Royal

³ [The Ecclesiastical Court \(Bailiwick of Guernsey\) Law, 1994.](#)

Court would be responsible for setting fees for any documents required and would receive this income.

- 1.8 Any surplus income from probate, following operational costs and the maintenance of a reserve, has in recent years been transferred to the Deanery Fund LBG and then utilised for charitable purposes and community initiatives. These projects have largely been for the benefit of Church of England in the Bailiwick and many have also benefited the wider community.
- 1.9 In terms of the future surplus income from probate, the Policy & Resources Committee considers it important that an allocation for charitable, social and community purposes is maintained and therefore recommends that an annual grant will be made to the Social Investment Fund for these purposes. It is proposed that an annual grant of £400,000 should be made by the States from General Revenue to the Social Investment Fund for the first two years of the Royal Court undertaking the transferred probate function. This grant will be paid regardless of the size or existence of a probate specific surplus in any one year, with the level of this grant being reviewed after two years of operation and then included in future Annual Budgets.
- 1.10 The customary jurisdiction for probate for Alderney and Sark is also vested in the Ecclesiastical Court. Alderney and Sark have been consulted about these proposals. In summary, Alderney has agreed with the proposal to transfer the customary jurisdiction to the Royal Court. There are ongoing discussions with Sark concerning its future arrangements. This is detailed in section 15 below.
- 1.11 In terms of the timescale for the transfer, it is proposed that the probate jurisdiction would transfer following the enactment of the legislation. An implementation group established under the responsibility of the Royal Court would plan and effect the transfer of the function, if States approval is given to this policy proposal.

2. Background and Overview of the Probate Function:

- 2.1 The Ecclesiastical Court may well have been instituted approximately 900 years ago when Guernsey formed part of the Diocese of Coutances. As such, it predates the States of Deliberation and is at least as old as the Royal Court. The Ecclesiastical Court is presided over by Dean of Guernsey, the Commissary of the Bishop of Winchester, to whose diocese the Channel Islands were annexed in 1568. Constitutionally, the Ecclesiastical Court derives its jurisdiction as a court from the Crown in the same way as the Royal Court.
- 2.2 In March 2014, the episcopal authority of the Bishop of Winchester for the Channel Islands was delegated to an assistant bishop in the Diocese of Winchester, the Right Reverend Trevor Willmott. The Archbishop of Canterbury's

Commission on the relationship of the Channel Islands to the wider Church of England published its report in October 2019, recommending the transfer of future episcopal oversight of the Channel Islands to the Bishop of Salisbury. It is understood that further legislation will be required to bring these changes into effect and will be relevant to the future governance of the Ecclesiastical Court as the Dean will exercise his jurisdiction as Commissary of the Bishop of Salisbury if these reforms are introduced.

- 2.3 In previous centuries, the Ecclesiastical Court had a broad jurisdiction in relation to ecclesiastical affairs, but now undertakes three principal functions: the issue of marriage licences, giving permission for alterations to churches, known as 'faculties', and issuing grants of probate in relation to personal property. It also has jurisdiction over the disposal or acquisition of church ornaments, the granting of permission for exhumation orders and the swearing in of notaries and churchwardens.
- 2.4 The Ecclesiastical Court is closely connected to the Church of England and its structure, with Anglican clergy presiding over the sitting of the Court and the Dean being responsible for the allocation of surplus funds to the Deanery Fund LBG. However, when undertaking the probate function and operating as a court, the Ecclesiastical Court applies the civil law in the same way as other courts in terms of meeting legal and procedural requirements.
- 2.5 The Dean presides over the Ecclesiastical Court and is responsible for the Ecclesiastical Court's staff. The Registrar and the two Deputy Registrars of the Ecclesiastical Court (referred to in this policy letter as "the Registrar" and "the Deputy Registrars" respectively), are legally qualified and provide specialist legal input to ensure that probate grants meet any legal requirements. The Dean also employs and contracts experienced staff who support and administer the probate function, including drafting documents, interviewing and advising service users and attending to Court matters.
- 2.6 Unlike in Jersey, which operates a similar probate system in terms of the separation of realty and personal property, there is no mandatory requirement in Guernsey to obtain probate before personal assets may be dealt with. The decision as to whether probate is required is determined by the policy of the third party holding the asset, such as a bank or a building society. Depending on the policy of the third party, it may not be necessary to obtain probate in order to release the asset, particularly where the asset is of low value. If the third party requires a Guernsey grant of probate before releasing the asset, an application must be made to the Ecclesiastical Court to obtain a grant.
- 2.7 There are a number of circumstances in which a grant of probate is not normally needed to transfer personal property. For example, if the personal assets are held in a trust fund or, generally speaking, where the assets are held in joint

names and the other named person is still alive and inherits the assets automatically.

- 2.8 In Guernsey (excluding Alderney and Sark which operate their own systems for registering real property transfers), the transfer of real property operates as a completely separate process to probate in relation to personal property. It is not generally necessary to obtain probate to transfer real property as, in most cases, it will pass to the heirs automatically. Where the deceased has left a will regarding real property, the will must be registered at the Greffe following an application to the non-contentious Court. Where there is no will in existence, the process in respect of real property is more complex and may require an application to be made to the Royal Court, for an “administration order”, which is an order to prove to any potential buyer of the deceased’s property that someone is eligible to be in a position to provide good title on behalf of those who are the heirs.⁴
- 2.9 In accordance with the 1994 Law, the Royal Court has jurisdiction where there is a dispute in relation to probate. The Royal Court can also issue directions to the Ecclesiastical Court regarding probate matters, although this power has never been exercised.
- 2.10 The income from probate provides the majority of the Ecclesiastical Court’s income. The current tariff for probate in Guernsey is based on a percentage of the value of the deceased’s gross personal estate (which is calculated before debts and liabilities are deducted) at the time of death, currently set at approximately 0.35% of the estate value. The value of the estate is assessed based on the deceased’s worldwide estate in relation to a first grant of probate, but assessed in relation to the value of the Guernsey estate where only Guernsey personal assets exist or where a probate grant has already been made in another jurisdiction. Additional fees are charged for the provision of any documents, as required by the particular application.
- 2.11 A financial reserve, equivalent to six months’ operational costs, has been retained by the Ecclesiastical Court, to protect the Court due to the unpredictable nature of the revenue. Any remaining surplus after topping up this reserve is currently transferred to the Deanery Fund LBG. Once any surplus funds have been transferred from the Ecclesiastical Court to the Deanery Fund, the funds are no longer the responsibility of the Ecclesiastical Court. Surplus funds are currently used to support charitable causes, as determined by the directors of the Deanery Fund LBG.

⁴ Reference regarding Guernsey: <http://www.guernseybar.com/services/private-client/wills-and-probate.aspx>

3. Review Process:

3.1 In 2011, the Chairman of the Parochial & Ecclesiastical Rates Review Committee (PERRC) approached the States of Guernsey to suggest that the future funding arrangements for the Ecclesiastical Court would be an appropriate subject for review. This was agreed by the former Policy Council who requested that the Treasury & Resources Department undertake this review.

3.2 In March 2016, the review was completed and the Treasury & Resources Department concluded that, while there were “no substantial matters of fundamental concern arising from the current funding arrangements associated with the Ecclesiastical Court”, it was recommended that a further review of whether it remained appropriate for the Ecclesiastical Court to undertake probate in relation to personal property was carried out by the former Policy Council. From May 2016, this review fell under the mandate of the Policy & Resources Committee.

3.3 The Policy & Resources Committee agreed that this review should be carried out, and approved the following terms of reference:

‘To consider whether it remains appropriate for the jurisdiction of the Ecclesiastical Court to include matters of probate. In pursuing this, the review will examine:

- The extent to which this practice affects the perception of Guernsey in the wider world and, in particular, whether it discourages investment in the island;
- How this matter is dealt with elsewhere;
- The potential options for Guernsey;
- The merits and demerits of those options.’

3.4 Since the start of this review, a number of changes have been introduced by the Ecclesiastical Court, including making improvements to its website and the introduction of a cap on probate fees in May 2018. In view of this, some of the responses received by the review did not accurately reflect the current practices of the Ecclesiastical Court. The responses were also made in relation to individual cases, and, therefore, needed to be considered in this context when informing any policy proposals to change the current probate function. This is referenced further at section 6 below.

3.5 Following completion of the first phase of Policy & Resources Committee review, in June 2019, by agreement of the President of the Policy & Resources Committee and the Dean of Guernsey, it was proposed that a working group be set up to consider and inform how the jurisdiction could be transferred, prior to

the Policy & Resources Committee submitting a Policy Letter to the States. The working group first met in October 2018 and has included the Dean, representatives from the Ecclesiastical Court, including the Registrar and Deputy Registrars, together with civil servants supporting the Policy & Resources Committee. Her Majesty's Greffier later joined the group on behalf of the Royal Court.

- 3.6 If the proposed transfer of jurisdiction is approved by the States of Deliberation, the makeup of the working group will be reviewed and it will become an implementation group led by Her Majesty's Greffier on behalf of the Royal Court. The implementation group will plan and implement the transfer.

4. Governance of the Probate Function:

- 4.1 The governance of the probate function, as undertaken by the Ecclesiastical Court in the Bailiwick, is different to the governance of the probate function in similar jurisdictions.
- 4.2 In England and Wales historically the proving of wills and related testamentary matters, subject to certain exceptions, came within the jurisdiction of various courts administered by the Church of England. The Court of Probate Act 1857 reformed the traditional position and created a state controlled and centralised system for probate, now known as the Probate Registry, which operates as part of HM Court and Tribunal Service.
- 4.3 Probate in Jersey was originally granted and administered by its own Ecclesiastical Court. In 1949, the function was transferred to the Probate Division of the Royal Court of Jersey. The Jersey Probate Registry now operates as part of the Judicial Greffe.
- 4.4 In contrast, Guernsey's probate function in relation to personal property is still undertaken by the Ecclesiastical Court, which retains close links to the Church of England. Constitutionally, the Ecclesiastical Court derives its jurisdiction as a court from the Crown.
- 4.5 In terms of the Ecclesiastical Court, the Commissary of the Ecclesiastical Court is the Dean of Guernsey, appointed by the Crown on the nomination of the Lieutenant Governor, with the agreement of the Bishop of Winchester. The Dean, as the senior Anglican priest in the Bailiwick of Guernsey, has responsibility for the Ecclesiastical Court, presides over the sittings of the Court, directly employs the Ecclesiastical Court staff and Registrar and contracts the services of the Deputy Registrars.

- 4.6 If the probate jurisdiction were to be transferred, the obvious alternative corporate governance arrangement is for the probate jurisdiction to be transferred to the Royal Court. It is considered that the Royal Court offers the best siting for the function, rather than setting up a new and separate service which would be expensive and complex to establish and operate.
- 4.7 While the Royal Court is constitutionally independent from the States of Guernsey and States of Deliberation when discharging its judicial functions, the Royal Court operates within the States of Guernsey's financial and corporate governance structure and, particularly through the offices of the Bailiff and Her Majesty's Greffier, performs many public sector functions in a way that is compatible with other public services. This includes mandatory reporting requirements, accountability for its budgeting and auditing to the States of Deliberation; its administrative and non-judicial functions being performed by staff employed by the civil service.
- 4.8 A transfer to the Royal Court would see:
- Accountability and public access to information by following the States of Guernsey's financial and reporting procedures.
 - Administrative oversight being provided by the Greffe alongside other legal functions utilising consistent public sector governance arrangements. The operation of the probate function by the existing staff, with the transferred staff under the line management of Her Majesty's Greffier, will enable the probate expertise to be developed following transfer.
 - The operation of the probate function alongside the registration of wills of realty would enable both functions to operate subject to the same governance arrangements. In practice, the two functions, which are legally and procedurally distinct, will remain separate processes.
- 4.9 The Royal Court would be responsible for ensuring that, if transferred, the function operates with appropriate accountability and scrutiny and for implementing any changes required to modernise the operation of the function.

5. Transparency:

- 5.1 It is important that a public service is delivered with transparency in terms of its operations and costs. The transparency of the Ecclesiastical Court has increased in the recent past. The web presence⁵ for the Ecclesiastical Court has been improved and provides the public with clearer access to information for probate matters. The Dean has also assisted the review process by sharing the accounts of the Ecclesiastical Court.

⁵ www.guernseyprobate.gg

5.2 Transferring the probate function to the oversight of the Royal Court would allow additional measures to be taken. For example:

- Annual budgeting and accounts would be subject to standard States of Guernsey procedures. The probate accounts would be included in the annual accounts presented to the States of Deliberation and available to the public.
- The information regarding probate would be logically sited and accessible for customers on the Royal Court's website, alongside information regarding its other legal and public services, providing clear information regarding the tariff and fees for the service.
- The function could benefit from existing States' services which are already advertised/marketed, including coverage on the States' website and social media channels which have a significant level of customer interaction.
- Future modernisation could be considered by the Royal Court with its move towards digitalisation of its services and improved online access.

6. Wider Perception of Guernsey's Probate Service in terms of its links to the Church of England and in relation to its charges:

6.1 As stated in paragraph 3.3 and 3.4, the terms of reference for the Policy & Resources Committee review led to limited enquiries being made to inform the policy development and any proposals to change the current operation and jurisdiction.

6.2 Some of the responses were provided in relation to individual cases and experiences, and, therefore, needed to be considered in that context. However, the responses were positive in terms of the efficient service provided by the Ecclesiastical Court staff.

6.3 One of the terms of reference for the Policy & Resources Committee review was the extent to which the probate function being operated by the Ecclesiastical Court affects the perception of Guernsey in the wider world and, in particular, whether the close link between the Ecclesiastical Court and the Church of England discourages investment in the jurisdiction.

6.4 The Dean, in or about 2016, consulted with representatives of the finance industry and officers of the Church of England's National Institutions, including the Church Commissioners. The Dean's findings suggested that it was unlikely that investment decisions have been complicated or compromised by the involvement of a Christian institution. He also noted that in terms of Sharia (Islamic Law) investment, the primary driver would come down to risk and

return, as charging interest is not considered ethical. Therefore, the concept of probate being run by a body with close links to the Church of England was not reported to be a concern in terms of investments in the Bailiwick.

- 6.5 In addition, from the enquiries undertaken, there was no evidence that the tariff charged for probate has influenced overseas investors as an incentive or disincentive to invest in the Bailiwick. Furthermore, the Ecclesiastical Court updated its tariff structure in 2018 by introducing a cap on fees of £100,000 which applies for estates worth £28 million or more to ensure that Guernsey remains internationally competitive for investors.
- 6.6 Taking into account the information obtained from stakeholders using the service, there was no evidence that the probate function being run by the Ecclesiastical Court or the charges applied have discouraged or affected investment from potential overseas investors or those who wish to move to Guernsey to live.
- 6.7 For the reasons outlined in this section and referred to in paragraph 3.4, the information obtained from the enquiries with stakeholders has not directed the policy proposals being made in this policy letter.

7. Levels of Service, Legal Expertise and Processes required for Grants of Probate:

- 7.1 The probate function, as operated by the Ecclesiastical Court, is acknowledged as being quick and efficient in comparison with obtaining probate in other jurisdictions.
- 7.2 The Policy & Resources Committee considers it important that these levels of service are maintained if the customary jurisdiction were to transfer to the Royal Court. There is also no intention to introduce a complex statutory system which may be slow to operate and may reduce the flexibility and efficiency of the current process.
- 7.3 Granting probate under the customary jurisdiction means that there is no statutory framework for processes, legal and procedural requirements for probate. Therefore, when considering applications for probate, the expertise, enquiry and judgment exercised by the Registrar, Deputy Registrars and court staff are essential in ensuring that applications meet any legal requirements and that grants are made with consistency and in the correct form.
- 7.4 The Ecclesiastical Court also regularly deals with complex cases concerning intestacy matters and applications for grants relating to assets held in the Bailiwick where the deceased lived outside the jurisdiction. These applications require legal expertise and judgment to be exercised.

- 7.5 When applying for probate in Guernsey, the process enables lay applicants to apply themselves (without necessarily instructing an advocate). The Ecclesiastical Court staff provide assistance to applicants, including the drafting and provision of required documents, such as powers of attorney, oaths and affidavits.
- 7.6 If the jurisdiction is transferred, it is proposed that the legally qualified and experienced staff would continue to deliver the function, subject to agreement. This includes planning the arrangements for both the employed staff and for the contracted legal staff which is continuing to be progressed alongside this policy letter. If the transfer of the jurisdiction is approved by the States, ongoing planning will be undertaken with the staff involved at the implementation stage of the project.
- 7.7 To help ensure the continuity of the current service provision and to achieve the smooth transfer of the employed staff providing the vital administration functions from the employ of the Ecclesiastical Court to the States of Guernsey, it is proposed that the employed staff are transferred by the same primary legislation that will transfer the jurisdiction. Similar legislative provisions have been used on previous occasions to effect a smooth transfer of staff from one organisation to another, such as in relation to the transfer of a limited number of States of Guernsey employees to the employ of the Data Protection Authority in 2017.
- 7.8 Using a legislative transfer approach will have significant benefits for all parties as it will mean that on the day of transfer, in effect all that will happen will be that the name of the employer will change. The staff will remain employed in their existing roles, at the same location (initially) and on the same terms and conditions as previously, but have the added security of knowing that their roles and terms and conditions remain unchanged and that accrued rights relating to their continuity of service are maintained. At the same time, the transferred staff will benefit from the application of certain States of Guernsey staff policies and directives which apply to States of Guernsey civil servants. Such a transfer will remove job uncertainty whilst at the same time helping to ensure that vital employee knowledge and service provision is retained for the function at a critical time.
- 7.9 In terms of the procedural and legal requirements for obtaining a grant, under the customary jurisdiction of the Ecclesiastical Court, the Dean of Guernsey or, in the Dean's absence, a Vice-Dean, presides over the sitting of the Court. The applicant swears an oath or makes an affirmation before the Dean as Commissary.

- 7.10 Following transfer of the jurisdiction, it is proposed that the Royal Court would be responsible for the implementation of the changes, the model for the delivery of the probate function and the structure of the probate service.
- 7.11 However, it is proposed that primary legislation would create new judicial posts of Registrar and Deputy Registrar (referred to in this policy letter as the "Court Registrar" and the "Court Deputy Registrar", respectively) and permit them to administer oaths and affirmations as required, as well as sit in the Ordinary Court and adjudicate on any disputes. The functions of the Court Registrar could also be performed by other judges who can constitute the Royal Court, with appeals being heard by the Court of Appeal. These changes will remove the current oversight of the Dean, while ensuring that the procedural and legal requirements for obtaining probate are met and that there is continuity in terms of the operation of the function. The primary legislation will also allow the introduction of future changes to the probate application process, including enabling online applications to be made. In future, the formalities could be changed to permit applicants to make legal declarations in place of oaths and affirmations.
- 7.12 In addition, if the probate function were transferred to the Royal Court, the following benefits could assist in maintaining or improving the current levels of service provided by the Ecclesiastical Court:
- Currently the Ecclesiastical Court office is open to the public on Mondays to Thursdays between 9am-12pm, with the Court sitting on Friday mornings. If required to meet demand, the administration of any oaths or affirmations required could take place on more than one day per week. This option, along with others, could be considered as part of any future planning for delivery of the service, including planning the digitalisation of the service in the longer term.
 - Working as part of a much larger organisation could assist with the sharing of resources, including sickness absence and leave cover, and may provide the opportunity for the up skilling of other staff to provide more resilience for the function.
- 7.13 As stated above, any changes regarding the future structure of the function would become the responsibility and subject to the decisions and direction of the Royal Court, if approval is given by the States for the jurisdiction to be transferred.

8. Income of the Ecclesiastical Court:

- 8.1 The majority of the Ecclesiastical Court's income is derived from probate income, with the tariff based on a percentage of the gross value of the personal estate at

the date of death. The current tariff applied is 0.35% of the value of the gross personal estate with additional fees for any documents, such as powers of attorney and certified copies of grants. The gross estate is the estate value before any fees or expenses are deducted. The fees for probate have been charged at these levels since 1987.

- 8.2 Where probate has been obtained in another jurisdiction first or there are only Bailiwick based assets, the tariff is calculated based on the value of the Bailiwick personal estate only. If probate has not already been obtained in another jurisdiction, the tariff is calculated according to the gross value of the deceased's worldwide personal estate at the date of death.
- 8.3 There are particular observations that can be made regarding the income. Firstly, it should be noted that the Ecclesiastical Court's income from probate varies each year depending on the number of grants made that year and the value of the personal estates for which the grants are made. Therefore, it is not possible to predict the annual income. From 2018, it is likely that the introduction of the cap in fees for high value estates will impact upon future income levels.
- 8.4 Secondly, it is also the case that an executor administering an estate will not necessarily apply for a grant in the year of death, as the application is made once the executor has ascertained the extent, location and value of the assets held and confirmed whether a grant is required to release the assets. The administration can sometimes be a lengthy process depending on the extent and distribution of assets.
- 8.5 In addition, whilst it is possible to compare the number of grants made annually, the individual applications have different complexities and requirements, resulting in varying workloads for the Ecclesiastical Court as each application is considered according to its individual requirements, regardless of the size or value of the estate.
- 8.6 The total income for the Ecclesiastical Court for the past five years and the number of grants per year are referenced in table 1 below. This also shows the average annual income per grant per annum.

Table 1:

Ecclesiastical Court Annual Income from 2014 – 2018:

YEAR	TOTAL INCOME (£)	NUMBER OF GRANTS	AVERAGE INCOME PER GRANT (£)
2014	938,534	491	1,911
2015	1,232,249	524	2,352
2016	603,452	488	1,237
2017	898,282	427	2,104
2018	629,047	499	1,260

8.7 It is proposed that following transfer of the jurisdiction, the tariff and fees charged would remain at their current level, at least in the short term, on the basis that the charges appear reasonable and that all future income from the probate tariff would be credited to General Revenue.

8.8 The proposed legislation will provide for the States to set the tariff in future following a recommendation from the Policy & Resources Committee as part of the Annual Budget of the States, with the Royal Court being responsible for setting other fees for the provision of documentation or the making of applications.

9. Expenditure of the Ecclesiastical Court:

9.1 The accounting for expenditure has changed in recent years. Prior to 2017, the Dean paid a sum to the Registrar in the form of the Registrar's service charge and this sum was used by the Registrar to pay for the staff and office costs, including rent. These expenses were not separately recorded until 2016. From 2017, as reflected in the annual accounts, the Dean has paid directly for the staff costs and office expenditure.

Table 2:

Ecclesiastical Court Expenditure from 2014 – 2018⁶:

Expenditure	2014 (£)	2015(£)	2016(£)	2017(£)	2018(£)
Staff/Registrar's Service Charge (in 2015/6)	311,524	321,746	276,115	273,497	268,621
Administration expenses	1,360	5,924	6,126	8,957	14,270
Operational costs (including rent)			30,012	35,842	39,505
Insurance					12,374 ⁷
Total expenditure	322,370⁸	327,670	312,253	318,296	334,770

9.2 Upon transfer of the jurisdiction, it is anticipated that the costs for providing the service will remain the same as currently and the Cash Limit of the Royal Court will be increased by this amount to fund the operation of the probate function.

9.3 Over time, savings could potentially be realised by the Royal Court in the following areas:

- Rent costs and building insurance costs could be eliminated if the probate service is moved to the Royal Court building in the future as this is a States' property which is already utilised for other States' functions; and
- There might be an opportunity to absorb the indemnity insurance expenditure currently paid by the Ecclesiastical Court into the States' insurance.

10. Surplus Income:

10.1 One of the key findings from the 1985 States' Report was that income from the probate function was usually at a level whereby the cost of running the function

⁶ It should be noted that the format of accounts has changed over time so like for like comparisons can be difficult

⁷ Insurance costs were not separately recorded in accounts before 2018.

⁸ The 2014 expenditure included £9486 relating to Office of the Dean expenses. This has not been claimed/recorded in subsequent accounts.

was covered, with little or no surplus. However, recent figures show surplus funds from the function, as detailed in table 3 below.

- 10.2 Surplus income from probate income is initially used to top up the Ecclesiastical Court's reserve fund which provides a financial buffer in the event that insufficient income is received by the Ecclesiastical Court for a six month period. Following this, any remaining surplus and any other funds not required to maintain the reserves are transferred to the Deanery Fund LBG.
- 10.3 It should be noted that the surplus fluctuates annually, in the same way as the income, according to the number of grants issued and value of estates for which probate is granted.

Table 3:

Ecclesiastical Court Surplus Funds 2014 – 2018⁹:

YEAR	SURPLUS FUNDS
2014	620,000
2015	905,000
2016	290,000
2017	580,000
2018	295,000

- 10.4 Over this 5 year period, the surplus ranged from £290,000 to £905,000 and averaged £538,000. As stated in this policy letter, the introduction of a fees cap in 2018 for high value estates is likely to affect future levels of income and, therefore, any future surplus.
- 10.5 Any transferred funds have in the recent past been allocated to the Deanery Fund LBG, a charitable organisation with a mission statement to support charitable and community functions, including the advancement of the Church of England in the Bailiwick of Guernsey. Their distribution is determined by the directors of the Fund. A significant amount of these funds have then been made available for charitable and community purposes. While the total funds actually distributed for good causes is not publicly available, it is understood that a large proportion of the available funds have been allocated to Church of England projects, many of which also benefit the wider community.
- 10.6 If the probate jurisdiction is transferred, the Policy & Resources Committee considers it appropriate that charities and community projects continue to

⁹ For ease of reference, approximations for the surplus income figures have been used in this section.

benefit from any surplus following the transfer of jurisdiction. The Committee proposes that an annual grant is made from General Revenue in future to the Social Investment Fund to be used to invest in the charitable and community sector within the Bailiwick of Guernsey. The establishment of the Social Investment Fund is the subject of a separate policy letter entitled “Establishment of the Social Investment Fund” to be consider by the States this term.¹⁰ The making of an annual grant will provide certainty regardless of the size or existence of a probate specific surplus in any one year. The Policy & Resources Committee will make proposals for the grant in future budgets but considers that it should be in the range of £300,000 to £500,000. Initially, it is proposed that the grant is set at £400,000 for the two years following transfer of the jurisdiction and operation of the function, with the level of grant then being reviewed and provision made in future Budgets.

- 10.7 In terms of funding distributions, church and faith-based organisations will be eligible to apply for these funds alongside other charitable and third sector organisations in accordance with the Social Investment Fund’s publicised criteria. It is considered that this proposal will ensure the fair and transparent distribution of any future surplus, for the benefit of the community.
- 10.8 Consideration has been given by the Committee to the human rights aspects of the proposals, in particular Article 1, Protocol 1 of the European Convention which entitles natural and legal persons to the peaceful enjoyment of their possessions. As set out in this paragraph, a significant amount of funds transferred by the Ecclesiastical Court to the Deanery Fund LBG have been made available for charitable and community purposes. On the basis that the probate income will in future be paid to General Revenue, out of which will be paid an annual grant of £400,000 to the Social Investment Fund, and Church of England organisations will be able to apply for grants from that Fund, the Committee considers that any claim for compensation based on the transfer of jurisdiction is theoretical.

11. Projected Costs for Transferring the Function:

- 11.1 An increased budget for the Royal Court will be required to cover the costs of administration once the transfer has been effected. These costs are expected to be no more than the current costs upon transfer but, in due course, it is anticipated that savings will be able to be made for items such as insurance and rent. In addition, ICT costs for the transfer of jurisdiction will be a maximum of £20,000 and a request will be made for an ICT minor capital vote.
- 11.2 Staff project management resources will be required to facilitate the transfer of the function and, if these cannot be funded within existing resources, the Policy

¹⁰ [Establishment of the Social Investment Fund Policy Letter](#)

& Resources Committee will use its existing delegated authority to make one-off funding available from the Budget Reserve.¹¹

12. Legislative Implications:

12.1 The probate jurisdiction of the Ecclesiastical Court is rooted in customary law with statutory intervention through the 1994 Law. The 1994 Law declares the jurisdiction of the Ecclesiastical Court regarding the inheritance of personal property in relation to grants of probate and letters of administration. It sets out that disputed probate applications fall within the jurisdiction of the Royal Court.

12.2 In order to support the recommendations in this Policy Letter and transfer the jurisdiction, the appropriate legislative route would be to draft a *projet de loi* which would establish the Royal Court's jurisdiction and responsibility for the probate function.

12.3 The legislation would:

- Transfer the customary jurisdiction in relation to personal property to the Royal Court sitting as an Ordinary Court;
- Make provision for the transferred probate jurisdiction to extend to Alderney and Sark (subject to Sark agreeing with this);
- For clarity, end the Ecclesiastical Court's customary jurisdiction in respect of probate matters and the receipt of probate income;
- Set out criminal offences for breaches under the legislation and applicable penalties, such as where a grant is obtained by the provision of false information;
- Create the judicial positions of Court Registrar and Court Deputy Registrar who would grant probate and sit in the Ordinary Court to hear any disputes;
- Permit the Policy & Resources Committee to recommend any change to the probate tariff to the States as part of the Annual Budget;
- Permit the Royal Court to make rules and set fees;
- Provide that the future income from probate (other than the Royal Court fees) will be paid into the States of Guernsey's General Revenue Account;
- Provide for an appeal from decisions of the Court Registrar and Court Deputy Registrars to be heard by the Court of Appeal; and
- Provide for the transfer of the employed staff from the Ecclesiastical Court to the new function.

12.4 The Law Officers' Chambers have advised that, with the proposal that the probate system will transfer as a customary jurisdiction in its current form to the

¹¹ It is possible that there may be additional costs for the Dean resulting from the transfer of the jurisdiction and probate function. These costs will need to be considered at the appropriate time.

Royal Court and with no intention to introduce a detailed statutory system, the drafting of the primary legislation should not be particularly time-consuming. Court Rules in the form of Orders of the Royal Court will set out the processes and other procedural requirements.

13. Residual Functions of the Ecclesiastical Court after transfer of the probate jurisdiction:

13.1 The transfer of the probate function from the Ecclesiastical Court to the Royal Court will see the Ecclesiastical Court continuing to operate its other functions following the transfer.

These functions include:

- Issuing licences for marriages according to the rites of the Church of England in the Bailiwick of Guernsey;
- Considering applications for permission to undertake any work proposed in the Anglican churches or churchyards in the Bailiwick and issuing of faculties to permit the work;
- Carrying out its duties in relation to the admission of clergy to benefices, the admission of churchwardens to their offices and the consecration of burial grounds;
- Carrying out the other responsibilities of the Court and of the Registrar, including in relation to clergy discipline¹²;
- Considering requests for exhumation of bodies or cremated remains interred in consecrated ground, and issuing of permission for exhumation (or otherwise); and
- Admitting notaries in Guernsey on the instruction of the Master of the Faculties.

13.2 The Ecclesiastical Court will continue to deliver these services and be responsible for the operation and any charges for these services.

14. Consultation with the Ecclesiastical Authorities:

14.1 Given the long establishment of the Ecclesiastical Court operating the probate jurisdiction and the episcopal arrangements regarding the Channel Islands, consultation with both the Bishop of Winchester and the Right Reverend Trevor Willmott, who currently exercises episcopal jurisdiction in the Channel Islands. No objections to the proposals to transfer the customary jurisdiction made in this policy letter were raised by this consultation.

¹² See the [Clergy Discipline \(Bailiwick of Guernsey\) Order, 2006](#).

15. Consultation with Alderney and Sark:

- 15.1 Consultation has been undertaken with Alderney and Sark over a period of several months concerning these proposals in relation to their probate for personal property. It is proposed that an agreement will set out the arrangements for the probate process within the Bailiwick.
- 15.2 On 23 January 2020, the Policy & Finance Committee of the States of Alderney resolved to approve the following policy proposals:
- The transfer of the probate jurisdiction from the Ecclesiastical Court to the Royal Court and the preparation of legislation to effect this transfer;
 - For the transferred jurisdiction to extend to Alderney's probate, in relation to their deceased residents and assets held by their residents;
 - To return any residue to Alderney regarding their deceased residents' estates and assets following any charges being applied for administering the probate process and returning income to the individual islands, at a Bailiwick tariff set by the Policy & Resources Committee and any document charges;
 - The system will be reviewed after 2-3 years of operation.

For clarity, Alderney has elected to have its proportion of any funds returned following the costs of the service being met rather than apply to the Social Investment Fund for a grant.

- 15.3 Discussions with Sark are ongoing regarding the administration of their probate function. However, it is anticipated that the position will be clear at the time of the States' consideration of this policy letter and can be addressed at the time of the legislation, as required. This is covered by proposition 1a) and b) which are alternatives depending if Sark wishes to be part of the transferred arrangements.

Similarly Sark has elected to have its proportion of any funds returned following the costs of the service being met rather than apply to the Social Investment Fund for a grant.

16. Timeframe:

- 16.1 In terms of proposed timescale for the transfer, it is proposed that the customary jurisdiction should transfer to the Royal Court following the enactment of the required legislation. Pending this, the function will continue to operate as currently under the jurisdiction of the Ecclesiastical Court.

17. Conclusion and Recommendations:

- 17.1 To conclude, it is appropriate that the customary jurisdiction for probate be transferred to the Royal Court.
- 17.2 The transfer will remove the function from its current close association and governance of the Church of England and enable its delivery as a government-led service.
- 17.3 Based on the information contained within this policy letter, the Policy & Resources Committee recommends, as included in the propositions, that:
- The customary probate jurisdiction is transferred from the Ecclesiastical Court to the Royal Court, with future probate income from the probate tariff to accrue to General Revenue.
 - For any changes to the tariff to be recommended by the Policy & Resources Committee as part of the Annual Budget of the States, with the Royal Court setting other fees.
 - A grant will be made available for distribution to charitable and third sector causes through an annual grant made to the Social Investment Fund, to be reviewed after two years.

If the proposals are approved by the States, an implementation group will effect the next stage of the plan, including the transfer of the service and staff, processes and procedures to the Royal Court.

18. Compliance with Rule 4:

- 18.1 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.
- 18.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

- 18.3 In accordance with Rule 4(3), the Propositions request the States to approve funding as detailed in propositions 3 and 4.
- 18.4 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.
- 18.5 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to develop and promote the States' overall policy objectives.

Yours faithfully

G A St Pier
President

L S Trott
Vice-President

J P Le Tocq
T J Stephens
A H Brouard