



VIII  
2021

# BILLET D'ÉTAT

WEDNESDAY, 24<sup>th</sup> MARCH 2021

## *ELECTIONS AND APPOINTMENTS*

1. Committee *for the* Environment & Infrastructure - Planning Panel -The re-election of members of the Planning Panel and to rescind Resolution 5 of Billet d'État VI of 2015, P.2021/16
2. Committee *for* Home Affairs - Police Complaints Commission: Notification of Resignation and Reappointment of Member, P.2021/20
3. Election of two Non-States Members of the States' Trading Supervisory Board, P.2021/22

## *LEGISLATIVE BUSINESS*

### *Legislation laid before the States*

The Income Support (Implementation) (Amendment) (No.2) Ordinance, 2021  
The LLPs (Annual Validation) Regulations, 2020  
The Companies (Annual Validation) Regulations, 2020  
The Limited Partnerships (Annual Validation) (Amendment) Regulations, 2020  
The Foundations (Annual Renewal) (Amendment) Regulations, 2020  
The Companies (Annual Validation) (No. 2) Regulations, 2020  
The Companies (Registrar) (Fees and Penalties) Regulations, 2020  
The Immigration and Social Security Co-ordination (EU Withdrawal) (Bailiwick of Guernsey) Regulations, 2020  
The Immigration (Bailiwick of Guernsey) (Amendment) Rules, 2021

CONTINUED OVERLEAF

*Legislation for Approval*

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*APPENDIX*

Committee *for* Home Affairs - Election of a Non-Voting Member of the Committee

# BILLET D'ÉTAT

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## TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

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I hereby give notice that a Meeting of the States of Deliberation will be held via **MICROSOFT TEAMS LIVE**, on **WEDNESDAY**, the **24<sup>th</sup> March, 2021** at **9.30 a.m.**, to consider the items listed in this Billet d'État which have been submitted for debate.

R. J. McMAHON  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey

26<sup>th</sup> February, 2021

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE**

**PLANNING PANEL – THE RE-ELECTION OF MEMBERS OF THE PLANNING PANEL AND TO  
RESCIND RESOLUTION 5 OF BILLET D’ÉTAT VI OF 2015**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "Planning Panel – The re-election of members of the Planning Panel and to rescind Resolution 5 of Billet d’État VI of 2015" dated 8<sup>th</sup> February, 2021 they are of the opinion:-

1. To re-elect:
  - (a) Mr Stuart Fell as a professional member of the Planning Panel for a further term of six years from 1<sup>st</sup> April, 2021;
  - (b) Mr David Gwyn Harry as an ordinary member of the Planning Panel for a further term of six years from 1<sup>st</sup> April 2021; and
  - (c) Advocate Mark Gideon Andrew Dunster as an ordinary member of the Planning Panel for a further term of six years from 1<sup>st</sup> April 2021.
2. To designate:
  - (a) Mr David Gwyn Harry as the Chairman of the Planning Panel; and
  - (b) Mr Stuart Fell as the Deputy Chairman of the Planning Panel.
3. To rescind Resolution 5 of Billet d’État VI of 2015, Article II (“The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members”) for the reasons set out in paragraphs 3.1 to 3.4 of this policy letter.

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.



## **COMMITTEE FOR THE ENVIRONMENT & INFRASTRUCTURE**

### **PLANNING PANEL – THE RE-ELECTION OF MEMBERS OF THE PLANNING PANEL AND TO RESCIND RESOLUTION 5 OF BILLET D'ÉTAT VI OF 2015**

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

8<sup>th</sup> February, 2021

Dear Sir

#### **1. Executive Summary**

1.1 The purpose of this Policy Letter is three-fold, namely, to ask the States:

(i) To re-elect:

- (a) Mr Stuart Fell as a professional member of the Planning Panel for a further term of six years from 1<sup>st</sup> April, 2021;
- (b) Mr David Gwyn Harry as an ordinary member of the Planning Panel for a further term of six years from 1<sup>st</sup> April 2021; and
- (c) Advocate Mark Gideon Andrew Dunster as an ordinary member of the Planning Panel, for a further term of six years from 1<sup>st</sup> April 2021.

(ii) To designate:

- (a) Mr David Gwyn Harry as the Chairman of the Planning Panel; and
- (b) Mr Stuart Fell as the Deputy Chairman of the Planning Panel.

(iii) To rescind Resolution 5 of Billet d'État VI of 2015, Article II (["The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members"](#)) for the reasons set out in paragraphs 3.1 to 3.4 of this policy letter.

#### **2 Background**

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

### **Establishment of Planning Panel.**

- 86.** (1) The States shall, on the recommendation of the Committee *for* the Environment & Infrastructure, draw up and maintain a panel to be called the Planning Panel which shall consist of nine independent persons and from which the members of the Planning Tribunal shall, from time to time, be appointed.
- (2) A recommendation of the Committee *for* the Environment & Infrastructure under subsection (1) may be amended by resolution of the States to the intent that persons other than those recommended by the Committee *for* the Environment & Infrastructure may be elected to the Planning Panel.
- (3) Of the members of the Planning Panel –
- (a) not less than four shall be permanently resident within the Channel Islands,
  - (b) not less than two, who shall be designated by States' resolution as the "professional members", shall be persons with such qualifications and experience in planning matters as in the opinion of the States is necessary for the hearing and determination of appeals to the Planning Tribunal,
  - (c) one shall be designated by States' resolution as the Chairman of the Planning Panel, and
  - (d) one shall be designated by States' resolution as the Deputy Chairman thereof.
- (4) The members of the Planning Panel shall, subject to the provisions of subsection (5), hold office for a term of six years, and a person may be elected for more than one term of office.

Such appointments must be made by the States upon the recommendation of the Committee *for* the Environment & Infrastructure.

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

- (a) a Member of the States of Deliberation within the meaning of the Reform (Guernsey) Law, 1948;
- (b) an employee of the States who is employed by the States within the Development & Planning Authority, a member of the Authority or a person who carries out work for, or provides services to the Authority in relation to any functions of the Authority under the 2005 Law or the repealed enactments;
- (c) a member of the Strategic Land Planning Group;
- (d) a person who holds appointment to any judicial office in Guernsey; or

- (e) any person who has been such a person at any time within the period of two years ending on the date of the proposed election.

### **3. Re-election of Planning Panel Members**

- 3.1 The Committee agreed to recommend to the States of Deliberation the re-election of Mr Stuart Fell as a professional member of the Panel and Mr David Harry and Advocate Mark Dunster as ordinary members of the Panel with effect from 1<sup>st</sup> April 2021 for a further six-year term. All three Panel members have indicated their willingness to serve a further term.
- 3.2 Further, the Committee has agreed that Mr Harry should be re-appointed as the Panel's Chairman and Mr Fell as the Vice Chairman. Both Mr Harry and Mr Fell have overseen the work of the Panel collaboratively drawing on their respective professional qualifications and experience. The Committee is confident that the combination of a legally qualified Chairman and an experienced planner as the Vice Chairman provides a sound basis for the Panel to discharge its duties fairly, independently and transparently.
- 3.3 The Committee has agreed, in consultation with the Panel, to advertise for up to two new Panel members to bring the Panel membership back up to its full establishment of six. An advert will be placed in the Guernsey Press in February 2021 and the vacancies will also be advertised via the States website and social media. The members of other Guernsey-based tribunals have also been invited to apply as they will have the key skills and experience required of tribunal members, including the ability to critically and independently review evidence, weigh it and reach reasoned and evidence-based decisions.
- 3.4 The Committee anticipates that it will be interviewing suitable candidates during February 2021 and will bring a further policy letter seeking the appointment of one or two new Panel members in April or May 2021.

### **4. Rescind Resolution 5 of Billet d'État VI of 2015, Article II**

- 4.1 In March 2015, the States, having considered a policy letter "The Planning Panel – Re-Election of Panel Members and Amendments to the Terms of Office for Panel Members", agreed to amend section 86(4) of the Land Planning and Development (Guernsey) Law, 2005 to:
  - (a) reduce the term of office from six to four years subject to any prior requirement to retire as set out below;
  - (b) introduce a retirement age of seventy years for the Chairman and members of the Planning Panel, unless otherwise extended by the Policy Council, and in any case they shall retire on reaching their seventy second birthday; and

- (c) set a maximum term of office for members of 12 consecutive years, except where a person is appointed as Chairman from amongst the Planning Panel, in which case the appointment should be limited to 16 consecutive years, subject in either case to the retirement requirement above.
- 4.2 This Resolution has not been progressed for a number of reasons, including the work to progress anti-discrimination legislation. Most recently, the preparation of the legislation to give effect to the Resolution was paused following the Resolution to remove a retirement age for members of the Employment & Discrimination Tribunal ([P.2017/61 – Employment and Discrimination Tribunal: Removal of the retirement age of Panel members and designation of the Convenor and Deputy Convenor](#)).
- 4.3 The Committee, as part of its review of extant Resolutions and its priorities under the Government Work Plan, has concluded that in order to ensure it is able to attract an adequate number of appropriately skilled and experienced people interested in appointment to the Panel, there should be no fixed retirement age. In not imposing a retirement age, the relatively small pool of people who have the required qualifications and expertise to be Panel members will be extended. This approach aligns with the direction of policies related to longer working lives, which recognise that increasing numbers of people wish to continue working past state pension age. It also recognises the value of retaining older people's knowledge and expertise in the workplace.
- 4.4 Further, in agreeing to rescind this extant resolution, the criteria for membership of the Panel will be broadly aligned with that for the Employment & Discrimination Tribunal.

## **5 Compliance with Rule 4**

- 5.1 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.
- 5.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 5.3 In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee has written to the Policy & Resources Committee to request that this policy letter be scheduled for debate at the March 2021 States meeting.
- 5.4 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.

5.5 In accordance with Rule 4(5) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions relate to the duties of the Committee *for* the Environment & Infrastructure in respect of land use and planning, and its duties under the Land Planning and Development (Guernsey) Law, 2005, as amended.

Yours faithfully

H L de Sausmarez  
President

S P Haskins  
Vice-President

A Cameron  
S Fairclough  
A Gabriel

## **APPENDIX 1**

### **Curriculum Vitae for Mr. David Gwyn Harry**

Mr. Harry was appointed as an ordinary member of the Planning Panel in 2009 and as its Chairman in 2017.

In September 2018, Mr. Harry was appointed as the Chief Executive of the Priaulx Library. This post is a part-time appointment.

Mr. Harry qualified as a solicitor in 1977 and retired from professional practice in 2014. Throughout his professional career he specialised in property matters and gained wide ranging commercial and private client legal experience including advocacy before courts and tribunals and considerable property and planning experience in connection with residential and commercial property situated in England and Wales.

In addition, since moving to Guernsey, Mr. Harry has been actively involved in Island life and has served on the St. Peter Port and St. Andrew's Douzaine (he stood down from the St. Andrew's Douzaine in December 2016). He has also been actively involved in sport in Guernsey, especially cycling. He is also chairman of the Guernsey Commonwealth Games Association and is a member of the panel of legal advisers appointed to advise the Commonwealth Games Federation.

### **Curriculum Vitae for Mr Stuart Fell**

Mr Fell was first appointed to the Planning Panel in March 2009 as one of its professional members. In September 2011, Mr Fell was appointed as the Panel's Vice Chairman. He was re-appointed to both roles in March 2015.

Mr Fell is now semi-retired and is actively involved in the work of Jersey Heritage as an architectural advisor and is a member of the Executive Committee of La Societe Jersiaise. Prior to retirement, he worked as a consultant in a Jersey-based architectural practice and was involved with a wide range of development work. His special interests include historic building projects and design work. Before moving into private practice, he worked for 10 years for the States of Jersey Planning Service in the role of conservation architect and urban designer, and for a period he headed up the development control service.

Mr Fell trained originally as an architect, but quickly developed an interest in heritage matters. Following specialist training, he subsequently worked in conservation officer posts in Halifax, Chester and Newark, before appointment as the Chief Technical Officer at Tunbridge Wells Borough Council. This managerial post included responsibility for architectural and quantity surveying services, as well as the repair of the Council's public housing stock of several thousand dwellings. On leaving Tunbridge Wells, Mr Fell worked as a Planning Inspector with the UK Planning Inspectorate, where he determined a wide

range of planning appeals in the name of the Secretary of State. These appeals were dealt with by means of written representations, informal hearings, or formal public inquiries. Mr Fell left the Inspectorate to take up his position in Jersey.

### **Curriculum Vitae for Advocate Mark Gideon Andrew Dunster**

Advocate Dunster was first appointed as an ordinary member of the Planning Panel in March 2014.

Advocate Mark Dunster is a partner with Carey Olsen specialising in litigation, compliance and financial regulatory matters. He undertakes a wide variety of commercial and civil litigation including insolvency work. He also advises institutions on regulatory matters including anti-money laundering, data protection, employment law, eGaming and renewable energy. He is an author of books on anti-money laundering and data protection.

Advocate Dunster was called as a barrister in 1994 and practised in London before returning to Guernsey where he qualified as an advocate in 1997 and he became a Notary Public in 2006.

Advocate Dunster is also the Vice President of the Parochial Appeals Tribunal and a member of the Social Insurance Appeals Tribunals. He was a member of the former Health and Social Services Department between 2004 and 2008. He was formerly Connétable of St. Pierre du Bois and is currently a Douzenier for that parish.

Advocate Dunster is the former Bâtonnier of the Guernsey Bar Association, and previously served as a non-States Member of the Legislation Review Panel.



Committee *for the*  
Environment & Infrastructure

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President  
Policy & Resources Committee  
Sir Charles Frossard House  
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8 February 2021

Dear Deputy Ferbrache

**Policy Letter - Planning Panel – The re-election of Members of the Planning Panel and to rescind Resolution 5 of Billet d'État VI of 2015**

In accordance with Rule 4(2) of the Rules of Procedure for the States of Deliberation and their Committees, it is requested that the Policy Letter entitled "Planning Panel – The re-election of members of the Planning Panel and to rescind Resolution 5 of Billet d'État VI of 2015" be considered by the States of Deliberation at its meeting on Wednesday 24 March 2021.

The request is made to ensure that the three members being proposed for re-election to the Planning Panel, namely Mr David Harry, Mr Stuart Fell and Advocate Dunster, remain in post when their current terms expire on 31 March 2021 and so enable the Panel to continue to discharge its duties without interruption.

Yours sincerely

**H L de Sausmarez**  
President  
Committee *for the* Environment & Infrastructure



**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* HOME AFFAIRS**

**POLICE COMPLAINTS COMMISSION:  
NOTIFICATION OF RESIGNATION AND RE-APPOINTMENT OF MEMBER**

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled “Police Complaints Commission: Notification of Resignation and Re-appointment of Member” dated 18<sup>th</sup> January 2021, they are of the opinion:

- 1 To note the resignation of Mrs Ann Nippers, as a member of the Police Complaints Commission with effect from 31<sup>st</sup> December 2020.
- 2 To re-appoint Mrs Alison Leonard as a member of the Police Complaints Commission for a further term of four years with effect from 1<sup>st</sup> April 2021.

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

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* HOME AFFAIRS**

POLICE COMPLAINTS COMMISSION:  
NOTIFICATION OF RESIGNATION AND RE-APPOINTMENT OF MEMBER

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

18<sup>th</sup> January 2021

Dear Sir

**1 Executive Summary**

- 1.1 The purpose of this Policy Letter is to note that Mrs Ann Nippers has resigned as a member of the Police Complaints Commission ('the Commission') with effect from 31<sup>st</sup> December 2020 and to approve the re- appointment of Mrs Alison Leonard as a member of the Commission with effect from 1<sup>st</sup> April 2021.

**2 Background**

- 2.1 In 2005, the States of Deliberation approved the then Home Department's recommendation that legislation be introduced to establish a Police Complaints Commission<sup>1</sup>. The Police Complaints (Guernsey) Law, 2008<sup>2</sup>("the Law") came into effect on 1st July 2011, and the Commission was established.
- 2.2 The Committee *for* Home Affairs ("the Committee") would like to take this opportunity to put on record its thanks and appreciation to all the members of the Commission for their dedication and commitment to their roles.

**3 Constitution**

- 3.1 The Schedule to the Law sets out the composition of, and appointment process to, the Commission. The following parts are relevant.

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<sup>1</sup> [Billet d'État I, 2005](#)

<sup>2</sup> [The Police Complaints \(Guernsey\) Law, 2008](#)

- 3.2 Paragraph 1(1) of the Schedule states that *“The Commission shall consist of a Chairman and five ordinary members.”*
- 3.3 Paragraph 1(2) states that *“The Chairman and ordinary members shall be appointed by the States on the recommendation of the Committee”.*
- 3.4 Paragraph 3(1) states *“A member may resign from office at any time.”*
- 3.5 Paragraph 3(2) states that when a resignation is made to the Committee, *“the Committee will notify the States of it at the first available opportunity thereafter”.*
- 3.6 *Paragraph 5(3)* states that *“A quorum at any meeting is three members”.*

#### **4 Resignation of Member**

- 4.1 Mrs Ann Nippers has served as a member of the Commission since the commencement of the Law on 1<sup>st</sup> July 2011. She was re-appointed in 2012 and 2017.
- 4.2 Mrs Nippers has resigned with effect from 31<sup>st</sup> December 2020.
- 4.3 The Committee would like to take this opportunity to thank Mrs Nippers for her contribution and commitment over the last nine years.
- 4.4 This resignation leaves the Commission with three ordinary Members. The Committee hopes to be able to fill the two vacant positions this year.

#### **5 Re-appointment of Member**

- 5.1 Mrs Alison Leonard has served as a member of the Commission since her first appointment on 1<sup>st</sup> February 2013, she was re-appointed on 29<sup>th</sup> March 2017 meaning that her term of office comes to an end on 30<sup>th</sup> March 2021.
- 5.2 Mrs Leonard is a committed member of the Commission and has carried out her role with professionalism and integrity.
- 5.3 The Chairman of the Commission is satisfied that Mrs Leonard meets the prescribed criteria as set out in the Law, and has recommended this re-appointment to the Committee.
- 5.4 The Committee respectfully requests that the States re-appoint Mrs Leonard for a further term of 4 years with effect from 1<sup>st</sup> April 2021.

## **6 Compliance with Rule 4**

- 6.1 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 6.2 In accordance with Rule 4(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.
- 6.3 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement and policing.

Yours faithfully

R G Prow  
President

S P J Vermeulen  
Vice-President

M P Leadbeater  
C J Le Tissier  
A W Taylor

**ELECTION OF TWO NON-STATES MEMBERS OF THE  
STATES' TRADING SUPERVISORY BOARD**

The States are asked:

To elect two voting members of the States' Trading Supervisory Board who shall not be members of the States in accordance with Rule 16 of The Rules of Procedure of the States of Deliberation and their Committees, whose terms of office shall expire in accordance with the terms of Rule 37(2).

(N.B.

1. Pursuant to the Mandate of the States' Trading Supervisory Board, Members of the Board are elected on the recommendation of the Board and shall not be the President or a member of the Transport Licensing Authority.)

## ***ORDINANCE LAID BEFORE THE STATES***

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

### **THE INCOME SUPPORT (IMPLEMENTATION) (AMENDMENT) (NO. 2) ORDINANCE, 2021**

In pursuance of the provisions of the proviso to Article 66A(1) of The Reform (Guernsey) Law, 1948, as amended, "The Income Support (Implementation) (Amendment) (No. 2) Ordinance, 2021", made by the Policy & Resources Committee on the 3<sup>rd</sup> February, 2021, is laid before the States.

#### **EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Support (Implementation) Ordinance, 1971, in order to allow payments from the Diffuse Mesothelioma Compensation Scheme, administered by the Committee for Employment & Social Security, to be wholly disregarded for the purposes of a claim to Income Support.

The Ordinance was approved by the Legislation Review Panel on the 1<sup>st</sup> February, 2021 and made by the Policy & Resources Committee in exercise of its powers under Article 66A(1) of the Reform (Guernsey) Law, 1948. Under the proviso to the said Article 66A(1), the States of Deliberation have the power to annul the Ordinance.

## ***STATUTORY INSTRUMENTS LAID BEFORE THE STATES***

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

No. 80 of 2020

### **THE LLP'S (ANNUAL VALIDATION) REGULATIONS, 2020**

In pursuance of section 113 (4) of The Limited Liability Partnerships (Guernsey) Law, 2013, "The LLP (Annual Validation) Regulations, 2020, were made by the Registrar of Limited Liability Partnerships on 1<sup>st</sup> September 2020, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations widen the category of information that must be provided by limited liability partnerships when submitting an annual validation. This additional information is required in order to assist the Registrar of Companies in discharging his or her functions on the basis of risk.

These Regulations came into force on 1<sup>st</sup> September, 2020.

No. 81 of 2020

**THE COMPANIES (ANNUAL VALIDATION) REGULATIONS, 2020**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, “The Companies (Annual Validation) Regulations, 2020”, made by the Committee for Economic Development on 1<sup>st</sup> September, 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations widen the category of information that must be provided by companies when submitting an annual validation. This additional information is required in order to assist the Registrar of Companies in discharging his or her functions on the basis of risk.

These Regulations came into force on 1<sup>st</sup> September, 2020.

No. 82 of 2020

**THE LIMITED PARTNERSHIPS (ANNUAL VALIDATION) (AMENDMENT) REGULATIONS, 2020**

In pursuance of section 44 (3) of The Limited Partnerships (Guernsey) Law, 1995, “The Limited Partnerships (Annual Validation) (Amendment) Regulations, 2020, were made by the Committee for Economic Development on 1<sup>st</sup> September 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations widen the category of information that must be provided by limited partnerships when submitting an annual validation. This additional information is required in order to assist the Greffier in discharging his or her functions on the basis of risk.

These Regulations came into force on 1<sup>st</sup> September, 2020.

No. 83 of 2020

**THE FOUNDATIONS (ANNUAL RENEWAL) REGULATIONS, 2020**

In pursuance of section 51 (4) of The Foundations (Guernsey) Law, 2012, “The Foundations (Annual Renewal) Regulations, 2020, were made by the Committee for Economic Development on 1<sup>st</sup> September 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations widen the category of information that must be provided by foundations when submitting an annual renewal. This additional information is required

in order to assist the Registrar of Companies in discharging his or her functions on the basis of risk.

These Regulations came into force on 1<sup>st</sup> September, 2020.

No. 111 of 2020

**THE COMPANIES (ANNUAL VALIDATION) (No. 2) REGULATIONS, 2020**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, “The Companies (Annual Validation) (No. 2) Regulations, 2020”, made by the Committee for Economic Development on 24<sup>th</sup> November, 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the date on which companies must submit an annual validation.

These Regulations came into force on 24<sup>th</sup> November, 2020.

No. 126 of 2020

**THE COMPANIES (REGISTRAR) (FEES AND PENALTIES) REGULATIONS, 2020**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, “The Companies (Registrar) (Fees and Penalties) Regulations, 2020, were made by the Registrar of Companies on 10<sup>th</sup> December 2020, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees and amounts payable to the Registrar of Companies in respect of the performance of his or her functions. They also prescribe the civil penalties incurred by companies that are in breach of the obligation to file an annual validation.

The Regulations will come into force on 1<sup>st</sup> January 2021.

No. 151 of 2020

**THE IMMIGRATION AND SOCIAL SECURITY CO-ORDINATION (EU WITHDRAWAL)  
(BAILIWICK OF GUERNSEY) REGULATIONS, 2020**

In pursuance of article 1(1) of the Immigration (Guernsey) Order 2020 and section 5 of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 as extended to the Bailiwick by that Order, The Immigration and Social Security Co-ordination (EU Withdrawal) (Bailiwick of Guernsey) Regulations, 2020, made by the Committee for Home Affairs on 18<sup>th</sup> December 2020, are laid before the States.



## EXPLANATORY NOTE

These Regulations bring the Immigration (Guernsey) Order 2020 ("the 2020 Order") into force, and make consequential and transitional provisions as a result of that Order coming into force.

Regulation 1 brings the 2020 Order (and these Regulations) into force at 11 pm on the 31st December, 2020 ("commencement day"), which is the end of the Brexit Transitional Period. The 2020 Order, amongst other things, extends provisions of the Immigration and Social Security Co-ordination (EU Withdrawal) Act 2020 ending the free movement of EEA nationals and their family members, conferring special immigration privileges to Irish citizens and authorising the Committee for Home Affairs to make consequential and transitional provisions. The power to make these provisions includes power to amend provisions of the Immigration Act 1971 and other UK statutory provisions previously extended to the Bailiwick as well as directions, orders, Rules and other provisions made under those UK statutory provisions as extended to the Bailiwick.

Regulations 2 to 7 provide for EEA citizens and their family members who were ordinarily resident in the Bailiwick before the Transition Period to be deemed to have been given leave to enter and remain during the 'grace period'. This is to give them time to apply for 'settled status' or 5-year leave to enter and remain under the EEA Settlement Scheme. The grace period is the period from commencement day until the 30<sup>th</sup> June 2021, but would be automatically extended for any person who has made such an application before that date and is awaiting a decision on the application, or awaiting a decision after bringing proceedings to challenge a refusal. The grace period expires if no proceedings are brought within 3 months of a refusal.

However, in the event of a late application being made, and the Committee for Home Affairs being satisfied that there is a good reason for this, provision is made for deemed extension of the grace period.

Regulations 2 to 7 also provide for those EEA citizens and their family members who are given lawful residence under the UK or Isle of Man versions of these consequential and transitional regulations to be deemed to have leave to enter and remain if they arrive in the Bailiwick while they have such lawful residence. This would enable the 'grace period' cohorts in the UK and Isle of Man to travel freely in the Bailiwick, in the spirit of the Common Travel Area. There is no need to make equivalent provision for the Bailiwick of Jersey as it will be giving deemed leave to enter and remain to its 'grace period' cohort, which is deemed under the Immigration Act 1971 to have a similar effect in the Bailiwick of Guernsey.

Regulations 8 to 13 amend the following legislation and provisions as they extend to or are made in the Bailiwick: the Immigration Act 1971, the Immigration and Asylum Act 1999, the Immigration (Entry through Republic of Ireland) (Exclusions and Restrictions) (Bailiwick of Guernsey) Order, 2015, the Immigration (Entry through Republic of Ireland) (Occupation and Employment) (Bailiwick of Guernsey) Order, 2015, the Directions of the Lieutenant Governor Concerning Leave to Enter or Remain, 2019 and the Immigration (Bailiwick of Guernsey) Rules, 2008. These amendments are made as a consequence of

the end of free movement of EEA citizens and their families and the granting of special immigration privileges to Irish citizens. So far as practicable, these amendments and the related transitional provisions reflect similar amendments and transitional provisions made in the UK.

Regulation 14 makes transitional provisions in relation to the new section 3ZA of the Immigration Act 1971, which confers special immigration privileges to Irish citizens.

These Regulations have effect throughout the Bailiwick.

The 2020 Order and these Regulations come into force at 11 pm on the 31<sup>st</sup> December, 2020.

No. 14 of 2021

#### **THE IMMIGRATION (BAILIWICK OF GUERNSEY) (AMENDMENT) RULES 2021**

In pursuance of section 3(2) of the Immigration Act 1971 as extended to the Bailiwick by the Immigration (Guernsey) Order 1993, The Immigration (Bailiwick of Guernsey) (Amendment) Rules 2021, made by the Committee *for* Home Affairs on 5<sup>th</sup> February 2021, is laid before the States.

#### **EXPLANATORY NOTE**

These Rules insert and give effect to a new Appendix HK: British Nationals (Overseas).

These Rules will come into force on the 6<sup>th</sup> February, 2021.

The full text of the legislation can be found at: <http://www.guernseylegalresources.gg>

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE INCOME TAX (CHARITABLE DONATIONS) (GUERNSEY) (AMENDMENT)**  
**ORDINANCE, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Tax (Charitable Donations) (Guernsey) (Amendment) Ordinance, 2021", 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 amends section 64B(1)(d) of the Income Tax (Guernsey) Law, 1975 to increase the maximum aggregate amount of donations that may be made to Guernsey Registered charities and be exempt from income tax in any year of charge from £5,000 to £7,500.



# **The Income Tax (Charitable Donations) (Guernsey) (Amendment) Ordinance, 2021**

**THE STATES**, in pursuance of their Resolution of the 16<sup>th</sup> December, 2020<sup>a</sup>, and in exercise of the powers conferred on them by sections 64B(3), 203A and 208C of the Income Tax (Guernsey) Law, 1975<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of 1975 Law.**

1. In section 64B(1)(d) of the Income Tax (Guernsey) Law, 1975, for "£5,000" substitute "£7,500".

## **Citation.**

2. This Ordinance may be cited as the Income Tax (Charitable Donations) (Guernsey) (Amendment) Ordinance, 2021.

## **Commencement.**

3. This Ordinance shall be deemed to have come into force on the 1<sup>st</sup> January, 2021 (and accordingly shall have effect for the year of charge 2021).

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<sup>a</sup> Article I of Billet d'État No. XXX of 2020.

<sup>b</sup> Ordres en Conseil Vol. XXV, p. 124; section 64B was inserted by the Income Tax (Guernsey) (Amendment) Law, 2009.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE LAND PLANNING AND DEVELOPMENT (VISITOR ACCOMMODATION)  
(AMENDMENT ETC.) ORDINANCE, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021", 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**

The Ordinance provides for a temporary relaxation of planning use controls for visitor accommodation in view of the ongoing issues faced by the visitor economy as a result of the coronavirus pandemic.

The Ordinance amends the Land Planning and Development (Exemptions) Ordinance, 2007 to add a new exemption from the need for planning permission for a change of use of visitor accommodation to certain residential uses but only if that change of use is one which occurs in the period from 25<sup>th</sup> March 2020 to 31<sup>st</sup> December, 2021 ("temporary exemption"). The temporary exemption is subject to specified conditions including that the land reverts back to its previous lawful use, immediately before the 25<sup>th</sup> March, 2020 on or before the 31<sup>st</sup> January, 2022. Provision is also made for an exemption from the requirement for planning permission for a change of use of the same premises back to the previous lawful visitor accommodation in compliance with the provisos to the temporary exemption.

The Ordinance provides for a modification to section 48(4) of the Land Planning and Development (Guernsey) Law, 2005 so that in calculating the period within which a compliance notice may be issued no account is taken of the period during which the temporary exemption allows visitor accommodation to be used for non-visitor accommodation uses i.e. from the coming into force of the Ordinance until the 31<sup>st</sup> January, 2022. This is in case a change of use is made in reliance on the temporary exemption but one of the conditions is not met so that a breach of planning control occurs.

The opportunity has also been taken to amend the Land Planning and Development (Use Classes) Ordinance, 2017 to require an owner or occupier of non-serviced visitor accommodation to notify the Development & Planning Authority of the commencement of use of the premises as a winter let to persons other than visitors, as currently allowed under that Ordinance, when this first occurs in each winter let period (i.e. from 1<sup>st</sup> November to the 31<sup>st</sup> March).

# **The Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021**

THE STATES, in pursuance of their Resolution of the \*\* February, 2021<sup>a</sup>, and in exercise of the powers conferred on them by sections 13(4) and (6), 28, 48(5), 81 and 89 of the Land Planning and Development (Guernsey) Law, 2005<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the Exemptions Ordinance.**

1. (1) The Exemptions Ordinance is amended as follows.
- (2) In the Schedule (exempt development), after Class 9 insert –

"CLASS 9A

TEMPORARY VISITOR ACCOMMODATION CHANGE OF USE

## **Temporary change of use from a visitor economy use to certain residential uses.**

1. (1) Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from an existing use falling within use class 7 (use as serviced visitor accommodation) or use class 8 (use as non-serviced visitor

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<sup>a</sup> Article V of Billet d'État No. V of 2021.

<sup>b</sup> Order in Council No. XVI of 2005; amended by Order in Council No. XIII of 2010; Ordinance Nos. XXI, XXII, XXV, XXVII and XXVIII of 2007; No. XVIII of 2011; Nos. IX and XI of 2016 and No. III of 2019.



accommodation) to a use within use class 1 (dwelling house), use class 2 (flat) or use class 5 (use of part of dwelling for business purposes) provided that –

- (a) the change of use is one which occurs in the period starting on 25<sup>th</sup> March, 2020 and ending on the 31<sup>st</sup> December, 2021,
- (b) the land reverts to its previous lawful use, immediately before the 25<sup>th</sup> March, 2020, on or before the 31<sup>st</sup> January, 2022,
- (c) the owner or occupier of the land notifies the Authority in writing of the date the change of use occurred and of the matters in subparagraph (2)–
  - (i) where the change of use has occurred before 1<sup>st</sup> April, 2021, by the 21<sup>st</sup> April, 2021, or
  - (ii) where the change of use occurs after the 1<sup>st</sup> April, 2021, within 21 days of the date of the change of use.

(2) The notification referred to in subparagraph (1)(c) must include -

- (a) the name and address of the land,

- (b) brief particulars of the use within use class 1, use class 2 or use class 5 to which the use of the land has changed, and
- (c) the expected duration of the use to which the use of the land has changed.

**Exemption for changes of use from certain residential uses to a visitor economy use.**

2. Change in the use of any land, including of any land which is, or is within the curtilage of, a protected building or a protected monument, from a use within use class 1 (dwelling house), use class 2 (flat) or use class 5 (use of part of dwelling for business purposes) to a use falling within use class 7 (use as serviced visitor accommodation) or use class 8 (use as non-serviced visitor accommodation) where the change of use is to revert to the previous lawful use immediately before 25<sup>th</sup> March, 2020 in compliance with the proviso in item (b) of paragraph 1(1).".

**Amendment of the Use Classes Ordinance.**

- 2. (1) The Use Classes Ordinance is amended as follows.
- (2) After section 4 insert –

**"Notification of use of non-serviced visitor accommodation as a winter let.**

4A. (1) The owner or occupier of any non-serviced visitor accommodation which is being used for the provision of sleeping accommodation or lodging to persons other than visitors in the circumstances set out in paragraph (b) of the definition of "**non-serviced visitor accommodation**" in section 5(1) must notify the Authority in writing of –

(a) the name and address of the accommodation,  
and

(b) the fact of and date of commencement of such  
use,

within 21 days of such use first occurring in each winter let period starting  
from the winter let period commencing on 1<sup>st</sup> November, 2021.

(2) In subsection (1), "**winter let period**" means the period  
beginning on the 1<sup>st</sup> November and ending on the 31<sup>st</sup> March in any 12 month  
period."

**Further modification of section 48(4) of the Law in relation to certain changes of use  
from a visitor economy use to certain residential uses.**

3. (1) Where a change of use from an existing use falling within use  
class 7 (use as serviced visitor accommodation) or use class 8 (use as non-serviced  
visitor accommodation) to a use within use class 1 (dwelling house), use class 2 (flat)  
or use class 5 (use of part of dwelling for business purposes) occurred in reliance on  
the exemption in paragraph 1 of Class 9A to the Schedule to the Exemptions  
Ordinance, section 48(4) of the Law is modified as set out in subsection (2).

(2) The modification is that in calculating the periods within which  
a compliance notice may be issued no account is to be taken of any time from the 1<sup>st</sup>  
April, 2021 until the 31<sup>st</sup> January, 2022.

**Interpretation.**

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

**"the Exemptions Ordinance"** means the Land Planning and Development (Exemptions) Ordinance, 2007<sup>c</sup>,

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

**"the Use Classes Ordinance"** means the Land Planning and Development (Use Classes) Ordinance, 2017<sup>d</sup>.

**Citation.**

5. This Ordinance may be cited as the Land Planning and Development (Visitor Accommodation) (Amendment etc.) Ordinance, 2021.

**Commencement.**

6. This Ordinance shall come into force on the 1<sup>st</sup> April, 2021.

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<sup>c</sup> Ordinance No. XXIII of 2007; amended by No. IX of 2016; No. IV of 2017 and No. XVIII of 2018.

<sup>d</sup> Ordinance No. IV of 2017.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE COPYRIGHT (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2021**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Copyright (Bailiwick of Guernsey) (Amendment) Ordinance, 2021", 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 amends sections 50 and 56 of the Copyright (Bailiwick of Guernsey) Ordinance, 2005 ("the Copyright Ordinance") to permit museums and galleries to make or accept replacement works.

Section 56 currently applies to not for profit libraries and archives. The museums and galleries that will be able to benefit from section 56 of the Copyright Ordinance as so amended will be prescribed in the Copyright (Prescribed Libraries, Archives, Museums and Galleries and Copying of Copyright Material) (Bailiwick of Guernsey) Regulations, 2021 ("the Prescribed Libraries Regulations"), which will come into force on the same day as the Ordinance.

This Ordinance also amends section 56 of the Copyright Ordinance to:

- extend the scope of works that may be copied to works of any type, including sound-recordings, and
- allow multiple copies to be made.

All copying pursuant to section 56 of the Copyright Ordinance must also comply with the conditions laid out in the Prescribed Libraries Regulations.

This Ordinance will come into force on the 26<sup>th</sup> March, 2021.



# **The Copyright (Bailiwick of Guernsey) (Amendment) Ordinance, 2021**

**THE STATES**, in pursuance of their Resolution of the 25<sup>th</sup> August 2020<sup>a</sup>, and in exercise of the powers conferred on them by sections 1 and 3 of the Intellectual Property (Enabling Provisions) (Bailiwick of Guernsey) Law, 2004<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of Copyright Ordinance.**

1. The Copyright Ordinance shall be amended as follows.
2. For the cross-heading "*Libraries and archives*" immediately before section 50 of the Copyright Ordinance, substitute "*Libraries, museums, galleries and archives*".
3. In section 50 -
  - (a) For the section heading substitute "Libraries, museums, galleries and archives: introductory.",
  - (b) Insert the text ", curators" after every reference to "librarians",
  - (c) Insert the text ", museum, gallery" after every reference to "library",

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<sup>a</sup> Article I of Billet d'État No. XVIII of 2020.

<sup>b</sup> Order in Council No. XIV of 2004; amended by Ordinances No. XXXIII of 2003; No. XXXIX of 2015; No. IX of 2016 and No. XXVI of 2018.

(d) Insert the text ", museums, galleries" after every reference to "libraries",

(e) Insert the text ", curator" after every reference to "librarian".

4. (1) In section 56 –

(a) For the section heading substitute "Copying by librarians, curators or archivists: replacement copies of works.",

(b) Insert the text ", curator" after every reference to "librarian",

(c) Insert the text ", museum, gallery" after every reference to "library",

(d) Substitute "one or more copies" for "a copy".

(2) In section 56(1)(a), after "the copy" insert "or copies".

(3) For the text immediately after section 56(1)(b) to the end of subsection (1) substitute "without infringing the copyright in a work of any description."

**Interpretation.**

5. (1) In this Ordinance "**Copyright Ordinance**" means the Copyright



(Bailiwick of Guernsey) Ordinance, 2005<sup>c</sup>, and other expressions, except where the context excludes, have the same meanings as in the Copyright Ordinance.

(2) The Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016<sup>d</sup> applies to the interpretation of this Ordinance.

**Citation.**

6. This Ordinance may be cited as the Copyright (Bailiwick of Guernsey) (Amendment) Ordinance, 2021.

**Extent.**

7. This Ordinance has effect throughout the Bailiwick of Guernsey.

**Commencement.**

8. This Ordinance shall come into force on the 26<sup>th</sup> March, 2021.

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<sup>c</sup> Ordinance No. XIX of 2005; as amended by Ordinances No. XXXIII of 2013; No. IX of 2016 and G.S.I. No. 97 of 2020.

<sup>d</sup> Order in Council No. V of 2018; as amended by Ordinances No. XXII of 2018 and No. XXVI of 2018.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**STATES' TRADING SUPERVISORY BOARD**

**STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING**

The States are asked to decide:-

Whether, after consideration of the policy letter 'States' Trading Supervisory Board – Succession Planning' dated 4 February, 2021, they are of the opinion:-

1. To agree that the Rules of Procedure of the States of Deliberation and Their Committees should be amended with immediate effect as follows –

(a) for Rule 37.(2), substitute:

“37.(2) The term of office for members of the States' Trading Supervisory Board, who are not sitting members of the States, shall expire on a date (or if more than one member, dates) to be determined by the States' Trading Supervisory Board provided that:

(i) if two such members are appointed, one of those member's term of office (as determined by the States' Trading Supervisory Board), will expire at least one year before the end of a new States' term and the other member's term of office (as determined by the States' Trading Supervisory Board) will expire no later than one year after the start of a new States' term and

(ii) if only one such member of the States' Trading Supervisory Board is appointed, their term of office will expire no later than one year after the start of a new States' term.”

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

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**STATES' TRADING SUPERVISORY BOARD**

STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

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

4<sup>th</sup> February, 2021

Dear Sir

**1 Executive Summary**

- 1.1 The purpose of this policy letter is to make recommendations to the States regarding both the immediate and long-term succession planning arrangements for the States' Trading Supervisory Board (STSB), specifically in relation to the Non-States Members of the Board.
- 1.2 The States have previously agreed to extend the terms of office for the STSB's two Non-States Members for a period of 6 months after the 2020 General Election. The STSB is under direction from the States to report back with proposals to either retain or replace one or both of its Non-States Members before the end of that period. It is also under direction to report back with longer-term succession planning proposals for the Board.
- 1.3 This policy letter is intended to address the above requirements. The proposals outlined below are intended to ensure a degree of continuity for the STSB, specifically in relation to its responsibilities to act as if it were a Board of Directors for the States' unincorporated trading concerns and commercial interests, thereby helping to assure their effective and efficient management, operation and maintenance.

**2 Background**

- 2.1 The STSB was established as an entirely new Committee of the States in May, 2016.

- 2.2 At the outset of the 2016-2020 political term, the Rules of Procedure of the States of Deliberation and Their Committees (the Rules) provided that the minimum requirements for the membership of the STSB included: a President who shall be a sitting Member of the States; at least one other sitting Member of the States; and, at least two other Members who shall not be sitting Members of the States.
- 2.3 The specific inclusion of Non-States Members in the membership requirements had been predicated on the need to ensure that the STSB was able to recruit the appropriate skills and experience required to fulfil its responsibilities for the States' trading businesses.
- 2.4 In 2015, the States' Review Committee's (SRC) second policy letter on the Organisation of States' Affairs<sup>1</sup> drew a distinction between the role of the STSB in respect of the incorporated and unincorporated trading businesses. The former are made up of Guernsey Electricity, Guernsey Post, the Aurigny Group and Jamesco 750 Limited and, in their case, the STSB's role is to act as shareholder. The latter include Guernsey Dairy, Guernsey Water, States Works, Guernsey Waste and Guernsey Ports, and the SRC's policy letter clearly envisaged that the STSB's role here would be to act as if it was the Board of Directors. This is how the STSB has approached its work.
- 2.5 As such, it was anticipated that those Members of the STSB who were not States Members would have skills in connection with corporate governance, board and shareholder responsibilities, risk management, operational efficiency and performance review and have a commercial, legal and/or financial background. In contrast to the Non-States Members appointed to the Principal Committees, the Non-States Members of the STSB are voting Members of the Board.
- 2.6 Following consideration of a policy letter from the Policy & Resources Committee (P&RC) in September, 2016<sup>2</sup> the States subsequently agreed that the number of Non-States Members included in the composition of the STSB should be two. This decision was based on a recommendation from the P&RC following a review of the correct skills mix that would be required of the political and non-political STSB Members.
- 2.7 The States also agreed to appoint Mr Stuart Falla MBE and Mr John Hollis to the Non-States Member positions. At that time Mr Falla and Mr Hollis completed the membership of the STSB alongside the two States Members.

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<sup>1</sup> Billet d'État XII of 2015 – States' Review Committee – The Organisation of States Affairs – Second Policy Letter

<sup>2</sup> Billet d'État XXIII of 2016 – Policy & Resources Committee – Constitution and Membership of the States' Trading Supervisory Board

- 2.8 Subsequently, the membership of the STSB was amended following the States consideration of a requête in July, 2018<sup>3</sup>, which resulted in an amendment to the Rules to increase the number of States Members to two in addition to the President, as well as having up to two Non-States Members.
- 2.9 As a result of the above decisions, the composition of the STSB is currently three States Members and two Non-States Members.
- 2.10 At their meeting of 26 February, 2020, the States considered a joint policy letter from the STSB and the P&RC<sup>4</sup> which concerned the succession planning arrangements for the STSB over the 2020 election period and at the start of each new political term. In doing so, the States agreed<sup>5</sup>, inter alia, to extend the terms of office of the Non-States Members for a short period beyond the end of the 2016-2020 political term. The background to and rationale for the proposals set out in that policy letter are summarised below.

### **3 STSB and P&RC – Joint Policy Letter on STSB Succession Planning - 2020**

- 3.1 The 2020 policy letter noted that, since its inception, the STSB had kept under regular review and development the arrangements around its governance to ensure that it could fulfil its mandate effectively and meet the expectations which were set out in the former SRC's policy letters on the organisation of the States' affairs.
- 3.2 Taking account of the above, it also noted that a particular focus of the STSB had been on ensuring that effective succession planning arrangements were in place for its businesses, both incorporated and unincorporated, at board and management level. Good succession planning is recognised widely in corporate governance codes as a key contributor to the long-term success of businesses: helping to maintain a degree of continuity that ensures the effective ongoing operation of the business and the delivery of its strategy.
- 3.3 The STSB has worked with the incorporated businesses to ensure that succession planning arrangements have been put in place for their respective Boards of Directors. However, in the case of the unincorporated businesses where the STSB itself acts as the Board of Directors, the political cycle means that it is unable to provide similar succession planning arrangements. The policy letter acknowledged that, in a good corporate environment, it would be almost unimaginable that a business would consciously allow its entire Board of Directors to step down simultaneously, as this scenario would present significant

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<sup>3</sup> Billet d'État XIX of 2018 – Requête – Amendment to the Constitution of the States' Trading Supervisory Board

<sup>4</sup> Billet d'État V of 2020 – Policy & Resources Committee and States' Trading Supervisory Board – States' Trading Supervisory Board – Succession Planning

<sup>5</sup> Resolution 1 of Article VIII of Billet d'État V of 2020

risks to its operation.

- 3.4 The policy letter noted that, on this basis, the STSB and the P&RC had reviewed the potential opportunities available to mitigate the risks set out above in respect of the unincorporated businesses. Whilst it was acknowledged that it would be unavoidable that the terms of office of the States Members of the STSB would end with the political term, it was considered that this need not be the case for the Non-States Members.
- 3.5 With this in mind, the States accepted the STSB and the P&RC's proposed change to the Rules to extend the terms of office of the STSB's Non-States Members for a short period beyond the end of the 2016-2020 political term in order to enable the following:
- A degree of continuity to be maintained as the States moved from one political term to the next and the STSB awaited the election of its States Members;
  - An opportunity for the newly elected States Members of the STSB to then review the Board's required skills mix and determine whether the existing Non-States Members helped to fulfil that or whether the time was right to refresh that part of its membership with new Non-States Members; and,
  - In the event that new Non-States Members were deemed to be required, time to undertake a transparent and public recruitment process for these positions (noting that the existing Non-States Members were appointed after such a process).
- 3.6 In agreeing to extend the terms of office for the Non-States Members, the States initially directed<sup>6</sup> the "new" STSB to report back no later than the meeting on 16 December, 2020, with its proposals to either retain or replace one or both of its Non-States Members. The Rules were subsequently amended accordingly.
- 3.7 However, the above decision was made prior to the onset of the COVID-19 pandemic and the resultant changes to the 2020 General Election timeframe. As a result of the delay to the General Election from June to October, the States agreed a consequential amendment<sup>7</sup> to the Rules to extend the terms of office of the STSB's Non-States Members to a date no later than six months following the end of a States' term, thereby allowing the Board additional time to make

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<sup>6</sup> Resolution 2 of Article VIII of Billet d'Etat V of 2020

<sup>7</sup> Billet d'Etat XVIII of 2020 – States Assembly & Constitution Committee – Dates of States Meetings and Minor Amendments to the Rules of Procedure of the States of Deliberation and their Committees

recommendations to the States regarding the retention and/or replacement of its existing Non-States Members.

- 3.8 Having considered the joint policy letter from the STSB and the P&RC, the States also resolved<sup>8</sup> to direct the STSB to report back to the States no later than the States meeting on 26<sup>th</sup> May, 2021, with its longer term succession planning proposals for the STSB. The policy letter envisaged that these could include consideration of a limit on the number of terms served by an individual Non-States Member (as is the practice for the Non-Executive Directors of the incorporated businesses) and/or varying the periods of office to stagger the appointment cycle, thereby reducing the possibility that all Members of the Board would be required to stand down in close succession in the future.

#### **4 Proposals**

- 4.1 The proposals outlined below are intended to address both the STSB's requirement to return to the States regarding its recommendations for the retention/replacement of its existing Non-States Members and in relation to the longer term succession planning arrangements for the Board.
- 4.2 As indicated in Section 3 above, the 2020 policy letter clearly envisaged that the longer term succession planning arrangements for the STSB would include a limit on the number of terms which could be served by an individual Non-States Member and a variation to the periods of office to allow for a staggered appointment cycle, which would prevent future scenarios whereby all Members of the Board would be required to stand down simultaneously or in short succession. This approach would also broadly align to the arrangements already in place for the Non-Executive Directors of the incorporated businesses.
- 4.3 With this in mind, the STSB is proposing a change to the Rules to allow for the appointment of its Non-States Members on a staggered basis, with the rotation points to be: for one of the Non-States Members, one year after the beginning of a States' term; and, for the other, no later than one year before the end of a States' term.
- 4.4 The STSB has considered whether a limit should be placed on the number of terms for which its Non-States Members can serve, noting that such limits help to ensure that membership of a Board of Directors is regularly refreshed with the right skills and experience. It has concluded that its policy should be for Non-States Members to be appointed for the equivalent of a single term, but which may be extended to a maximum of two full terms. As any reappointment for an additional term can only be made upon the recommendation of the President of the STSB and would always remain subject to the approval of the States, the STSB

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<sup>8</sup> Resolution 3 of Article VIII of Billet d'Etat V of 2020

does not believe it is necessary to make provision for a term-limit within the Rules.

- 4.5 With regard to the STSB's existing Non-States Members, having reviewed the current skills mix required by the Board and considered their involvement in ongoing key work streams, the STSB will be recommending the retention of both Mr Hollis and Mr Falla at this juncture. It is noted that Mr Hollis and Mr Falla have confirmed that they are willing to continue as Members of the STSB. Their current terms of office expire on 15 April, 2021.
- 4.6 In the event that the above-mentioned arrangements are approved, the STSB will undertake a recruitment exercise for the replacement of Mr Hollis no later than October, 2021, this being the first rotation point following the 2020 General Election. A further recruitment process would then be undertaken for the replacement of Mr Falla in time for the next rotation point of June, 2024.
- 4.7 It is stressed that, should a change to the Rules as set out above be agreed, the ultimate authority to approve or reject proposals regarding Non-States Members appointments would remain with the States Assembly, upon a recommendation from the President of the STSB.
- 4.8 In anticipation of the above arrangements being approved by the States, a request has been made to the Presiding Officer for Propositions to be published for the reappointment of Mr Hollis and Mr Falla in accordance with the usual process for appointments to Committees and Boards as set out in the Rules. The STSB will also be asking the Presiding Officer to seek approval from the States to amend the running order of the States meeting at which these matters are considered to allow for the policy letter to be debated ahead of those elections. It is intended that this approach will allow the States the opportunity to first consider the basis on which the elections are being made.
- 4.9 It is noted that, although Mr Hollis and Mr Falla were engaged in the decision-making process with regard to the long term succession planning arrangements for the STSB, they were not party to the deliberations regarding the extension to their own terms of office. On this basis, they have been included as signatories to this policy letter.

## **5 Change to Rules of Procedure**

- 5.1 To facilitate the future appointment of Non-States Members to the STSB on a staggered basis, with the rotation points to be: for one of the Non-States Members, one year after the beginning of a States' term; and, for the other, no later than one year before the end of a States' term, it is proposed to amend existing Rule 37.(2) so that it reads as indicated below:



*“37.(2) The term of office for members of the States’ Trading Supervisory Board, who are not sitting members of the States shall expire on a date (or if more than one member, dates) to be determined by the States’ Trading Supervisory Board provided that:*

*(i) if two such members are appointed, one of those member’s term of office (as determined by the States’ Trading Supervisory Board), will expire at least one year before the end of a new States’ term and the other member’s term of office (as determined by the States’ Trading Supervisory Board) will expire no later than one year after the start of a new States’ term and;*

*(ii) if only one such member of the States’ Trading Supervisory Board is appointed, their term of office will expire no later than one year after the start of a new States’ term.”*

- 5.2 The proviso set out above within the proposed revision to the Rules reflects the fact that the constitution of the STSB allows for the appointment of “...up to” two Non-States Members.

## **6 Compliance with Rule 4**

- 6.1 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.
- 6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications.
- 6.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Board.
- 6.4 In accordance with Rule 4(5), the Propositions relate to the duties of the STSB to assure the efficient management, operation and maintenance of any States’ unincorporated trading concerns and commercial interests which the States has resolved to include in the mandate of the Board.
- 6.5 In accordance with Rule 4(5), the Board has liaised with the States’ Assembly & Constitution Committee regarding the proposed amendment to the Rules.

Yours faithfully

P J Roffey  
President

C N K Parkinson

Vice-President

N G Moakes  
Member

S J Falla MBE  
Non-States Member

J C Hollis  
Non-States Member

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**STATES' TRADING SUPERVISORY BOARD**

POLICY LETTER – STATES' TRADING SUPERVISORY BOARD – SUCCESSION PLANNING

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

4<sup>th</sup> February, 2021

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 States' Trading Supervisory Board (STSB) requests that the policy letter entitled 'States' Trading Supervisory Board – Succession Planning' be considered at the States' meeting to be held on 24 March, 2021.

This policy letter includes proposals regarding the immediate succession planning arrangements for the Non-States Members of the STSB. As such, this request is made in accordance with Rule 37.(2) of the Rules of Procedure of the States of Deliberation and their Committees which provides that:

*"The term of office for members of the States' Trading Supervisory Board, who are not sitting members of the States shall expire no later than six months after the end of a States' term occurs".*

On the basis of the above and taking account of the schedule of 'Submission Deadlines for 2020 – 2024 States Meetings', the meeting planned for 24<sup>th</sup> March is the last meeting at which the proposals related to the re-appointment of the STSB's Non-States Members may be considered by the States Assembly prior to the cessation of their existing terms of office.

In putting forward this request, I should like to draw your attention to paragraph 4.8 of the policy letter, which notes that the Board will also be asking the Presiding Officer to ask the States to agree to a change in the usual running order for the States' meeting on 24<sup>th</sup> March to enable this policy letter to be considered prior to the States then considering the propositions for the re-election of Mr Falla and Mr Hollis as Non-States Members of the Board.

Yours faithfully,

**Deputy Peter Roffey**

President

**Deputy Charles Parkinson**

Vice President

**Deputy Nick Moakes**

Member

**Stuart Falla MBE**

**John Hollis**

Non-States Members

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* ECONOMIC DEVELOPMENT**

**CONTROL OF THE FIRST SALE AND PURCHASE OF FISH AND SHELLFISH LANDED IN  
GUERNSEY**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Control of the first sale and purchase of fish and shellfish landed in Guernsey' dated 8<sup>th</sup> February 2021, they are of the opinion:-

1. To approve the proposals to introduce legislation amending the Fishing Ordinance, 1997 as set out in out in Section 4 of this Policy Letter.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* ECONOMIC DEVELOPMENT**

**CONTROL OF THE FIRST SALE AND PURCHASE OF FISH AND SHELLFISH LANDED IN  
GUERNSEY**

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

8<sup>th</sup> February, 2021

Dear Sir,

**1      Executive Summary**

- 1.1      Commercial fishing in Guernsey waters is regulated and the relevant fishing vessels have to be registered and licensed. An important aspect of the licensing system is that it allows the Committee to manage fishing activity with the objective of conserving fish stocks for future generations of fishermen.
- 1.2      A person who fishes for sport or pleasure does not have to have a registered and licensed vessel.
- 1.3      The Committee has been aware of that some boatowners who operate unlicensed vessels are regularly selling fish and shellfish in Guernsey, however, the scale of this activity has been brought into sharp focus over the last 12 months.
- 1.4      It is now apparent that this activity does not amount to the occasional sale of a few fish or shellfish that have been caught in excess of any personal requirements by a person who fishes for pleasure, and that the volume of sales from unlicensed vessels is significant.
- 1.5      The Committee believes that the significant volume of landings and sales from unlicensed vessels will not only have a serious effect on the ability of local commercial fishermen to recover from the economic impact of the Covid-19 restrictions, but also adversely impacts its efforts to manage and conserve stocks of local fish and shellfish.

- 1.6 This policy letter therefore proposes the amendment of the Fishing Ordinance, 1997 to insert additional powers allowing the Committee to regulate (a) the first sale of prescribed fish and shellfish landed in Guernsey, and (b) the purchase of prescribed fish and shellfish in a transaction which involves a first sale of those fish and shellfish.

## **2 Background**

- 2.1 In order to fish commercially in Guernsey waters, a fishing vessel has to be registered under the Merchant Shipping Act (with a GU number), and be licenced under the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012. That law also regulates the methods of fishing, the size of catch (quotas) and the traceability of the catch to ensure conservation measures are maintained. These requirements do not apply to vessels used by persons who are fishing solely for pleasure.
- 2.2 Any person who wants to acquire a licence has to purchase an entitlement from an existing fishing boat, go through the process of making an application, have the licence transferred to a vessel and then comply with all of the licence conditions. There are licence conditions on such things as fishing activity including the gear that can be used, catch limits, safety, and record keeping. The relevant vessel would also have to be registered and a GU number obtained.
- 2.3 All of this requires a commercial fisherman to make a significant investment of time and also involves considerable expenditure on a fishing boat, licence, fishing gear and safety equipment. This arrangement creates a clear distinction between vessels used for commercial fishing and those that are used for recreational fishing.
- 2.4 There are, therefore, fishermen who have chosen to invest in registering and licensing a vessel in order to fish commercially (and to make fishing their livelihood) and those who have decided to take advantage of the exemption for vessels that are used for fishing solely for pleasure and who have not had to make the same investments.

## **3 Sale of fish and shellfish landed by non-commercial fishermen**

- 3.1 The Committee has been aware of anecdotal evidence that some fishermen who operate unlicensed vessels have sold fish and shellfish in Guernsey, however, the scale of this activity has been brought into sharp focus in the last twelve months.
- 3.2 With Covid-19 restrictions in place, commercial fishing activity has been much reduced due to the closure of the Bailiwick's borders, however, the Committee began to receive reports that a considerable amount of fish and shellfish were being offered for sale in Guernsey and not by commercial fishermen.

- 3.3 A meeting between a Member of the Committee and representatives of the commercial fishing industry was convened to verify those reports.
- 3.4 The Committee has also been made aware, and has verified, that there are a number of unlicensed fishing vessels that are fitted with the type of gear that it would expect to find on a licensed, commercial vessel. It is the type of gear that would not be required if a person was only fishing for pleasure for personal and family consumption.
- 3.5 It is now apparent that this activity does not amount to the occasional sale of a few fish or shellfish that have been caught in excess of any personal requirements by a person who fishes for pleasure, and that the volume of sales from unlicensed fishing vessels is significant.
- 3.6 As with other sectors of the Guernsey economy, the local commercial fishing industry will have to recover from the impact of Covid-19 and the local market for fish and shellfish, at least in the short-term, will be a vital foundation from which recovery can be built.
- 3.7 The Committee is concerned that the sale of fish and shellfish landed from unlicensed vessels will erode the local market for products landed from licensed vessels and that this could have a serious impact on the ability of the local commercial fishing industry to recover from the economic impact of Covid-19.
- 3.8 The Committee strongly believes, as a matter of principle, that it is unjust that a person who has used the exemption on pleasure fishing activity (and therefore avoided the investments that are necessary to obtain a commercial fishing licence and register a fishing vessel) should be able to exploit that situation, and benefit financially, and in doing so, potentially affect the livelihood of the fishermen who have invested in their commercial business.
- 3.9 The Committee is also concerned that extensive fishing activity from unlicensed vessels will significantly undermine any measures that are put in place through the licensing system to manage the Guernsey fishery and conserve stocks for future generations.
- 3.10 The Committee therefore recommends the amendment of the Fishing Ordinance, 1997 to introduce stricter controls on the first sale of fish and shellfish landed in Guernsey and also the purchase of fish and shellfish in a transaction that involves such a first sale.

#### **4 Proposed control of first sale and first purchase of fish and shellfish landed in Guernsey**

- 4.1 Under the current legislative framework, the control of sales from unlicensed vessels is not easy to enforce because it is necessary to evidence a direct link



between, for example, a fish caught by an individual and the fish actually sold by that person. In effect a fish caught by person X is the exact same fish sold and purchased by person Y.

- 4.2 The Committee therefore considers that there needs to be a clearer link between the activities of selling and buying and a potential offence of unlicensed fishing.
- 4.3 Section 1 of the Fishing Ordinance, 1997 provides certain powers for the control of e.g. taking, buying or selling fish of a prescribed species which is of a size less than the minimum size prescribed.
- 4.4 The Committee proposes that an additional power should be inserted which would allow it, by Order, to regulate the import, export, taking, buying and selling of any fish which is of a prescribed species.
- 4.5 The Committee would then make an Order that would prohibit the first sale of fish or shellfish, unless that fish or shellfish had been landed by a fishing vessel licensed under the Sea Fish Licensing (Bailiwick of Guernsey) Law, 2012 or the person selling the fish or shellfish is authorised to do so by the Committee.
- 4.6 Such an Order would also prohibit a person from making a first purchase of fish or shellfish unless either it had been landed from a licensed fishing vessel or the person selling the fish or shellfish was authorised by the Committee.
- 4.7 The prescribed species under the Order would include those fish already regulated under Section 1 of the Fishing Ordinance 1997 such as bass, brill, Pollack, and shellfish such as crabs, European lobsters and scallops.
- 4.8 It is important to make it clear that the proposed controls would only apply to the first sale and purchase after fish or shellfish had been landed in Guernsey. All subsequent sales and purchases would not be regulated.
- 4.9 The Committee would also like to emphasise that these proposals will not affect fishermen who fish for pleasure and their ability to provide catches for family and friends. Furthermore, there would be nothing to prevent a fisherman who currently sells fish caught using an unlicensed vessel from seeking to licence and register that vessel in order to continue to make such sales.
- 4.10 The Committee believes that these proposed measures, including restrictions on first purchases, will address the issues described above and protect the commercial fishing industry at a time when it is facing a number of significant challenges. The measures will also serve to clarify the distinction between fishermen who invest in vessels and equipment in order to fish on a commercial basis and those who fish for pleasure.

## **5 Financial implications**

- 5.1 The Committee considers that the introduction to the measures proposed in the policy letter will; not require additional resources, financial or otherwise.

## **6 Compliance with Rule 4**

- 6.1 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.
- 6.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 6.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 6.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee *for* Economic Development to protect, promote and develop all sectors of business, including living marine resources such as fishing.

Yours faithfully

N R Inder  
President

S J Falla  
Vice-President

A Kazantseva-Miller  
N G Moakes  
S P J Vermeulen

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8<sup>th</sup> February 2021

[www.gov.gg](http://www.gov.gg)

Dear Deputy Ferbrache,

**Preferred date for consideration by the States of Deliberation**

In accordance with Rule 4(2) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee for Economic Development requests that the proposition entitled '*Control of the first sale and purchase of fish and shellfish landed in Guernsey*' be considered at the next available States of Deliberation meeting to be held on 24<sup>th</sup> March 2021.

Commercial fishing in Guernsey waters is regulated and the relevant fishing vessels have to be registered and licensed. However the Committee has become aware that some boat owners who operate unlicensed vessels are regularly selling fish and shellfish in Guernsey. The Committee is therefore, as a matter of urgency, proposing measures that will support its efforts to manage and conserve stocks of local fish and shellfish, and will protect the livelihoods of commercial fisherman who invest in their licensed fishing vessels and who need every assistance to help their industry and their livelihoods to recover from the impact of Covid-19.

I would therefore be grateful if the Policy & Resources Committee would consider the Committee's request for this item to be debated at the States of Deliberation's meeting on 24<sup>th</sup> March 2021.

Yours sincerely



N R Inder  
**President**

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT**

**INTRODUCTION OF LIMITED LIABILITY COMPANIES LEGISLATION**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'introduction of limited liability companies legislation' dated 14<sup>th</sup> January 2021 of the Committee *for* Economic Development, they are of the opinion:-

1. To approve the introduction of Limited Liability Companies as set out in that Policy Letter.
2. To agree that LLCs should be treated in the same way as partnerships for the purposes of taxation, by default, but should have the option of making an irrevocable election at the point of establishment to be taxed as a company instead.
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**

**THE COMMITTEE *FOR* ECONOMIC DEVELOPMENT**

INTRODUCTION OF LIMITED LIABILITY COMPANIES LEGISLATION

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

14<sup>th</sup> January 2021

Dear Sir

**1      Executive Summary**

- 1.1      This Policy Letter recommends the introduction of Limited Liability Companies (“**LLCs**”) legislation in Guernsey.
- 1.2      LLCs are commonly used in the United States (“**US**”) for trading businesses, holding vehicles and special purpose vehicles in finance and investment structures. Whilst there are variations within the legislation enacted in different States, in general terms the US LLC is recognised as providing a flexible hybrid structure combining features of both corporations and partnerships. They offer legal personality, and limited liability, in a tax transparent structure with, in many jurisdictions, the opportunity to elect to be taxed in the same way as a corporation.
- 1.3      The Committee *for* Economic Development (the “**Committee**”) believes that the introduction of LLC legislation would be attractive to the local finance sector, in particular the funds sector, and will add to the existing range of commercial legislation that supports the growth of the finance industry, such as legislation for companies, partnerships, limited partnerships, limited liability partnerships and foundations.
- 1.4      The introduction of LLC legislation would ensure that Guernsey can compete with other jurisdictions to support the US market, by providing a vehicle familiar to US funds, fund managers and lenders. The proposal to introduce LLCs would support the States of Guernsey’s Revive and Thrive Strategy, and assist in attracting investment into the Island. This policy letter details the key proposed features of Guernsey LLC legislation.

**2      Background**

- 2.1      LLC legislation (or equivalent) exists in a number of jurisdictions. For example the Isle of Man enacted its Limited Liability Companies Act in 1996, based on US LLC

legislation. This was with a view to attracting more business from the US. In Luxembourg the closest equivalent structure to LLCs is the Société à Responsabilité Limitée (SARL).

- 2.2 Many common law jurisdictions have not enacted LLC legislation, although in recent years some, including both Bermuda and the Cayman Islands, have done so.
- 2.3 The Committee has reviewed legislation from other jurisdictions in preparing these proposals.

### **3 Difference between LLCs and LLPs**

- 3.1 In Guernsey, and some other common law jurisdictions, including the United Kingdom ("UK"), Limited Liability Partnerships ("LLPs") are utilised, and offer some of the same key features as LLCs. There are many similarities between LLCs and the existing Guernsey LLP product.
- 3.2 The Limited Liability Partnerships (Guernsey) Law, 2013 created a hybrid structure which is a body corporate, with limited liability, and also tax transparent as a matter of Guernsey Law.
- 3.3 LLPs share some of the features of companies, such as limited liability for their members and separate legal personality, whilst still retaining their status as a form of partnership, governed by a member's agreement rather than a memorandum and articles of incorporation. LLCs can also be described as a hybrid structure with characteristics of both a company and a partnership.
- 3.4 An LLC structure can be owned, and managed, by one or more persons. The LLC agreement will set out whether decisions are made by voting, or whether responsibilities are delegated to different owners. In a "manager managed" LLC, one person, who may be someone other than a member, is designated to manage the LLC and to make the decisions. With an LLP, each partner has the authority to represent the business, to sign contracts and to make binding decisions.
- 3.5 While one person can form an LLC, at least two are required to form an LLP, given that it is a partnership structure.

### **4 Reputational issues**

#### Introduction

- 4.1 In recommending the introduction of LLC legislation, the Committee has been conscious of the importance of balancing economic development with ensuring that there is no detrimental impact on the Bailiwick's international reputation and status as a leading, compliant and trustworthy financial jurisdiction. Equally, it is essential to ensure that Guernsey LLC legislation fits within the Island's existing legislative, regulatory and tax framework.

### Beneficial Ownership

- 4.2 In 2017, Guernsey introduced a requirement to register beneficial ownership information, relating to all legal persons established in Guernsey, in a central private register accessible by law enforcement. It will be necessary to extend those registration requirements to LLCs.

### Anti-Money Laundering and Countering the Financing of Terrorism (“AML/CFT”)

- 4.3 It is proposed that the formation of a Guernsey LLC could only be undertaken by a Bailiwick of Guernsey corporate services provider. This would mean that the Bailiwick’s AML/CFT framework would apply to the formation of LLCs. To effect the above, amendments would be required to the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 (the “**Fiduciaries Law**”).

### Financial Services Regulation

- 4.4 It is likely that the activities of some LLCs would require them to be licensed by the Guernsey Financial Services Commission (“**GFSC**”), under one of Guernsey’s financial services regulatory laws. The Committee anticipates that LLCs would fit within the regulatory regime in a similar manner to LLPs.
- 4.5 It is anticipated that the provision of corporate services to LLCs (i.e. formation, management or administration, advice relating to the same and the provision of individuals to act as officers) would be restricted activities, under the Fiduciaries, Law, to be performed by a licensed fiduciary.
- 4.6 Consideration will be given to whether LLCs should be permitted to engage in all forms of regulated financial services business (including being Collective Investment Schemes), or whether there should be any restrictions on the regulated activities which they can undertake and the Committee anticipates that other, minor, consequential amendments to financial services legislation will be required to accommodate LLCs within the existing regulatory framework.

### Amendments to other legislation

- 4.7 Amendments to other areas of Guernsey legislation will be required to accommodate LLC legislation. In addition to the regime under the Beneficial Ownership of Legal Persons (Bailiwick of Guernsey) Law, 2017, there will also need to be amendments to the Income Tax (Guernsey) Law, 1975 to make appropriate provision for the taxation of LLCs and economic substance requirements.

## **5 Key features of Guernsey LLCs**

### Terminology

- 5.1 In order to utilise the benefit of familiarity for the US market the Committee proposes that LLC legislation in Guernsey should align, as far as is possible, with the most frequently used and recognisable LLC structure, namely that of Delaware.

### Body Corporate/Legal Personality

- 5.2 In Guernsey, most existing business structures are bodies corporate with legal personality, for example companies, LLPs, and limited partnerships which have elected to have legal personality. Foundations have legal personality but are not bodies corporate.
- 5.3 It is proposed that a Guernsey LLC should be expressly stated to be a body corporate with legal personality, notwithstanding that the intention is that it would not, by default, be taxed in the same way as a company. This would be consistent with the status of Guernsey LLPs, which are the most comparable structure currently available. It is noted that some jurisdictions have provided for an LLC to have legal personality, without being a body corporate<sup>1</sup>, whilst in others LLCs are expressly bodies corporate<sup>2</sup>.

### LLC Agreement

- 5.4 It is proposed that the key constitutional document, which all LLCs would be required to have, would be the LLC Agreement. This is the approach taken in Bermuda, Cayman and Jersey, and is most common across jurisdictions with LLC legislation in place.
- 5.5 It is proposed that the LLC Agreement would set out (i) the rights and duties of the members, (ii) administrative procedures, (iii) contributions, (iv) allocation of profits and losses, (v) distributions and (vi) the overall operation of the LLC.
- 5.6 The LLC Agreement could also address other operational and administrative aspects of the LLC. In circumstances where the LLC Agreement does not provide for certain matters, a default position would prevail.
- 5.7 A member or manager of an LLC should be bound by, and entitled to enforce, the LLC Agreement and provision should be made, in the legislation, ensuring that the LLC members are not liable for the debts, obligations or liabilities of the LLC.

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<sup>1</sup> For example, Jersey, where an LLC will have legal personality but will explicitly not be a body corporate. See section 2(2) of the Limited Liabilities Company (Jersey) Law, 2019. This is consistent with the status of a Jersey LLP.

<sup>2</sup> For example, the Cayman Islands, where section 9(3) of the Limited Liability Companies Law, 2016 provides that, "From the date of registration, a limited liability company shall be a body corporate (with legal personality separate from that of its members from time to time)...".



## Membership

5.8 It is proposed that:

- (i) a person could be admitted as a member when the LLC is formed, or subsequently;
- (ii) the LLC could have one or more members;
- (iii) subject to the LLC Agreement, a member may, or may not, receive an interest in the LLC; and
- (iv) a person may be admitted as a member whether or not they have made a contribution.

## Managers

5.9 It is proposed that, where the LLC Agreement provides, it should be possible to appoint a manager, or group of managers. Subject to the LLC Agreement, an LLC should be able to have an unlimited number of managers. A member should also be able to be a manager.

5.10 The LLC Agreement would define, and delineate, the extent of a manager's powers and would be able to stipulate the roles, responsibilities and limitations on any authority granted.<sup>3</sup>

5.11 A manager should be able to make contributions to the LLC and share in the profits of the LLC, as a member. It is proposed that LLCs could be member or manager managed.

## Management Powers

5.12 As in most other jurisdictions, it is proposed that, subject to the provisions of the LLC Agreement, all management powers should vest in the members unless managers are separately appointed. Managers may, but need not, be members.

## Fiduciary Duties

5.13 It is proposed that managers would be under fiduciary duties to (i) act in good faith in the performance of their management duties, in the interests of the LLC, and (ii) exercise reasonable care, diligence and skill, although the LLC Agreement may expand those duties. Subject to the LLC Agreement, a manager would not owe any other fiduciary duties to the LLC, any member or any other person.

5.14 Subject to any specific duties under the proposed legislation, the rights and duties of members as between themselves would be determined by the LLC Agreement.

## Membership Classes

5.15 It is proposed that an LLC should be able to have different classes of membership ("**Membership Classes**"). Membership Classes would be similar to different classes of

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<sup>3</sup> As part of this process, consideration will be given to permitting different classes of managers.

shareholders in a company, for example shareholders who hold ordinary and/or preference shares. Membership Classes could be used to distinguish different groups within the LLC membership via their rights and obligations. Membership Classes could, by way of example, provide for members who have no voting rights.

#### Name

- 5.16 In most jurisdictions, it is compulsory for an LLC to have the words 'Limited Liability Company' or 'LLC' at the end of its name.
- 5.17 In order to avoid potential confusion with companies (with limited liability) governed by the Companies (Guernsey) Law, 2008, it is proposed that, Guernsey LLC legislation should require the name of a limited liability company to end with the abbreviation "LLC" or "L.L.C.". There should be provisions permitting reservation, and changes of name, similar to those found in the Companies (Guernsey) Law, 2008.

#### Contributions

- 5.18 It is proposed that contributions to the LLC could be in the form of cash, property, services or an undertaking to provide the same. Unless otherwise provided for in the LLC Agreement, a person should be able to be admitted to an LLC as a member, and receive an interest in the LLC, without making a contribution or being obligated to make a contribution to the LLC.

#### Liability for Debts, Obligations and Liabilities

- 5.19 It is proposed that Guernsey LLC legislation should provide that the debts, obligations and liabilities of an LLC, howsoever arising, would be solely the debts, obligations and liabilities of the LLC. No member or manager of an LLC should be personally liable for any debt, obligation or liability of the LLC, solely by reason of being a member or a manager of the same. Notwithstanding this, a member or manager of an LLC may agree to be personally liable for all, a proportion of, or an agreed amount of, the debts, obligations or liabilities of the LLC.

#### LLC Interests

- 5.20 It is proposed that Guernsey LLC legislation should require that the profits and losses of an LLC are allocated among the members, and among classes or groups of members, in the manner provided for in the LLC Agreement. If the LLC Agreement is silent in this regard, then profits and losses should be allocated on the basis of the agreed value of the contributions made by each member, to the extent they have been received by the LLC and have not been returned. The agreed value would be identified in the records of the LLC. The LLC Agreement may provide for the payment of distributions and specify the manner, time and form of any such payment.

## Registration

- 5.21 It is proposed that LLCs would be created upon registration and would register by submitting an application and filing a declaration with the Registrar of LLCs. The legislation should therefore establish a new statutory Office of the Registrar of LLCs which should be held by the Registrar of Companies (the “**Registrar**”).
- 5.22 It is proposed that the Registrar of LLCs would maintain a public register of basic information relating to the LLC, as well as copies of all applications, declarations and returns filed pursuant to the requirements of the LLC legislation.
- 5.23 It is proposed that appropriate provision should be made to enable (i) the migration of LLCs into, and out of, Guernsey, and (ii) the amalgamation of LLCs. Industry have confirmed that the ability to migrate LLCs would be attractive to business, and several enquires had already been received in this regard.
- 5.24 Fees could be set by the Registrar, payable pursuant to the exercise of his, or her, functions. The Committee anticipates that provisions relating to the office, functions and powers of the Registrar of LLCs would be similar to equivalent provisions in legislation governing other existing Guernsey entities with legal personality and/or limited liability.
- 5.25 All current business structures with legal personality and/or limited liability are required to provide certain particulars in order to register. Proposed particulars for inclusion in an LLC application would be:
- (i) the name;
  - (ii) the address of the registered office;
  - (iii) the full name and address of each founder member;
  - (iv) capital contribution by each founder member;
  - (v) the ability to admit additional members;
  - (vi) whether the LLC includes managers;
  - (vii) ability to appoint managers;
  - (viii) for manager managed LLCs, the full name and address of each manager; and
  - (ix) the name and address of the corporate services provider submitting the application. It is envisaged that the application for registration would be signed by the corporate service provider.

## Disqualification

- 5.26 It is important to protect Guernsey’s international reputation, as a well-regulated financial centre. This will include ensuring that there is a mechanism to disqualify individuals who are unfit to be members or managers of an LLC from acting as such.
- 5.27 It is therefore proposed that appropriate provision should be made to enable the disqualification of persons from being members or managers of LLCs.

#### Registered Office/Resident Agent

- 5.28 It is proposed that an LLC would be required to maintain a registered office in Guernsey at which certain documents (such as accounting records, returns, register of members, etc.) would be kept, and at which documents could be served. This should be modelled on provisions applying to other Guernsey entities.
- 5.29 The Committee proposes that there should be a requirement for an LLC to have a resident agent, similar to the requirement for companies found in Part XXIX of the Companies (Guernsey) Law, 2008, in respect of Beneficial Ownership.

#### Series of Members, Managers, LLC Interests or Assets ('Series')

- 5.30 In some US States, LLC legislation has evolved to permit the creation of "Series" of Members, managers or LLC interests, which can have separate rights, powers or duties with respect to (i) specified property or obligations of the LLC or (ii) profits and losses associated with specified property or obligations of the LLC.
- 5.31 Series share some of the features of cells of incorporated cell companies under the Companies (Guernsey) Law, 2008 such as the liabilities of the Series only being enforceable against the assets of the Series. A Series would have separate legal personality, rights, powers or duties with respect to specified property or liabilities of the LLC. It would therefore possible for them to enter into contracts, sue and be sued. It should be noted that whilst each Series would be treated as a separate entity, and whilst an application to the Registrar would be required to create a new Series, each Series would not be required to be independently registered.
- 5.32 Series LLC are a relatively new extension to limited liability company structures and, consequently, they are not yet commonplace amongst US States or other jurisdictions that have enacted LLC legislation. The novelty of the concept means that there is relatively little case law in the US regarding the concept. Jersey has chosen to make provision for Series in its legislation, whereas both Bermuda and Cayman have not.
- 5.33 It is proposed that Guernsey LLC legislation would make provision for Series and the detail of this will be developed as the legislation is drafted. The legislation should permit the making of further provision in respect of Series by Ordinance, to allow for future amendment and fine tuning given the novelty of this concept.
- 5.34 Such provision should reflect the key features of Series in other jurisdictions to the extent appropriate.

#### Tax transparency

- 5.35 A key feature of LLCs is that they are designed to be tax transparent by default, i.e. the LLC itself is not subject to taxation. Instead profits fall to be taxed in the hands of members, in much the same way as the profits of a partnership. Whilst taxation of LLCs, in Guernsey, going forward will ultimately be a matter for the Policy & Resources

Committee, the Committee's recommendation, supported by the Policy & Resources Committee, is that LLCs should be treated in the same way as partnerships for the purpose of taxation, by default, but should have the option of making an irrevocable election at the point of establishment to be taxed as a company instead. Under the current provisions of the Income Tax (Guernsey) Law, 1975, a "body of persons" not being a "partnership" is a company for the purposes of the Income Tax (Guernsey) Law, 1973<sup>4</sup>, and so an LLC would be taxed as a company without legislative provision being made. Amendment of Guernsey's income tax law is therefore required to give effect to these proposals.

- 5.36 The tax treatment of LLCs in other jurisdictions will ultimately depend on the laws of each jurisdiction, following an analysis of the substantive nature of the structure, although it is possible that some relevance may be attached to the tax treatment of the entity in Guernsey. It is understood that the default position, in the UK, is that LLCs are considered to be companies for tax purposes, although case law<sup>5</sup> in respect of a Delaware LLC, suggests that they may be considered to be tax transparent on a case by case basis. The provisions of each individual LLC Agreement will therefore be of importance in determining how an LLC is categorised, for tax purposes, in another jurisdiction.

#### Substance Requirements

- 5.37 In 2018, the States enacted the Income Tax (Guernsey) (Substance Requirements) (Amendment) Ordinance, 2018, under which the Policy & Resources Committee have issued regulations specifying substance requirements that must be met by Guernsey companies engaged in certain, specified, core income generating activities, to assist in ensuring that companies are taxed on their profits in the jurisdiction in which the real economic activity is being carried on or undertaken.
- 5.38 It is proposed that if an LLC carries on a relevant activity, then it should be subject to the same economic substance requirements as companies.

#### Other Key Features

- 5.39 Without prejudice to the specific proposals outlined above, LLC legislation should make necessary provision relating to:
- (i) the Office and powers of the Registrar of LLCs;
  - (ii) formation and registration of LLCs;
  - (iii) members and LLC interests (including assignment of interests);
  - (iv) managers;
  - (v) financial provisions and distributions;
  - (vi) series;
  - (vii) record keeping;

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<sup>4</sup> See the definition of company in section 209(1) of the Income Tax (Guernsey) Law, 1975: "company" means anybody of persons corporate or unincorporate, not being a partnership.

<sup>5</sup> *George Anson v HMRC* [2015] UKSC 44.

- (viii) registered office;
- (ix) resident agents;
- (x) fees, charges, etc.;
- (xi) offences and sanctions for non-compliance with requirements of the Law; and
- (xii) winding up and dissolution of LLCs.

5.40 In keeping with the general policy intention set out above, it is proposed that LLC legislation should also, to the extent possible, reflect the principal features of equivalent legislation in key competitor jurisdictions, and other jurisdictions where LLCs are well established, to ensure that Guernsey's legislation is attractive and contributes to the competitiveness of the local finance sector in the international market.

## **6 Resources and Implementation**

6.1 The introduction of LLC legislation will create a new work stream for the Guernsey Registry. In addition to a registration fee, the Committee is proposing that all LLCs will be obliged to file annual validations and pay an annual fee which will be set at a level broadly equivalent to that which applies to companies. The Registrar will consult with the financial services industry and the Committee when setting the fees under the legislation.

6.2 The introduction of LLCs is intended to create an additional revenue stream for the States, as the Registrar will be required to pay all fees and sums received to the Committee for the general revenue account of the States. The extent of this revenue stream will be dependent on the level of demand for LLC registration, and the fees charged, and would not be limited to cost recovery. It is difficult to estimate the likely demand for LLCs in Guernsey.

6.3 The Registrar has advised that additional resourcing, including staffing and IT systems, would be required to administer the new legislation. The Registrar will work with the Committee to develop an appropriate business case.

## **7 Engagement and Consultation**

7.1 The Committee issued a consultation paper, on 28<sup>th</sup> August 2019, to seek feedback from industry on the merits and potential economic benefits, of enacting LLC legislation in Guernsey.

7.2 Four responses were received to the consultation, including from 3 industry associations. Comments were also provided by the GFSC. The information gathered over the engagement and consultation process showed that there was unanimous support from respondents for the enactment of LLC legislation. It was highlighted by the responses that the introduction of an LLC would offer a flexible structure which would allow Guernsey to attract business from the US as well as help Guernsey compete with other jurisdictions that have introduced similar legislation.

- 7.3 The GFSC has been consulted on the proposals and their comments have been taken into account.

## **8 Conclusion**

- 8.1 The introduction of LLC legislation will allow Guernsey's finance sector to compete with similar regimes in other jurisdictions. The proposal will support the Economic Development Strategy and assist in attracting investment into the Island, especially from the US market.

## **9 Compliance with Rule 4**

- 9.1 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.
- 9.2 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 be put into effect.
- 9.3 In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions above have the unanimous support of the Committee.
- 9.4 In accordance with Rule 4(5), the Propositions relate to the duties of the Committee. The introduction of LLC legislation in Guernsey would be consistent with the Committee's purpose, responsibilities and Economic Development Strategy.
- 9.5 Also in accordance with Rule 4(5), the Committee consulted with the Policy & Resources Committee in the preparation of the propositions.

Yours faithfully

N Inder  
President

S Falla  
Vice-president

S A Kazantseva-Miller  
N Moakes  
S Vermeulen

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

**IMPLEMENTATION OF APPROVED RATE OF LONG-TERM CARE CO-PAYMENT**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Implementation of approved rate of Long-term Care co-payment”, dated 8<sup>th</sup> February, 2021, they are of the opinion:-

1. To agree that the Long-term Care co-payment is increased from £229.37 to £242.06 per week from 5<sup>th</sup> July, 2021.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

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



**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

IMPLEMENTATION OF APPROVED RATE OF LONG-TERM CARE CO-PAYMENT

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

8<sup>th</sup> February, 2021

Dear Sir

**1. Executive summary**

- 1.1. On 19<sup>th</sup> August, 2020, the States debated a Policy Letter from the Committee *for* Employment & Social Security ('the Committee') entitled 'Supported Living and Ageing Well Strategy: Extending the Life of the Long-term Care Insurance Scheme'<sup>1</sup> ('the August 2020 Policy Letter'). This set out a package of proposals intended to address some very significant challenges facing the Long-term Care Insurance Scheme in Guernsey.
- 1.2. One of these challenges was to address the financial sustainability of the care home sector, with the very real risk that several care homes would be forced to close if income was not increased. It was acknowledged that the minimum amount paid for a bed under the Long-term Care Insurance Scheme was too low to sustain the market. In order to address this, the States agreed that the grants paid from the Long-term Care Insurance Fund to care homes, and the co-payment paid by individuals towards the costs of their accommodation, daily living costs, and care, needed to increase. Following this debate, the weekly co-payment was increased by £20.00 per week from £209.37 to £229.37 with effect from 5<sup>th</sup> October, 2020.
- 1.3. The States also resolved to increase the co-payment further to £280.00 per week by January 2023. Having considered this timeframe, the Committee has set out in this Policy Letter a proposal for the next incremental increase in the rate of the co-payment towards that target of £280.00. The Committee

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<sup>1</sup> Supported Living and Ageing Well Strategy: Extending the Life of the Long-term Care Insurance Scheme ([Billet d'État XVI of 2020, Article V](#)).

recommends increasing the co-payment to £242.06 per week from 5<sup>th</sup> July, 2021. This next step takes into account the financial challenges faced by the care home sector, while recognising the impact of the proposal on States' expenditure in the short-term.

- 1.4. This Policy Letter does not make recommendations beyond July, 2021. The Committee has deemed it more appropriate to consider medium-term proposals as part of the annual process of uprating benefit rates, which will take place in the autumn of 2021 and 2022.

## **2. Background**

- 2.1. The Long-term Care Insurance Scheme ('the Scheme') was launched in 2003, and since this time, has supported islanders in need of residential or nursing care. The Scheme was intended to insure islanders against the risk that they would face significant personal costs if they needed care later in life; and to encourage investment in the private care market, which at the time, was considered to be supplying too few beds to meet demand. The Scheme is funded by the Long-term Care Insurance Fund ('the Fund'), which is financed from Social Security contributions and the Fund's investment income.
- 2.2. Eligibility for benefit is based on the following criteria:
- Residency test: an individual must have lived in the Bailiwick for at least five years in their life and the 12 months immediately prior to accessing Long-term Care;
  - Care needs: an individual must have been assessed as having Long-term Care needs by a Needs Assessment Panel, for either residential or nursing care
  - Accommodation: an individual must secure a bed in a registered nursing or residential home
  - Co-payment: an individual must make a minimum weekly contribution, known as the 'co-payment', towards the cost of their accommodation and care. This is a standard rate that applies to all residents in private long-term residential and nursing care. Anyone who cannot afford to pay the co-payment is assisted through Income Support. Some homes also charge additional fees or top-ups, which the individual is required to fund themselves.
- 2.3. In 2016, following consideration of the Supported Living and Ageing Well Strategy<sup>2</sup>, the States resolved to agree in principle that the Fund should be

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<sup>2</sup> Supported Living and Ageing Well Strategy ([Billet d'État III of 2016, Volume II, Article XIV](#)).

used to meet the costs of care and support only, and that individuals should pay for their accommodation and daily living costs.

- 2.4. The 2018 annual accounts for Guernsey and Alderney care homes were analysed using a recognised benchmarking toolkit<sup>3</sup> devised by health and community care analysts LaingBuisson<sup>4</sup>, in conjunction with the Joseph Rowntree Foundation. This showed that the estimated cost of living expenses and accommodation would be £280.00 per week when inflated to 2020 values. The benchmark is constructed assuming homes need to make a market return on their investment in order for provision to be sustainable in the long-term, and for there to be an incentive for providers to invest in the market. Further information regarding the benchmarking results from the analysis of care home costs is provided in section 6 and Appendix 5 of the August 2020 Policy Letter.
- 2.5. The August 2020 Policy Letter explained that the Committee considered that, in order to ensure stability in the care home market and encourage investment, the total States rate (i.e. the sum of the benefit rate and the co-payment) should reflect the mid-point of the benchmark derived through the LaingBuisson analysis. The Committee sought, through the Propositions set out in the August 2020 Policy Letter, to achieve this over a two year period by increasing both the benefit level and the co-payment.
- 2.6. Given the financial pressure facing care homes and the real risk to some not-for-profit homes in particular, the Committee sought an immediate increase in the benefit rates and the rate of the co-payment. Following consideration of the August 2020 Policy Letter, the States resolved, amongst other things, to increase the Long-term Care benefit and co-payment to the weekly rates set out in Table 1 overleaf, with effect from 5<sup>th</sup> October, 2020. The States approved the draft Ordinance entitled the Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2020 to bring these new rates into effect.

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<sup>3</sup> The LaingBuisson toolkit is a market standard toolkit used for calculating a fair market price for care.

<sup>4</sup> LaingBuisson is a leading healthcare business intelligence provider and is the chosen provider of independent sector health care market data to the UK Government's Office for National Statistics. In 2018, LaingBuisson was awarded the contract by the UK Department of Health and Social Care to review the NHS-funded Nursing Care Rate in England.

**Table 1 – Weekly rates of the Long-term Care benefit and co-payment**

Type of benefit or co-payment	Weekly rate from 5 <sup>th</sup> October 2020	Weekly rate prior to 5 <sup>th</sup> October 2020
Residential care benefit	£521.00	£463.89
Residential - dementia (Elderly mentally infirm)	£681.00	£611.24
Nursing care benefit	£940.00	£866.11
Residential care respite benefit	£750.37	£673.26
Residential - dementia (EMI) respite benefit	£910.37	£820.61
Nursing care respite benefit	£1,169.37	£1,075.45
Co-payment	£229.37	£209.37

- 2.7. The States noted that formula-led expenditure on Income Support would increase by £40,000 in 2020 as a result of the increase in the co-payment.
- 2.8. The States also agreed that the co-payment should be further increased, over a two year period, to £280.00 per week from January 2023, in line with estimates for the cost of providing ‘living and accommodation’ services indicated by the LaingBuisson analysis. Combined, these measures will bring the States rate above the benchmark floor in October 2020 and transition this to the benchmark mid-point by January 2023.
- 2.9. The August 2020 Policy Letter did not make a recommendation for how the co-payment would be increased to £280.00 per week over the two year period. This Policy Letter is recommending the next step towards the benchmark mid-point, to take effect from 5<sup>th</sup> July, 2021.

### **3. Next stage of the increase in the co-payment**

- 3.1. The current rate of the co-payment is £229.37 per week. This is £50.63 short of the target rate of £280.00 per week. Given that the target date of January 2023 is almost two years away, the Committee has considered that it would be appropriate to increase the co-payment by roughly equal amounts every six months in January and July each year, until the target of £280.00 per week is reached in January 2023. This will require four incremental increases of £12.66 per week, plus inflation for the January increases.
- 3.2. Based on this, the rate of the co-payment would be £242.03 per week from July 2021. However, Long-term Care benefit rates need to be divisible by seven, as the benefit is calculated on a daily rate, which is paid weekly on a Monday. Therefore, the rate is adjusted to the nearest amount that is divisible by seven. The Committee therefore proposes that the rate of the co-payment is increased to £242.06 per week from 5<sup>th</sup> July, 2021.

- 3.3. The Committee is only proposing the phased increase for July 2021 in this Policy Letter, as an adjustment to the target weekly rate of £280.00 will need to be made to account for inflation, in accordance with the proposed uprating percentage for Long-term Care benefits for 2022 and 2023. Table 2 below shows the approximate increases to the weekly rate of the co-payment, prior to inflation being added, for illustration purposes only.

**Table 2 – Approximate weekly co-payment rate to January 2023**

<b>Date rates will be effective from</b>	<b>Current, proposed and approximate future weekly co-payments (before inflation is applied)</b>
Current co-payment	£229.37
5 <sup>th</sup> July 2021	£242.06
3 <sup>rd</sup> January 2022	£255.00
4 <sup>th</sup> July 2022	£267.00
2 <sup>nd</sup> January 2023	£280.00

#### **4. Financial impact**

- 4.1. Paragraphs 5.11 and 5.13 of the August 2020 Policy Letter noted that increasing the co-payment, so that individuals were responsible for meeting (in broad terms) their own living and accommodation costs would have knock-on effects on the Income Support Scheme and would transfer a portion of the 'saving' made by the Long-term Care Insurance Fund to General Revenue expenditure. It was noted that the percentage of pensioners who would qualify for Income Support to assist with the payment of their co-payment was expected to increase from 30% (2020 level, prior to the £20 increase in the co-payment which took effect from 5<sup>th</sup> October, 2020) to between 40% and 45%, thereby increasing the cost of providing Income Support.
- 4.2. Paragraph 5.14 of the August 2020 Policy Letter stated:
- “...Increasing the minimum co-payment from £209 to £280 a week would reduce the [Long-term Care Insurance] Fund expenditure in 2022 by an estimated £1.8m a year but could increase the cost of providing Income Support by between £0.7m and £1.1m a year (at 2020 prices).”
- 4.3. It is estimated that the proposed increase in the co-payment from 5<sup>th</sup> July, 2021 would add £70,000 to Income Support formula-led expenditure in 2021. The August 2020 Policy Letter noted that a number of people who will qualify for Income Support are likely to be homeowners who are asset rich, but cash poor. That Policy Letter included a proposal for an equity release scheme which would have enabled them to release a modest portion of the equity in their property to pay for their Long-term Care co-payment. This scheme

would have enabled such pensioners to avoid the need to apply for Income Support, and consequently, the cost to the taxpayer would have been less. That proposal was not approved by the former States.

- 4.4. It is important to note, however, that the net financial impact to the States of Guernsey of increasing the co-payment is positive. Expenditure from the Long-term Care Insurance Fund will reduce by significantly more than the amount that General Revenue expenditure will increase by.

## **5. Compliance with Rule 4 of the Rules of Procedure**

- 5.1. In accordance with Rule 4(1) of the Rules of Procedure of the States of Deliberation and their Committees, the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 5.2. In accordance with Rule 4(3), an estimate of the financial implications to the States of carrying this proposal into effect is set out in this Policy Letter.
- 5.3. In accordance with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions have the unanimous support of the Committee.
- 5.4. In accordance with Rule 4(5), the Propositions relate to the Committee's mandated responsibilities for Long-term Care Insurance, and the Committee's purpose. The Committee has also considered the need to consult with other bodies. It was deemed that consultation was not necessary on this occasion because full consultation took place during the development of the policy proposals set out in the August 2020 Policy Letter.

Yours faithfully

P J Roffey  
President

H L de Sausmarez  
Vice-President

T L Bury  
S J Falla  
J A B Gollop

M R Thompson  
Non-States Member

R J Le Brun  
Non-States Member

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE and COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY**

IMPROVING THE GOVERNANCE OF THE STATES OF GUERNSEY'S INVESTMENT FUNDS

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Improving the Governance of the States of Guernsey's Investment Funds' dated 8<sup>th</sup> February, 2021 they are of the opinion:-

1. To approve the proposals set out in that policy letter for the constitution of a States' Investment Board as a sub-committee of the Policy & Resources Committee.
2. To agree that the responsibility for the management of the Common Investment Fund currently managed by the Committee *for* Employment & Social Security is transferred to the Policy & Resources Committee.
3. To agree that the mandate of the Policy & Resources Committee is amended to clarify its responsibility with respect to investments by the addition of:
  - (b) 11. Responsibility for setting the investment objectives for all States' investment funds and for appointing an independent board to oversee the management of such Funds in line with the States' permitted Investment Rules
4. To agree that the mandate of the Committee *for* Employment & Social Security is amended to remove its responsibility with respect to investments by the deletion of:
  - (a) 7. Investment of the Guernsey Health Service Fund, Long-Term Care Insurance Fund and Guernsey Insurance Fund
5. In Section II of Appendix II to Billet d'État XX, 2017 ("Rules for Payments to States Members, Non-States Members and Former States Members") approved on 8 November 2017;
  - (a) in paragraph 1 to insert ", the States' Investment Board" after "the Development & Planning Authority", and
  - (b) in paragraph 2 to insert "or the States' Investment Board" after "the States'

Trading Supervisory Board”.

6. To approve The States of Guernsey Permitted Investment (Amendment) Rules, 2021 as set out in Appendix One and to agree that they shall replace the States of Guernsey Permitted Investment (Amendment) Rules, 2015.
7. To rescind the resolution of the States pursuant to Section 100(4) of the Social Insurance (Guernsey) Law, 1978, Section 1(7) of the Health Service (Benefit) (Guernsey) Law, 1990 and Section 1(7) of the Long-term Care Insurance (Guernsey) Law, 2002 made on the 28th September, 2011 on Article XIII of Billet d’Etat No. XV of 2011.
8. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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



**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE and COMMITTEE *FOR* EMPLOYMENT & SOCIAL  
SECURITY**

**IMPROVING THE GOVERNANCE OF THE STATES OF GUERNSEY'S INVESTMENT FUNDS**

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

8<sup>th</sup> February, 2021

Dear Sir

**1      Executive Summary**

- 1.1 The States of Guernsey are accountable for the management of a number of sizeable investment funds, currently valued at £3,335 million<sup>1</sup>, with political responsibility allocated to one of two different Committees depending on the fund in question.
- 1.2 The Policy & Resources Committee has responsibility for the Consolidated Investment Fund, which comprises the Superannuation Fund, the Core Investment Reserve, the General Reserve, the Capital Reserve and numerous other smaller funds and funds held in a fiduciary capacity. This Fund is currently valued at £2,450 million and is managed through its Investment and Bond Sub-Committee in accordance with an agreed governance framework.<sup>2</sup>
- 1.3 The Committee *for* Employment & Social Security has responsibility for management of the Common Investment Fund which comprises the Guernsey Insurance Fund, Guernsey Health Service Fund and Long-Term Care Insurance Fund. This Fund has a value of £885 million and the Committee discharges the responsibility for its management through an Investment Sub-Committee, again in accordance with an agreed governance framework<sup>3</sup>.

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<sup>1</sup> All valuations as at 31<sup>st</sup> December 2020 but subject to year-end adjustments and audit

<sup>2</sup> <https://www.gov.gg/CHttpHandler.ashx?id=119024&p=0>

<sup>3</sup> <https://gov.gg/CHttpHandler.ashx?id=119025&p=0>

- 1.4 The States Review Committee (SRC) recommended in its November 2015 policy letter<sup>4</sup> that the current arrangements should be reviewed. The States agreed, directing that *“the Policy & Resources Committee and the Committee for Employment & Social Security [should] review the case for maintaining and the case for reforming the arrangements in relation to which committee of the States should have political responsibility for the States’ insurance funds.”*
- 1.5 This policy letter outlines the initial work that has taken place which has led the Committees to conclude that responsibility for all investment funds should rest with a single Committee of the States – the Policy & Resources Committee. It also recommends the establishment of a specialist sub-committee, to be known as the States’ Investment Board (SIB) with responsibility for overseeing the management of Funds in order to meet the investment objectives set by the Policy & Resources Committee.

## **2 Background**

- 2.1 The States of Guernsey are accountable for the management of a number of sizeable investment funds, with political responsibility allocated to either the Policy & Resources Committee or the Committee *for* Employment & Social Security depending on the fund in question. The States set the permitted investment rules by Resolution but delegate the formulation and implementation of investment strategies to the responsible Committees.

### Policy & Resources Committee

- 2.2 As part of the Policy & Resources Committee’s wider mandate, it has been delegated political responsibility for advising the States and developing and implementing policies and programmes relating to the fiscal policy, economic affairs, and the financial and other affairs of the States.
- 2.3 In line with the Rules of Procedure of the States of Deliberation and their Committees, the Policy & Resources Committee may choose to convene a sub-committee or working party at its discretion provided that any authority delegated to it is in accordance with the provisions of the States Committees (Constitution and Amendment) (Guernsey) Law, 1991 and the States Reform (Guernsey) Law, 2015 relating to the delegation of a Committee’s functions. The Committee remains at all times responsible for anything done by a sub-committee or working party which it has established. In line with this, the Committee has established an Investment and Bond Sub-Committee (IBSC), which operates in accordance with the terms of reference.
- 2.4 With effect from 2018, a decision was made to establish the Consolidated

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<sup>4</sup> Billet d’Etat XXI, 2015

Investment Fund which incorporates all investment funds, other than those held for working capital purposes, which are under the management of the Policy & Resources Committee.

- 2.5 The Consolidated Investment Fund comprises the Superannuation Fund, the Core Investment Reserve, the General Reserve, the Capital Reserve and numerous other smaller funds and funds held in a fiduciary capacity. The purpose of the main Funds and Reserves are summarised in the following paragraphs:
- 2.6 The Superannuation Fund (valued at £1,607 million) was established to meet the pension liabilities of the employees of the States of Guernsey and other Members of the States of Guernsey Public Servants' Pension Scheme. Every three years, the Policy & Resources Committee commissions an actuarial valuation of the Superannuation Fund to compare the value of the Scheme's assets with a funding target which calculates the value of the benefits that will be paid from the scheme in the future (the liabilities).
- 2.7 The Core Investment Reserve (balance of £212 million) is a long-term reserve, the capital value of which is only available for use in exceptional and specific circumstances of severe and structural decline in public sector finances or major emergencies.
- 2.8 The General Reserve (balance of £32 million) retains the net balance of surpluses and deficits arising from the operational activities of the States.
- 2.9 The Capital Reserve (total balance including committed funds of £291 million) is a reserve created to provide funding for the States' programme of capital expenditure. The profile of funding may differ markedly year on year from the programme of expenditure.
- 2.10 As part of consideration of the Annual Budget of the States for 2021, Members resolved:

*To approve the creation of the General Revenue Reserve by the closure, on 31 December 2020, of:*

*(a) the Capital Reserve; and*

*(b) the following funds and reserves from the existing General Reserve:*

- the Transformation and Transition Fund;*
- the Future Guernsey Economic Fund;*
- the Corporate Housing Programme Fund;*
- the Insurance Deductible Fund;*

- *the Brexit Transition Fund; and*
- *the General Revenue Account Reserve (Unallocated Balance)*

*with the balance of each Reserve / Fund mentioned in (a) and (b) above, and any outstanding obligations, liabilities and commitments in respect thereof, together with the existing delegated authorities pertaining to the expenditure, commitment or use of those Reserves / Funds, being transferred to the General Revenue Reserve subject to the same terms, conditions and restrictions as are currently applicable in respect of those Reserves / Funds.*

- 2.11 All of these reserves and funds currently form part of the Consolidated Investment Fund and therefore these changes will not alter its make-up or operation.
- 2.12 In terms of investment strategy and the management of risk, the Consolidated Investment Fund aims to maintain a Value at Risk of 10% or less with 95% confidence. This indicates that statistically there is only a 5% chance of an adverse move in the portfolio value of more than 10%. This level of accepted risk has led to the Committee setting a target return of UK RPI+4% per annum. Actual return has averaged 8.0% per annum over the last five years, exceeding the target return by an average of 1.3%.
- 2.13 The Fund is currently managed through twenty seven accounts invested in a combination of discretionary mandates and regulated funds which give access to a broad combination of asset classes including equities, bonds, property, private equity and debt, alternative investments and cash. In addition, since 2009, the Fund has utilised a currency overlay programme that seeks to reduce volatility from exposure to foreign currency while providing a small positive long-term return.
- 2.14 The Consolidated Investment Fund is legally held in the name of the States of Guernsey, acting through the Policy & Resources Committee. However it is a pooled fund and has a number of beneficial owners.

#### Committee for Employment & Social Security

- 2.15 The Committee for Employment & Social Security has responsibility under Law for management of the Guernsey Insurance Fund; the Guernsey Health Service Fund; and the Long-Term Care Insurance Fund. These Funds have been pooled for investment purposes into the Common Investment Fund which has a valuation of £885 million.
- 2.16 The Guernsey Insurance Fund is a contributory social insurance scheme to provide financial assistance during old age, bereavement, incapacity,

unemployment, maternity and death. The authority for the Committee to control and manage the Fund derives from Section 100 of the Social Insurance (Guernsey) Law, 1978, as amended. The Fund has a value of £684 million<sup>5</sup>.

- 2.17 The Guernsey Health Service Fund is a contributory health insurance scheme to provide prescription drugs, specialist medical care and universal subsidised GP appointments. The balance of the Fund is currently £111 million and authority to control and manage this Fund is granted through Section 1 of the Health Service (Benefit) (Guernsey) Law, 1990. It should be noted that the States have resolved to move this Fund to general revenue and the legislation has been drafted and should be implemented during 2021.
- 2.18 The Long-Term Care Insurance Fund is a contributory long-term care insurance scheme designed to assist with the costs of care in private nursing and residential homes. It is governed by the Long-term Care Insurance (Guernsey) Law, 2002 and has a current value of £95m.
- 2.19 The three social security schemes are essentially designed on a pay-as-you go basis (that is that contributions collected should cover the benefits payable), although each has historically accumulated significant reserves over many years, particularly the Guernsey Insurance Fund. The Common Investment Fund is therefore a “buffer fund” that can be called upon in circumstances where benefit expenditure and administration costs exceed income from social insurance contributions, States’ grants and any investment income.
- 2.20 The ultimate owner of the Common Investment Fund is the States of Guernsey, acting through the Committee *for* Employment & Social Security.
- 2.21 The Committee *for* Employment & Social Security manages and controls all of the Funds under its remit through its Investment Sub-Committee (ISC). The Sub-Committee has set a target investment return of UK LIBOR <sup>6</sup> +3.5% p.a., while aiming to also keep Value at Risk within 10-12% with a 95% confidence.
- 2.22 The Fund invests in a combination of asset classes including equities, bonds, private equity/debt and with a particular focus on alternative strategies that aim to provide protection on the downside. Cash is a small element of the strategy. This strategy is largely hedged into Sterling and active currency decisions are not undertaken.
- 2.23 Both the Policy & Resources Committee’s IBSC and the Committee *for*

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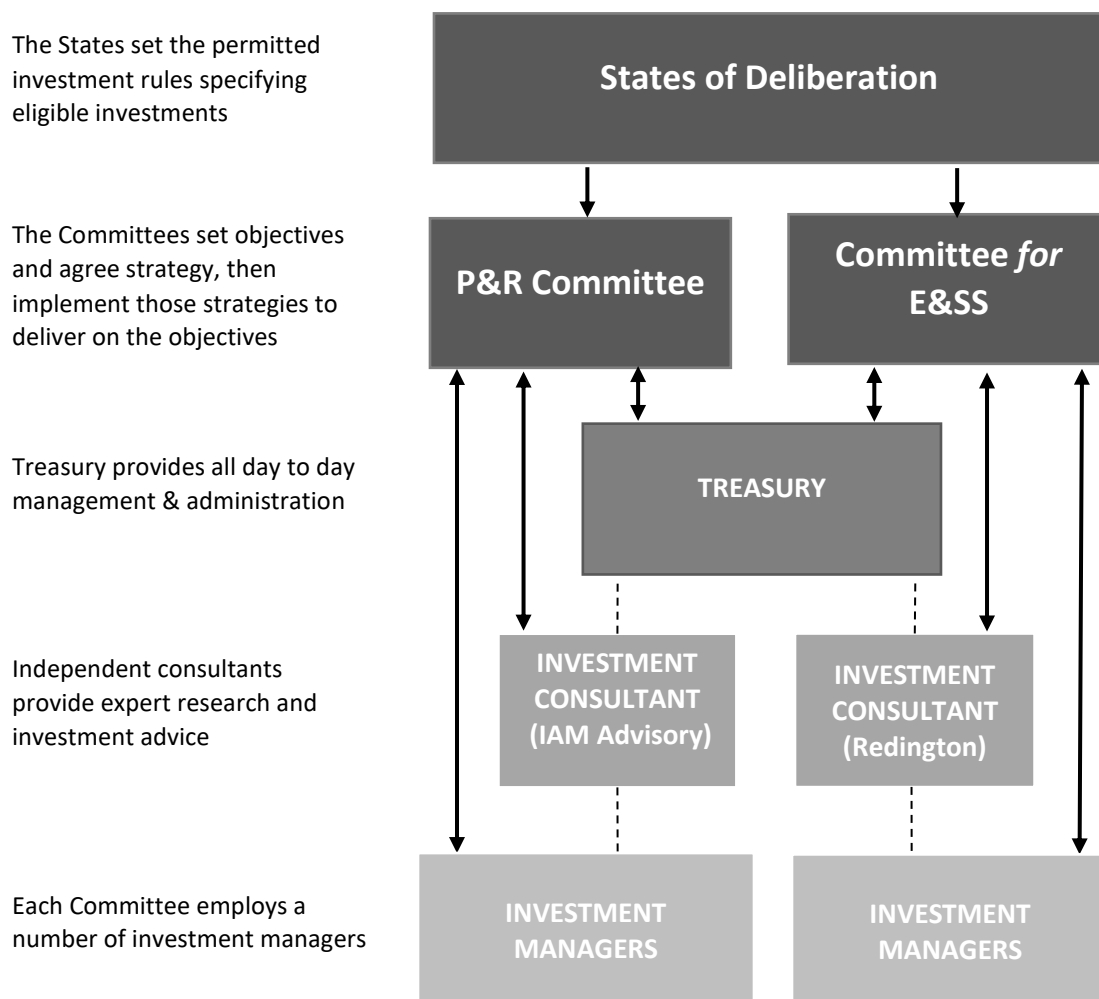
<sup>5</sup> Values for the Employment & Social Security Funds are as at September 2020, and include minor balances held outside the Common Investment Fund.

<sup>6</sup> LIBOR, the acronym for London Interbank Offer Rate, is the global reference rate for unsecured short-term borrowing in the interbank market. It acts as a benchmark for short-term interest rates

Employment & Social Security's ISC employ investment consultants to advise them on their investment responsibilities. At present, the IBSC retains local firm IAM Advisory and the ISC currently utilises the services of Redington, based in London. Each sub-committee consists of three members, selected from the main Committees plus advisors and/or non-States Members.

2.24 The current States of Guernsey Investment Governance Structure is set out below in figure one.

**Figure one.**



### 3 Issues

#### 3.1 In 2015, the SRC recognised that:

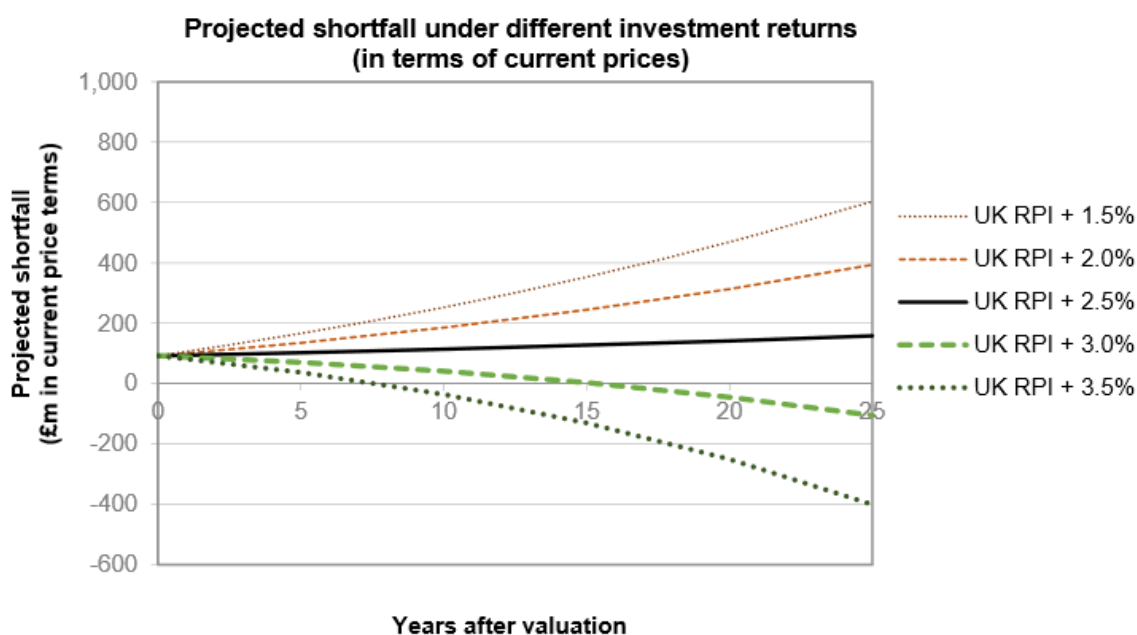
*“Decisions made in relation to the States’ insurance funds – for example, the setting of contribution rates and the management of the funds – can have a considerable effect on the fiscal policies and finances of the States, but responsibility for the funds has always rested with the Social Security Department and its predecessors rather than with the Treasury & Resources Department and its predecessors. This division of responsibility will be retained at the inception of the new committee structure in May, 2016: the Treasury will fall under the remit of the Policy & Resources Committee and the insurance funds will fall under the remit of the Committee for Employment & Social Security. However, the Committee recommends that early in the life of the next States those two new Committees should jointly review the matter of political responsibility for the insurance funds and report to the States with recommendations either to retain the present allocation of responsibility or to adopt the alternative approach of the Policy & Resources Committee assuming responsibility for the setting of contribution rates and the management of the funds and the Committee for Employment & Social Security retaining responsibility for the setting of rates of benefit. An appropriate recommendation is included in this policy letter. For the avoidance of doubt, the funds concerned are the Guernsey Insurance Fund, the Guernsey Health Service Fund and the Long-Term Care Insurance Fund.”*

3.2 The Tax Review <sup>7</sup> provides the appropriate time to address the issue of potential changes to responsibilities for setting contribution rates and that review is being guided by Members of both Committees. This policy letter focuses on improvements to the governance and management of investment funds across the States, which can have a material effect on finances.

3.3 The performance of the States’ investment funds will have a material impact on the requirement for other policy changes. For example, the last actuarial valuation of the Superannuation Fund showed the scheme was 93% funded based on a series of demographic and financial assumptions. The investment return was assumed to average UK RPI + 2.5% per annum. Should the investment return prove to be either higher or lower, the resultant impact on the surplus/deficit on the Fund is shown in the chart below:

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<sup>6</sup> The States resolved to undertake a Tax Review in January 2020 (Billet d’État I, January 2020) which seeks to ensure the tax base has the capacity to raise revenues up to the limits of aggregate revenues proposed in the Fiscal Policy Framework in a sustainable way within the boundaries of the Framework. Social Security Contributions are within the scope of this review.



- 3.4 Likewise, the recently published actuarial valuation of the Guernsey Insurance Fund<sup>8</sup> sets out a number of variant investment return scenarios and the impact they would have on either the longevity of the Fund or the contribution rates required. The investment return assumption for the valuation was set at an average of UK RPI + 2% per annum. Should investment return be 1% per annum higher, then the exhaustion of the Fund would be delayed by two years and the required constant contribution rate would fall from 11.3% to 11%. While investment return alone will not resolve the Fund's sustainability issues, a higher average return could reduce the additional contributions or taxation required from the public.
- 3.5 With the total value of the combined investment funds being £3,335 million, an average increase in return of 0.5% per annum would lead to the Funds increasing by more than £99 million over 5 years, or by £200 million for a 1% improvement.
- 3.6 Similarly a reduction in manager or other investment fees of even 0.1% would result in an increase in value of the Funds of £20 million after 5 years.

<sup>8</sup> <https://gov.gg/CHttpHandler.ashx?id=135485&p=0>



## 4 Proposed New Governance Structure

- 4.1 When the work to examine this subject was commenced by the predecessor Committees, the model considered was that each of the stakeholder Committees would retain their existing responsibilities for the Funds under their control but that a single, professionally resourced, less politically dependent investment board that could span political terms would best service the interests of all stakeholders and provide the best overall governance model.
- 4.2 However, work undertaken in this term has led the Committees to conclude that greater efficiency and effectiveness could be achieved if the Policy & Resources Committee is responsible for all States' investment funds.
- 4.3 There would be no change to the purpose or legal status of the Social Security Funds, and they would continue to be accounted for and reported separately as identifiable independent Funds. However, Section 100 of The Social Insurance (Guernsey) Law, 1978 and Section 1 of the Long-term Care Insurance (Guernsey) Law, 2002 would require amendment to make the Policy & Resources Committee responsible for the management of the Funds.
- 4.4 Given the importance and value of the combined investment funds of the States, it is recommended that the mandate of the Policy & Resources Committee is amended to clarify this responsibility by the addition of the following:

(b) 11. Responsibility for setting the investment objectives for all States' investment funds and for appointing an independent board to oversee the management in line with the States' permitted Investment Rules

Additionally, as the Committee for Employment & Social Security will no longer be responsible for oversight of the investment of the Common Investment Fund, their mandate is recommended to be amended by the deletion of:

(a) 7. Investment of the Guernsey Health Service Fund, Long-Term Care Insurance Fund and Guernsey Insurance Fund

- 4.5 The Policy & Resources Committee will be responsible for setting investment objectives which are likely to include, as a minimum, risk parameters, target returns, cash flow requirements and liquidity, together with environmental, social and governance requirements and carbon neutrality.

### States' Investment Board (SIB)

- 4.6 Difficulties in ensuring adequate levels of investment expertise and sophistication of pension fund trustees have been common areas of concern in the UK for some time. Regrettably, such shortcomings only become fully apparent when something goes wrong, at which point misunderstandings of risk

and/or return inherent in various investment strategies are often uncovered. These same issues could arise for the States where investment committees are resourced from political members. Members with sufficient investment and governance expertise and experience are not always available and political terms do not align with the Funds' investment horizons. Ideally, the best time to review and improve the robustness of investment structures is prior to serious performance or governance issues arising.

- 4.7 To address the risks inherent in the current approach, the proposal is for the Policy & Resources Committee to create a States' Investment Board (SIB) as a sub-committee under rule 54(3) of the Rules of Procedure. The Board will comprise an external chair, at least two suitably qualified external members and the States Treasurer. The external appointments would be made by a panel consisting of Members of the Policy & Resources Committee, and cover fixed terms of up to four years, with a maximum of three terms, subject to provisions about termination of office, retirement and resignation. The intention is that the appointments would span political terms, in order to ensure a degree of continuity that cannot be achieved through the current governance arrangements, although it is appreciated that the continuing membership of any sub-committee would have to be formally endorsed at the beginning of a new political term. A member of the Policy & Resources Committee would retain a standing invitation to the SIB meetings, in a non-voting oversight capacity.
- 4.8 Under the current structure, both Committees are responsible for appointing, monitoring and removing a large number of investment managers. There are currently in excess of thirty managers employed via either collective investment funds or bespoke investment accounts. These cover a wide array of permitted investment types and contain highly complex strategies. This creates significant challenges for Members, with sometimes limited investment experience and available time, to properly gain sufficient understanding of the proposals to make informed decisions. As such, inconsistent investment strategies can develop across the States' investments, which can undermine long term returns. Under the proposed new structure, responsibility for dealing with investment managers is delegated to the SIB. Within its membership it will contain the necessary experience and understanding to be able to ensure consistent and appropriate investment strategies are employed across each of the range of different funds under their mandate.
- 4.9 The SIB will implement a range of investments strategies, through its investment managers, designed to achieve the objectives defined by the Policy & Resources Committee for each of the Funds within its mandate. It is envisaged the SIB will employ the services of one or more specialist investment consultants where necessary and the States' Treasury function will continue to provide day-to-day management and administrative services across all Funds.

4.10 The SIB will be accountable to the Committee through several mechanisms:

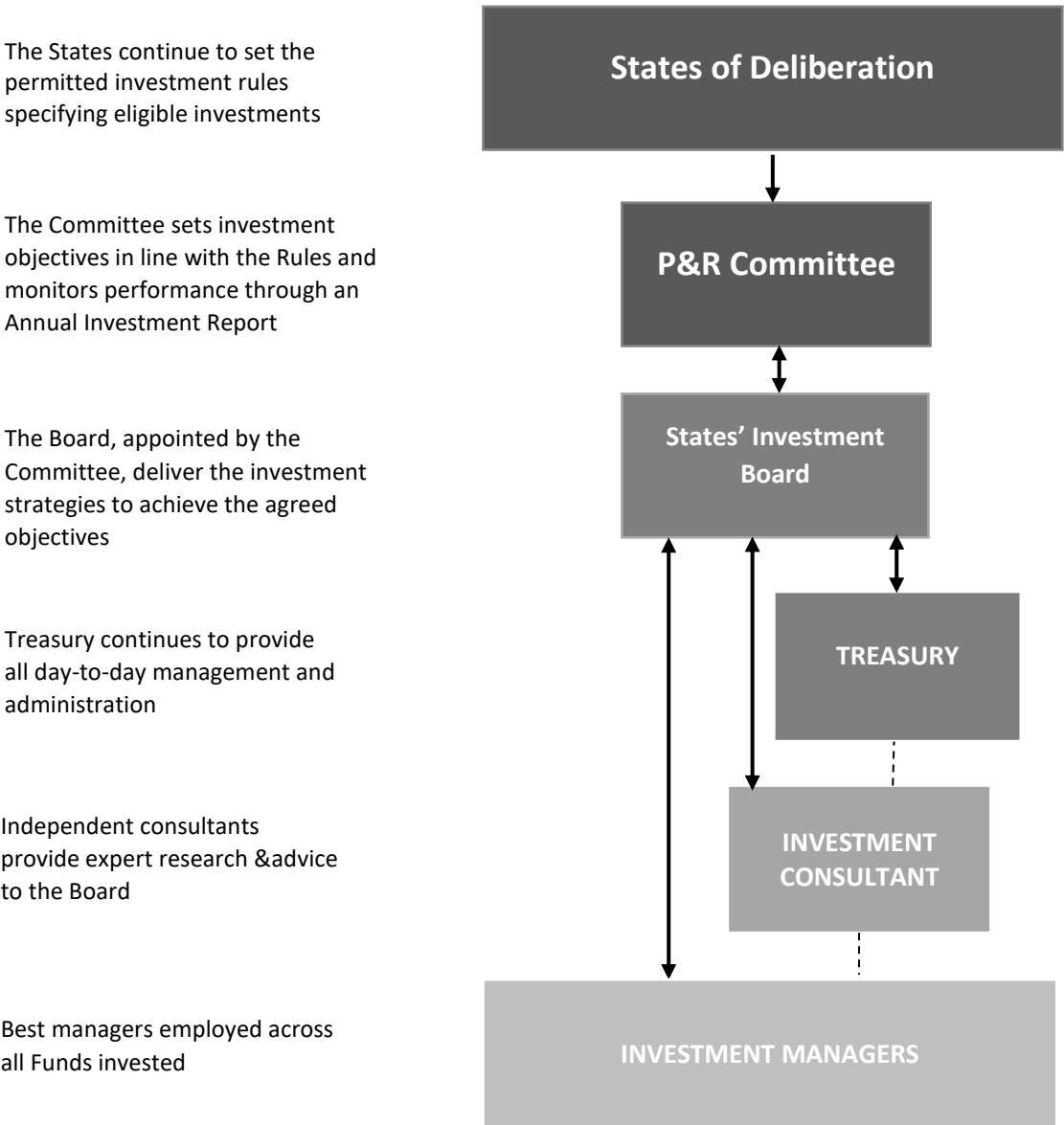
- An Annual Investment Report will detail the performance of the Funds and any significant changes made during the past year, as well as the proposed investment plan for the subsequent year. This will form the basis for the Committee's annual review of the SIB.
- A member of the Committee may attend SIB meetings, and minutes will be made available where requested.
- The Committee will appoint, monitor and remove the independent members of the SIB. This is a far simpler performance based process with independent, rather than political, members. Committee members will not require the considerable time and expertise to gain a detailed understanding of each individual investment manager strategy and performance, but will be required to annually assess whether the SIB members are adequately performing their duties in a manner consistent with achieving the agreed objectives.

4.11 This will leave the Committee in a more strategic position to assess progress towards its objectives and, where necessary, revise those objectives.

4.12 The aim of the SIB would be to provide independent investment expertise and governance to all States' funds. With the ability to not only implement a tailored strategy aligned to each Fund's objectives, but also to coordinate and leverage the total States' investment position to provide the best solution. Having oversight of the total investment position is critical for accurately assessing the States' overall exposure to different investment risks and will allow for these to be managed in a more effective manner, while targeting appropriate returns for stakeholders. A professional investment body of this nature would benefit all stakeholders of States' controlled investment portfolios, both in respect of the potential for enhanced long-term performance and also to ensure robust independent governance and oversight in the future.

4.13 The proposed governance structure is set out in figure two below:

Figure two.



4.14 The detailed terms of reference for the SIB are yet to be drafted however, its main responsibilities would be:

- **Investment strategies** – the SIB will monitor investment strategies throughout the year, on a continuous basis, in order to assess progress toward meeting the stated objectives.
- **Appointment of experts** – the SIB will appoint expert investment consultants, where necessary, to support its decision making.
- **Investment performance** – the SIB will review and consider the performance of all investment/cash managers appointed to manage funds under control of the Board throughout the year, and meet with the main managers at least annually.
- **Appointment and dismissal of investment managers** – the SIB will have delegated responsibility to appoint and dismiss investment managers in order to implement its investment strategies to best deliver on the Committees' agreed investment objectives.
- **Annual Report** – the Policy & Resources Committee will be presented with an annual report outlining the past year's investment performance and positioning of the portfolios. This will include an assessment of the outcomes relative to the agreed investment objectives set within the context of the market environment. It will also set out proposals for the future investment strategy for approval by the Policy & Resources Committee.

## 5 Establishment of States' Investment Board

5.1.1 It is envisaged that it may take several months to formalise the detail of the investment strategy and objectives and to appoint the independent members. The Policy & Resources Committee intends to work with the Committee *for* Employment & Social Security to form an advisory sub-committee to act in a shadow Investment Board capacity until formal appointments can be made and legislative changes implemented.

5.1.2 Once established the Committee will also continue to assess the effectiveness of the SIB structure with a view to making further improvements where these can be identified.

## 6 SIB Resources

6.1 Given that the Treasury team already provides administrative support on a day-to-day basis and both Funds employ an investment consultant, the only additional cost to be borne by the Funds would be that of the independent members. It is recommended that the fee paid is initially set at that paid to non-

States' members on the States' Trading Supervisory Board (£8,615 p.a.), but the Policy & Resources Committee will keep this under review. No further additional resources are likely to be required.

6.2 There are several potential efficiencies which could be gained from a single experienced management board negotiating fees and costs across a much larger pool of investments. For example:

- A reduction in investment manager fees of just 0.05% (5 basis points) equates to a saving across the existing two Funds of approximately £1.6 million per annum.
- The number of investment meetings could be reduced.
- Greater access to best performing strategies and research for all funds, not dependant on size.
- Consolidation and consistency of reporting to ensure meaningful comparisons.
- Improved terms with external service providers.

## **7 The States of Guernsey Permitted Investment (Amendment) Rules**

7.1 The SIB will be required to ensure the underlying investments are in line with the Permitted Investment Rules agreed by the States which will continue to be reviewed and amended from time to time to ensure they remain fit for purpose. The States currently have two different sets of Investment Rules – one for the funds under the control of the Policy & Resources Committee and another for those managed by the Committee *for* Employment & Social Security.

7.2 The Committee for Employment & Social Security currently has a separate set of rules for permitted investments. While these are not materially different from States of Guernsey Permitted Investment (Amendment) Rules, 2015 it makes sense that a single consistent set of rules is implemented for all States of Guernsey investment Funds.

7.3 The Investment Rules have been reviewed as part of this work and are now presented for approval as a consolidated set. These Rules replace all previous versions and have been amended only to incorporate the proposals in this policy letter in respect of the management of the funds through an independent non-political professionally qualified sub-committee, with the necessary expertise and experience. The proposed new single and consistent set of permitted investment rules, which it is proposed would replace the two sets of existing rules, is attached at Appendix 1.

## **8 Legislative Amendments**

- 8.1 Changes to Section 100 of The Social Insurance (Guernsey) Law, 1978 and to Section 1 of The Long-term Care Insurance (Guernsey) Law, 2002 (and any other minor consequential changes) will be required to assign political responsibility to the Policy & Resources Committee for the investment of the Funds.

## **9 Recommendations**

- 9.1 To approve the proposals set out in that policy letter for the constitution of a States' Investment Board as a sub-committee of the Policy & Resources Committee.
- 9.2 To agree that the responsibility for the management of the Common Investment Fund currently managed by the Committee for Employment & Social Security is transferred to the Policy & Resources Committee.
- 9.3 To agree that the mandate of the Policy & Resources Committee is amended to clarify its responsibility with respect to investments by the addition of:
- (b) 11. Responsibility for setting the investment objectives for all States' investment funds and for appointing an independent board to oversee the management of such Funds in line with the States' permitted Investment Rules
- 9.4 To agree that the mandate of the Committee for Employment & Social Security is amended to remove its responsibility with respect to investments by the deletion of:
- (a) 7. Investment of the Guernsey Health Service Fund, Long-Term Care Insurance Fund and Guernsey Insurance Fund
- 9.5 In Section II of Appendix II to Billet d'État XX, 2017 ("Rules for Payments to States Members, Non-States Members and Former States Members") approved on 8 November 2017;
- (a) in paragraph 1 to insert ", the States' Investment Board" after "the Development & Planning Authority", and
- (b) in paragraph 2 to insert "or the States' Investment Board" after "the States' Trading Supervisory Board".
- 9.6 To approve The States of Guernsey Permitted Investment (Amendment) Rules, 2021 as set out in Appendix One and to agree that they shall replace the States of Guernsey Permitted Investment (Amendment) Rules, 2015.
- 9.7 To rescind the resolution of the States pursuant to Section 100(4) of the Social Insurance (Guernsey) Law, 1978, Section 1(7) of the Health Service (Benefit) (Guernsey) Law, 1990 and Section 1(7) of the Long-term Care Insurance (Guernsey)

Law, 2002 made on the 28th September, 2011 on Article XIII of Billet d'Etat No. XV of 2011.

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

## **10 Compliance with Rule 4**

- 10.1 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.
- 10.2 In accordance with Rule 4(1), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 10.3 In accordance with Rule 4(3), the Committee has included Propositions which request the States to approve funding for remuneration of the SIB external Members at the rate paid to non-States' members on the States' Trading Supervisory Board (£8,615 p.a. per external Member). Further details about the financial implications of the Propositions are provided in paragraphs 6.1.
- 10.4 In accordance with Rule 4(4), it is confirmed that the propositions above have the unanimous support of the Committees.
- 10.5 In accordance with Rule 4(5), the Propositions relate to the mandated duties of the Policy & Resources Committee in relation to States Treasury functions, specifically the management of investment funds under paragraph (b)7, and the operational function of the Committee for Employment & Social Security of investing social insurance funds (paragraph (a) 7).
- 10.6 The Policy & Resources Committee and the Committee *for* Employment & Social Security have worked jointly on the preparations of these propositions and believe they will significantly contribute to the objective of strengthening investment governance, which in turn will lead to improved long term returns and risk management of States Funds.

Yours faithfully

Peter Ferbrache – Policy & Resources Committee President  
Heidi Soulsby – Policy & Resources Vice-President  
Mark Helyar  
David Mahoney  
Jonathan Le Tocq



Peter Roffey – Committee for Employment & Social Security President  
Lindsay De Sausmarez - Committee for Employment & Social Security Vice-President  
Tina Bury  
Steve Falla  
John Gollop  
Ross Le Brun – Non-States Member  
Mark Thomson – Non-States Member

## **APPENDIX ONE**

### **The States of Guernsey Permitted Investment (Amendment) Rules, 2021**

**THE STATES**, in pursuance of their resolution of the XX<sup>th</sup> March, 2021 have approved the following Rules:

#### **Permitted investments**

1. The States of Guernsey acting by and through the Policy & Resources Committee (hereinafter referred to as “the Committee”) shall arrange for any Funds, held for the purpose of investment under their responsibility, to be invested in all or any of the following descriptions of assets:

- a) Bonds

Debentures, debenture stocks, loan notes, unsecured loan stocks, bonds, structured products, secured loans and short term interest bearing instruments (such as certificates of deposit, bills and commercial paper), issued or guaranteed by, and interest bearing deposits with:

- i) any Government of any country or territory, or
- ii) the States of Guernsey, or
- iii) any local authority or other public body in any of the above countries or territories, or
- iv) any building society in the United Kingdom, or
- v) any supranational institution, or
- vi) any company incorporated in any country or territory.

- b) Equities

Equity stocks and shares, whether nil paid, partly paid or fully paid, of companies incorporated in any country, provided that they are traded on or under the rules of a Stock Exchange recognised for this purpose by the Department.

- c) Property

Real property or interests in real property including:

- i) commercial property,
- ii) residential property,
- iii) land for residential or commercial use,
- iv) agricultural land,
- v) forestry,
- vi) any form of pooled investments for categories i) to v), including, but not limited to, limited partnerships, property unit trusts, fund of property unitised vehicles, sociétés d'investissement a capital variable (SICAVs) and real estate investment trusts.

- d) Derivatives

Derivative instruments based on financial securities, currencies or financial markets such as options, warrants, futures contracts, swaps, forward foreign exchange contracts, and contracts for differences, whether quoted on a stock market or an exchange or over the counter.

e) Pooled Funds

- i) any form of pooled investment including, but not limited to, as a limited partnership, unit trust, SICAV, fund of fund or exchange traded fund,
- ii) policies issued by a properly constituted insurance or assurance company.

f) Other Assets

The following assets may also be held -

- i) Hedge funds of any type including fund of hedge funds,
- ii) Infrastructure assets of any type, including Private Finance Initiative investments,
- iii) Private equity,
- iv) Currency and currency overlays,
- v) Pooled funds where the underlying assets are commodities,
- vi) Investments specifically focused on corporate entities where the majority of their revenue is derived from undertakings in Guernsey.

**Other Controls**

2. The Committee will implement the following:

- i) to set investment objectives appropriate for each Fund under their control. In addition to risk and return targets, these objectives should detail controls on position, size and quality of all investments to ensure funds are properly and fully diversified by individual security and asset type. Further considerations should include, but are not limited to, future cash flows, and environmental, social and governance aspects,
- ii) appoint an independent non-political sub-committee with the necessary expertise and experience to formulate and implement investment strategies, on a discretionary basis, in order to achieve the objectives set for each Fund,
- iii) set terms of reference that will clearly define the duties and responsibilities of the sub-committee which will report to the Committee on progress toward the objectives set,
- iv) investments in corporate entities where the majority of revenues are derived from undertakings in Guernsey should not exceed 10% of the total assets of the fund.

**Additional Powers**

3. The Committee has in respect of any Fund power to:

- i) sub underwrite or underwrite a new issue,
- ii) enter into stock lending arrangements with financial institutions,

- iii) guarantee the obligation of a company owned or partly owned by the Fund,
- iv) borrow on a temporary basis to a maximum of 5% of the total market value of the Fund.
- v) enter into arrangements for common investment funds with other Funds of the States of Guernsey..

**Citation**

- 4. These Rules may be cited as the States of Guernsey Permitted Investments (Amendment) Rules, 2021.

**Repeal**

- 5. The States of Guernsey Permitted Investment (Amendment) Rules, 2015 are repealed.

**Commencement**

- 6. These Rules shall come into force on 29 March 2021.

**THE STATES OF DELIBERATION**  
**of the**  
**ISLAND OF GUERNSEY**

**POLICY & RESOURCES COMMITTEE AND  
COMMITTEE *FOR* HOME AFFAIRS**

**THE FUTURE GOVERNANCE AND OPERATION OF THE SEIZED ASSET FUND**

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled “The Future Governance and Operation of the Seized Asset Fund”, dated 08<sup>th</sup> February, 2021, they are of the opinion:

1. To agree that receipts from seized assets will be first used to support cost recovery, victim compensation and asset sharing.
2. To agree that any remaining assets will be divided between a new Seized Asset Fund and a fund for community purposes, with an allocation of 80% to the Seized Asset Fund and 20% to community purposes (as set out in section 6.5 of the Policy Letter).
3. To agree that the Policy & Resources Committee will have the authority to approve the use of assets in the Seized Asset Fund for distinct initiatives aligned with the Fund’s purpose (as set out in section 6.6 of the Policy Letter).
4. To agree that the Policy & Resources Committee will consult the Committee *for* Home Affairs before approving any funding from the Seized Asset Fund.
5. To approve the immediate transfer of 20% of the uncommitted balance of the current Seized Asset Fund to the Social Investment Fund.
6. To agree that the new arrangements for the governance and operation of seized asset distribution should be introduced on a policy basis as soon as practicable and to direct the Policy & Resources Committee to liaise with HM Receiver General in respect of the implementation of the new arrangements ahead of the introduction of legislation.
7. To direct the preparation of legislation as necessary to put the seized asset arrangements on a legislative footing.

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 AND  
COMMITTEE *FOR* HOME AFFAIRS**

THE FUTURE GOVERNANCE AND OPERATION OF THE SEIZED ASSET FUND

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

08<sup>th</sup> February 2021,

Dear Sir

**1. Executive Summary**

- 1.1. The Seized Asset Fund forms an important part of the Bailiwick of Guernsey's asset recovery regime. Recovered criminal proceeds without an alternate claim are deposited into the Fund where they are then distributed to the islands' benefit. Under present arrangements, the contents of the Fund are assigned to specific initiatives led by Law Enforcement or the Law Officers' Chambers, or to societal initiatives aimed at community support and crime reduction.
- 1.2. In 2018, the States agreed<sup>1</sup> that a review of the governance and operation of the Fund would be carried out by the Committee *for* Home Affairs and the Policy & Resources Committee ("the Committees"). The need for a review was supported by a letter from HM Procureur which recognised that the Fund arrangements, established in 1995, were out of step with best practice and recommended that the Fund be put on a statutory footing.
- 1.3. Over the course of the review, issues were identified in regard to the absence of political representation in the Fund structure, limited Fund reporting, and organisational limits on accessing funding. The Committee *for* Home Affairs and the Policy & Resources Committee, informed by consultation with the Law

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<sup>1</sup> States of Guernsey Annual Budget for 2019, Billet d'État No XXIV - Resolutions

Officers, have developed a seized asset distribution model which addresses these limits and reflects international obligations and good practice.

- 1.4. In the proposed model, seized assets are first used to recuperate asset recovery costs, support victim compensation, and fulfil any asset sharing agreements with other jurisdictions. This proposal is consistent with the Bailiwick's international obligations and reflects the importance of a sustainable asset recovery regime.
- 1.5. After the first three priorities are met, the new model would divide any remaining funds between a ring-fenced internal fund (80%) and a fund for community purposes (20%).
- 1.6. The internal fund would be available to individual initiatives with no ongoing funding requirement aimed at improving the performance of the criminal justice system (particularly the tracing and recovery of assets, key objectives in Law Enforcement's approach to economic crime), reducing the crime rate, and repairing the damage caused by crime. The fund would be available to initiatives that are not technically criminal justice matters but which are relevant to criminal justice more widely. For example, it is essential that the Bailiwick is able to prioritise the effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and the financing of proliferation, and other related threats to the integrity of the international financial system, in line with the Financial Action Task Force (FATF) Recommendations and the global focus on tracing and confiscating criminal proceeds.
- 1.7. It is proposed that the Social Investment Fund be used to distribute the funds intended for community purposes. The Social Investment Fund is a separately constituted body, acting as a States partner, which uses public and some private funds to invest in the Bailiwick's charitable and community sector organisations. Distribution through this mechanism will ensure that seized asset funds are more easily accessible to third sector organisations, prevent unnecessary duplication of process and allow applicants to access existing support to develop and propose initiatives.
- 1.8. To further good governance, it is proposed that the internal fund be governed by a States Committee which will introduce political representation into the governance structure. It is recommended that the Policy & Resources Committee fulfil this role. The Committee has mandated responsibility for the allocation of public funds and is independent from the use of seized asset funding. It is also well positioned to coordinate applications from different areas, ensure that proposed initiatives are aligned to wider States work, and achieve an appropriate balance between the use of General Revenue and seized asset funding.

- 1.9. The Policy & Resources Committee would be required to follow appropriate guidelines when assessing an initiative's impact on the criminal justice system. These guidelines would be produced by the Law Officers with support from Law Enforcement. In addition, before considering applications, the Policy & Resources Committee would be required to formally consult with the Committee *for* Home Affairs.
- 1.10. The prominent role of the Committee *for* Home Affairs reflects the focus of the Committee's mandate. The Committee *for* Home Affairs has clear policy and advisory responsibilities for justice policy, crime prevention and law enforcement (including efforts to address economic crime). Operations within the mandate of the Committee are also most likely to contribute to the aims of the internal fund and any application of the fund will need to be aligned to the objectives of these services and will need to consider any associated ongoing cost or service implications.
- 1.11. The transparency of the seized asset regime will be further improved by an annual reporting cycle, both in terms of the internal fund and the allocation to the Social Investment Fund. Necessary operational confidentiality will be maintained as part of any reporting. Further clarity on the use of funding will also be driven by placing the fund arrangements on a statutory footing. This will clearly demonstrate to the public and international partners how assets are being governed and used.
- 1.12. Further detail on the current arrangements and the future model are laid out in this policy letter. The Committees believe that the proposed model retains the current pragmatic and proportionate approach, whilst ensuring that the Bailiwick can continue to meet its international obligations and derive benefits from seized asset funding.

## **2. Introduction – what is the Seized Asset Fund?**

- 2.1. Like many developed jurisdictions, the Bailiwick of Guernsey has a comprehensive legal framework for the identification and recovery of criminal proceeds. By seizing such assets, the islands prevent them from being reinvested in further criminality and demonstrate a commitment to tackling international issues such as money laundering, terrorist financing and drug trafficking.
- 2.2. The process of asset recovery generally consists of four phases: an intelligence gathering phase, an investigative phase, a judicial phase, and a disposal or distribution phase. This may be carried out in response to domestic criminality or to confiscate locally held assets on behalf of another jurisdiction (often leading to an asset sharing agreement). Whilst each step in the recovery process is



significant, this policy letter is focused on the Bailiwick's arrangements for the final distribution of assets.

- 2.3. In the Bailiwick, seized assets without an alternate claim are transferred to the Seized Asset Fund. The Fund was set up in 1995, with the agreement of the then Advisory and Finance Committee. A report was made to the States on the establishment of the Fund as part of the Policy Planning, Economic and Financial Report<sup>2</sup>, following advice given by HM Procureur (acting in his capacity as HM Receiver General).
- 2.4. Originally, the Fund was intended to provide a resource in the fight against drug trafficking. Since it was established however, international standards on financial crime have advanced and broader confiscation powers have been introduced. The recovery route for assets in the Seized Asset Fund may have been through confiscation orders (for example, orders issued under the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999), as part of asset sharing agreements with partnering jurisdictions, or through civil forfeiture. Civil forfeiture is not the focus of this policy letter however the current practice of allocating such assets to the Seized Asset Fund will continue as part of any future model (further information on the legislative framework governing asset recovery is available in Appendix 1). HM Procureur has advised that the changes in the Fund's circumstances (Appendix 1) have gradually exposed it to a different range of risks and opportunities.
- 2.5. In order to ensure that the Fund continues to operate in an effective manner, the States agreed that a review of its governance and operation should be carried out by the Committee for Home Affairs and the Policy & Resources Committee ("the Committees"). The Committees have carried out this review and developed an effective future operating model which remains proportionate to the Islands' needs. The model is based on lessons learned from other jurisdictions and the existing good practice and opportunities in the Fund's current arrangements.

### **3. Existing Arrangements - How does the Seized Asset Fund work?**

- 3.1. The current operation of the Fund is laid in detail out in the Seized Asset Fund Expenditure Policy<sup>3</sup>. Sections 3.2-3.3 provide an overview of this policy, how it prioritises asset distribution and the decision makers involved.

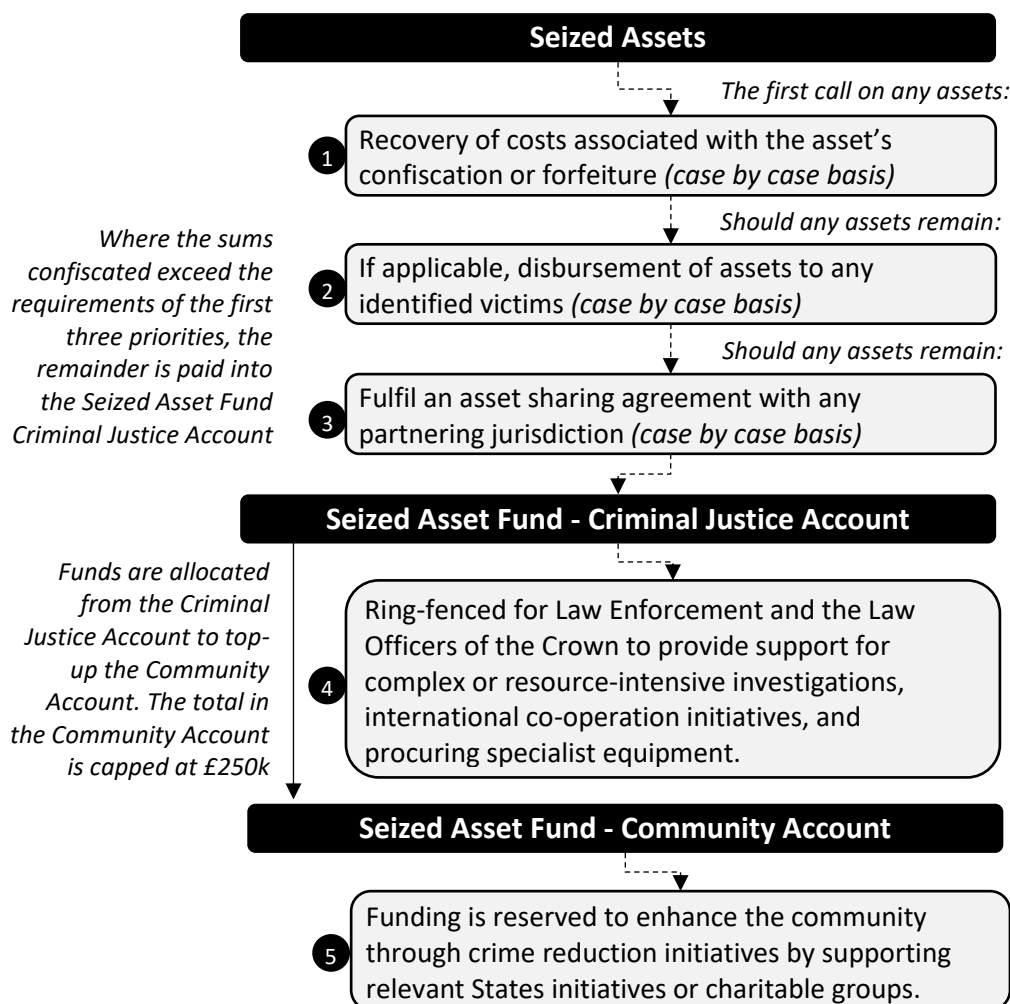
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<sup>2</sup> 1995 Policy Planning, Economic and Financial Report, Billet d'État XV, 1995

<sup>3</sup> Seized Asset Fund Expenditure Policy

### 3.2. Distribution of Seized Assets

3.2.1. Figure 3.1 summarises the current arrangements for the distribution of confiscated or forfeited assets.



**Figure 3.1: The existing model for the distribution of seized assets**

3.2.2. The current model gives precedence to cost recovery, victim compensation and asset sharing (1, 2, 3), each of which are assessed and apportioned on a case-by-case basis. The prioritisation of these three uses is in line with global expectations and best-practice, with a number of international treaties and guidance documents emphasising their importance for ensuring an effective and sustainable asset recovery regime (further information on international expectations associated with asset distribution is provided in section 6).

3.2.3. Where the sum confiscated exceeds these requirements, and provided that it is not a pre-condition of any asset share that the funds are put to a specific purpose, the remainder is retained in the Seized Asset Fund to be allocated to

Law Officers' Chambers or Law Enforcement initiatives (4), or to support crime reduction initiatives in the community (5).

- 3.2.4. The funding ring-fenced for Law Enforcement and the Law Officers' Chambers is allocated, on a case by case basis, to support complex or resource-intensive investigations, discrete international co-operation initiatives, or to procure specialist equipment. Financial support is not provided to services which should otherwise be funded through general revenue (although service pilots may be funded) or, as receipts are not consistent, where ongoing funding is required.
- 3.2.5. The Seized Asset Fund Community Account has wider eligibility criteria. It can be allocated to related initiatives of community benefit, such as crime prevention initiatives, drug and alcohol rehabilitation and mental health initiatives, and to support groups like Victim Support and Witness Service or other relevant charitable organisations. The account, however, is currently limited to £250k and individual applications cannot exceed £50k. As with the ring-fenced funding, long-term support is not available as ongoing finance cannot be guaranteed.
- 3.2.6. By focusing the use of Fund assets primarily on the criminal justice system, the Bailiwick has benefited from a positive feedback loop whereby the performance of the asset recovery regime, and wider criminal justice operations, is improved by financial support from recovered assets which in turn results in an increased volume of assets being seized and further financial support to improve the system. This relationship is recognised in asset recovery regimes across the world.

### 3.3. Fund Governance and Administration

- 3.3.1. Applications to the Seized Asset Fund are made on a case by case basis. The authority to grant any funding requests rests with the Seized Asset Fund Committee, which is chaired by HM Procureur (in her role as HM Receiver General). The committee comprises H.M. Receiver General, H.M. Deputy Receiver General, the States Treasurer, the Chief Executive, the Director of Operations, Justice and Regulation and the Head of Law Enforcement.
- 3.3.2. In the case of any applications to the Community Account<sup>4</sup>, a sub-committee can assess and grant funding requests up to £50k based on the request's alignment to the account's community enhancement aim, but in practice applications have been decided by the full Committee. The community account has two application periods each year, between January and March and June and August. Financial support is not available from the account at any other time.

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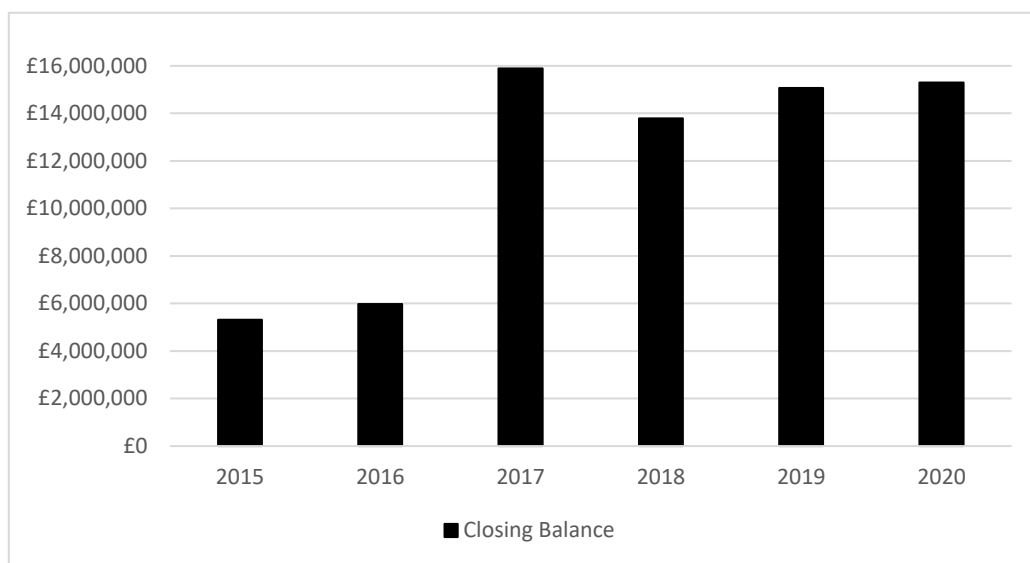
<sup>4</sup> Seized Asset Fund Community Account - Terms of Reference

3.3.3. Administrative support for any meetings of the Fund committee is provided by the Law Officer's Chambers. Fund decisions are recorded and accounts for the Fund are maintained, however, historically, these have not been published. When the Fund was first established, these accounts were prepared by Treasury.

3.4. **Under this existing operating model, the financial support available from seized assets has successfully contributed to a wide range of valuable initiatives. Since the Seized Asset Fund was established however, the volume of assets involved has significantly increased and the international environment within which asset recovery takes place has advanced.**

#### 4. **Accounts - What is the financial status of the Seized Asset Fund?**

4.1. The Seized Asset Fund has a current balance of approximately £15.3m (£3m of this balance is committed to future work)<sup>5</sup>. Figure 4.1 illustrates how the Fund balance has changed between 2015 and 2020.



**Figure 4.1: Seized Asset Fund Closing Balance 2015 – 2020.** *The Fund received a large injection of income from a seizure in the United States of America in 2017.*

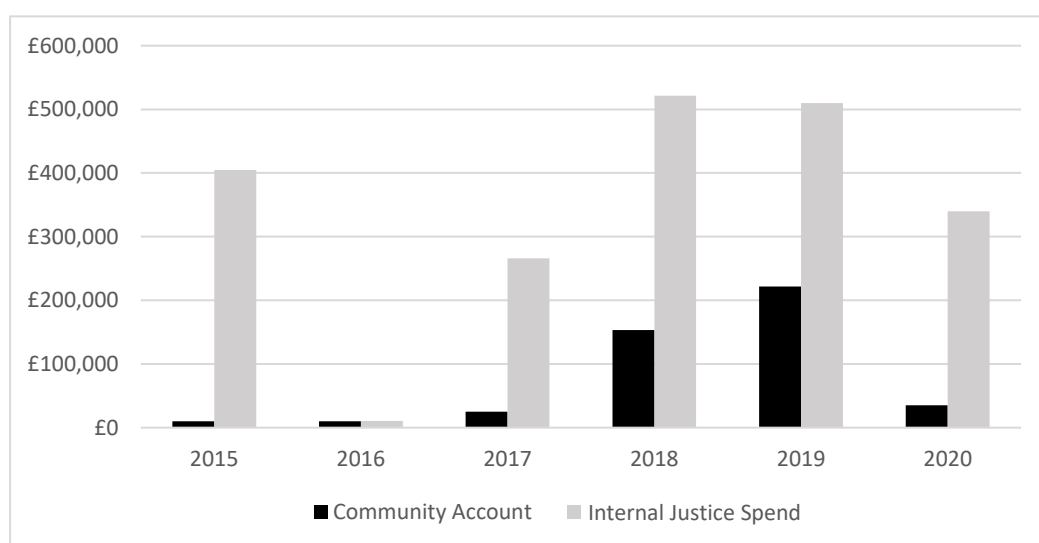
Payments from the Fund have been used to support the criminal justice system and thereby assist the Bailiwick to meet its international obligations. Both community and States initiatives have received investment, including the

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<sup>5</sup> Based on accounts which are subject to audit

purchase of NUIX, a computer software programme to facilitate searches of complex documentation in financial investigations, and funding a time limited pilot of a dedicated asset recovery team, the International Cooperation and Asset Recovery Team.

- 4.2. Figure 4.2 illustrates the division of funding between the Seized Asset Fund Community Account and remaining spend from the Fund. On average, 20% of spend has been dedicated to initiatives of community benefit through the Community Account.



**Figure 4.2: Spend from the Community Account and the main Fund. Income dedicated to asset sharing agreements has not been included in this analysis.**

- 4.3. **The balance of the Seized Asset Fund has risen over the last few years. The scale of funding involved emphasises the need to ensure that the Fund has an appropriate governance structure and an effective mechanism for funding beneficial initiatives.**

## 5. Issues and Opportunities – what are the potential areas for improvement?

- 5.1. The Seized Asset Fund was established over twenty years ago. In this time, the Fund has supported a range of successful States' and community initiatives. The circumstances within which the Fund operates however, have evolved over the years. For example, the focus of international compliance interests on asset management and disposal regimes has increased and the legal framework for asset recovery and the structure of Law Enforcement have changed, increasing the volume of assets deposited in the Fund. These changes have resulted in the Fund's exposure to different opportunities and risks.

5.2. In reviewing the Fund's operation and governance, the Policy & Resources Committee and Committee *for* Home Affairs, in consultation with the Law Officers, have sought to build on existing good practice and identify options for improvement. Sections 5.3 to 5.5 describe some of the opportunities to improve the current arrangements. By taking these opportunities forward, the operation of the Seized Asset Fund should better reflect the States' commitment to good governance and sound financial management, however any improvements made will need to remain proportionate to the Bailiwick's circumstances.

### 5.3. Governance of the Fund

#### 5.3.1. *Increased Political Representation*

5.3.2. The current governance model for the Seized Asset Fund includes a committee established at Law Officer and States of Guernsey officer-level. Decisions concerning the application of the Fund are taken by H.M. Receiver General, after consulting with committee members, including H.M. Receiver General, H.M. Deputy Receiver General, the States Treasurer, the Chief Executive, the Director of Operations, Justice & Regulation and the Head of Law Enforcement.

5.3.3. Whilst this committee include experienced senior officers and Crown appointees, it includes the main users of the fund and there is no political representation in the structure. This differs from wider governance in the States where politicians are responsible for, and have visibility of, expenditure. Whilst political review of Fund applications might not be ideal in a jurisdiction with a greater volume of recovered assets and more disparate services, political representation is commonly seen in the decision-making structures of other small jurisdictions. In Jersey, for example, legislation provides that the Minister for Treasury and Resources approves expenditure from the Criminal Offences Confiscations Fund (Jersey's equivalent of the Seized Asset Fund), following consultation with the Attorney General.

5.3.4. **By including appropriate States Members in the Fund's governance, or by making use of an existing States' Committee, the Seized Asset Fund's visibility would be enhanced, and the Fund would move in line with the States' wider governance structure. This would also help ensure applications are not agreed without consideration of wider budget implications and strategic priorities.**

#### 5.3.5. *Increased Reporting*

5.3.6. An analysis of Seized Asset Fund expenditure is not currently published. While there will remain a need to maintain operational confidentiality for Law Enforcement and the Law Officer's Chambers cases, there is no reason why transparent reporting on the Fund cannot otherwise be achieved, going forward.

5.3.7. **Mandatory annual reporting to the States of the Fund's distribution would help to enhance its overall transparency. In addition, although information about the Seized Asset Fund Community Account and the Fund's Expenditure Policy are currently available on the Law Officers' website, greater reporting would help to draw attention to the financial support available to external organisations so as to generate more applications and better demonstrate the Islands' use of seized assets. It would also act as a deterrent to criminals by demonstrating Guernsey's commitment to the use of repressive measures whenever necessary.**

5.4. Legislative Provision

5.4.1. The Seized Asset Fund is currently operated on a policy basis only and has not been established under legislation. This issue was first identified in the International Monetary Fund (IMF) report<sup>6</sup> carried out in 2003 which recommended that consideration be given to adopting legislation to provide for an asset forfeiture fund and for asset sharing with other jurisdictions. The lack of a legal basis for the fund was also raised in a letter to the Policy & Resources Committee and Committee for Home Affairs from HM Procureur in 2019.

5.4.2. **Without legislative provision, the Islands' arrangements may be perceived as less binding by international partners or by the public. Additionally, without resolution from the States Assembly, the establishment of the Fund remains as per the 1995 model and with the structure and governance as laid down in its Constitution.**

5.5. Purpose of Funding

5.5.1. *Outcome-based Allocation*

5.5.2. The majority of assets held in the Fund are currently ring-fenced for Law Enforcement and the Law Officers (although other service areas and the third sector are eligible for limited funding from the community account). The criminal justice functions discharged by Law Enforcement and the Law Officers (which include not only the investigation and prosecution of crime and recovery of related criminal proceeds, but also financial intelligence functions and the civil forfeiture of the proceeds of crime) are likely to be the services with the greatest capacity to improve the asset recovery process and impact criminal activity.

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<sup>6</sup> Guernsey-Crown Dependency of the United Kingdom: Assessment of the Supervision and Regulation of the Financial Sector Volume II—Detailed Assessment of Observance of Standards and Codes

However, there are other services within the remit of the Committee *for* Home Affairs which have a key role to play in the effective operation of the criminal justice system, such as the prison and probation services, as well as services that are outside the remit of the Committee *for* Home Affairs but are nonetheless an essential part of the anti-money laundering and terrorist financing (AML/CFT) framework, such as the Guernsey Registry. In addition, there may be initiatives relating to other services, such as health and education, which have an indirect, but nevertheless meaningful, impact on criminal justice related matters, particularly in repairing the damage of crime.

- 5.5.3. **In this case, restricting access to the majority of Fund assets according to the purpose for which they will be used, rather than restricting funding to specific service areas, would offer a more flexible approach appropriate to the size of the jurisdiction and the volume of assets seized.**

5.5.4. *Community Account Cap*

- 5.5.5. The initial overall cap on the Community Account (£250k) was deliberately established to ensure that the majority of funding was used to support the activity of Law Enforcement and the Law Officer's Chambers. Applications to the Community Account have also been limited to £50k by agreement of the Fund committee. This ensures that multiple, and wide-ranging, initiatives can be funded at the same time, rather than a single initiative consuming all of the resource. However, it does restrict community investment to relatively small initiatives, the number of which is currently limited by the overall cap.

- 5.5.6. **If the overall cap on community funding were amended to reflect a percentage of the available proceeds, it might enable more initiatives to be supported following cases with particularly high asset forfeiture.**

5.5.7. *Opportunity to Combine States' Funding Sources*

- 5.5.8. As the Fund is not comprised of States' funding or grants, it has been governed separately from these forms of resource. As such, it is potentially more difficult for service areas or NGOs to combine resources from the Fund with other funding sources.

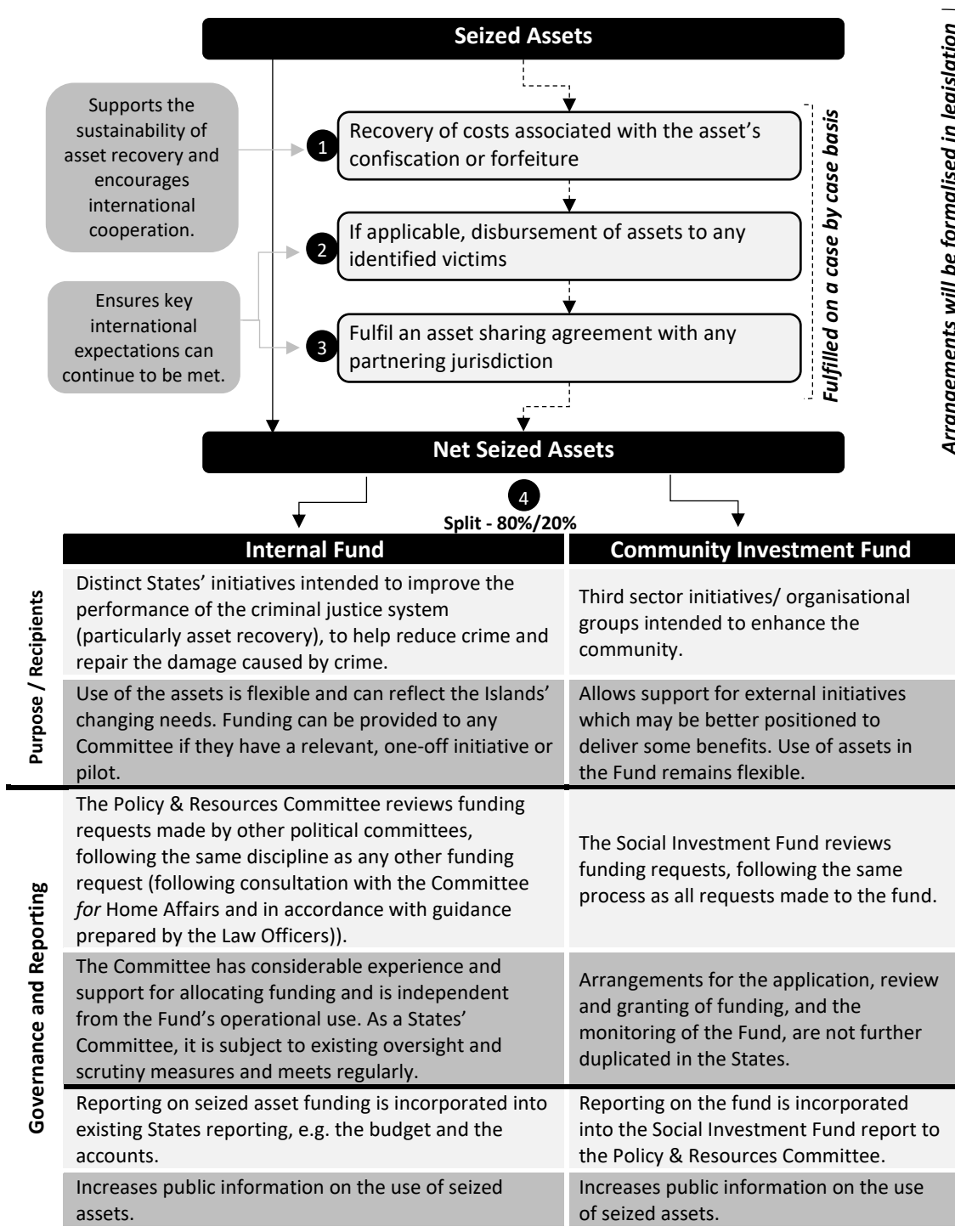
- 5.5.9. **Enhancing the ease with which financial support could be combined, or applications considered together, may help to maximise the benefit that can be generated for the community and allow the Fund to contribute to more significant or long-term initiatives by helping to mitigate the risk associated with unpredictable receipts from asset recovery.**



- 5.6. The above opportunities and issues have been considered by the Policy & Resources Committee and Committee *for* Home Affairs as part of their review of the Fund. Alongside lessons taken from international guidance, best practice and other jurisdictions, the Committees have used these insights to develop a model for the future operation and governance of seized assets. This model is described in detail in Section 6.

## 6. Future Arrangements - What will the proposed model look like?

6.1. Based on the Policy & Resources Committee and Committee *for* Home Affairs review, figure 6.1 provides an overview of the proposed governance and operation for the distribution of seized assets.



**Figure 6.1: Proposed model for the governance and operation of seized asset funds.**

- 6.2. Within the proposed model, assets recovered would continue to be allocated for the recovery of costs, disbursement to victims and asset sharing, however the net receipts (i.e. where the sums confiscated exceed the requirements of the three priorities) would be split between internal (States) and community investment. These would be managed and governed separately to ensure that appropriate conditions are in place for the different stakeholders.
- 6.3. The model aims to address the key issues with existing arrangements by focusing on outcomes rather than service area and by using existing States' governance and reporting mechanisms to improve transparency, good governance, and efficiency. Sections 6.4 to 6.8 describe the components of the proposed model in further detail.
- 6.4. Case by Case – Prioritised Distribution (1-3)
- 6.4.1. Like the existing model, the proposed arrangements prioritise **(1) the recovery of operational costs, (2) victim compensation and (3) asset sharing**. These uses are common across jurisdictions and are strongly encouraged by international agreements and guidance.
- (1) An analysis of the laws and practices on asset recovery in EU Member States<sup>7</sup> identified that all Members had mechanisms in place for victim compensation. Furthermore, several international agreements strongly encourage jurisdictions to prioritise the use of recovered assets to compensate victims of crime. Articles 14 and 25 of the United Nations Convention against Transnational Organised Crime<sup>8</sup> ("UNTOC") provide for the return of recovered proceeds to prior legitimate owners and for compensating victims over payment to the State. Article 57 of the United Nations Convention against Corruption<sup>9</sup> ("UNCAC") further states that State Parties should give priority consideration to compensating victims of crime. Both conventions have been extended to the Bailiwick of Guernsey.
- (2) UNCAC also mandates the return of assets in corruption cases, such as the embezzlement of public funds. In most other cases where a country enforces a confiscation order made by the courts of another country, the normal default position is that assets remain in the country that enforced the order, not the one that initiated the request. An asset sharing agreement on the other hand, enables part of the proceeds to be

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<sup>7</sup> Disposal of Confiscated Assets in the EU Member States - Laws and Practices, Center for the Study of Democracy

<sup>8</sup> United Nations Convention against Transnational Organised Crime

<sup>9</sup> United Nations Convention against Corruption

returned to the initiating country. These agreements can be made on a case-by-case basis or can be part of an ongoing arrangement (such as the agreement currently in place between the Bailiwick and the USA).

Asset sharing in this way helps to ensure that jurisdictions are not rewarded for serving as havens for criminal wealth and encourages international cooperation, helping to improve the performance of global crime fighting efforts. With this in mind, asset sharing is recommended as best practice within the majority of key asset recovery guidance<sup>10</sup> and has been advised by the Law Officers for many years.

- (3) Effective asset recovery programmes can be expensive. Resources need to be allocated for all stages of the forfeiture process, including investigation, tracing and seizing the assets. Where possible, it is relatively common for jurisdictions to allow law enforcement agencies to recover costs from the forfeited proceeds in a case. This is accounted for in the UNCAC where Article 57 (4) states that State Parties may deduct reasonable expenses incurred in investigations, prosecutions or judicial proceedings leading to the asset recovery.

6.4.2. **By ensuring that funding is allocated to these three uses first, the Bailiwick will continue to be able to fulfil its international obligations and preserve the sustainability of its asset recovery regime.**

6.4.3. Whilst the capacity for each of these uses is vital, not all cases will result in the distribution of funding to victims or to other jurisdictions. In many cases where the proceeds of crime are seized, direct victims are difficult to identify (for example, in the case of drug trafficking). In some cases, consideration will also be needed as to whether allocation is appropriate. For example, where an identified victim is a large corporation in a politically unstable jurisdiction, there may be a risk that the returned proceeds would simply be stolen again.

6.4.4. In the case of asset sharing, such sharing would only be undertaken where or when it was considered necessary. To be effective, the amount shared would need to reflect the impact and effort of each jurisdiction's contribution towards recovery. As such, responsibility for agreeing the terms of any asset share most appropriately rest with the Law Officers' Chambers, in close consultation with Law Enforcement.

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<sup>10</sup> Including the Stolen Asset Recovery initiative ("StAR") guidance, the Global Forum on Asset Recovery Principles, and Financial Action Task Force ("FATF") guidance.

**6.4.5. Conclusion: Receipts from confiscated or forfeited assets need to be first used to support cost recovery, victim compensation and asset sharing.**

**6.5. Fund Arrangements - Distribution of Remaining Assets (4)**

6.5.1. In some cases, confiscated or forfeited assets will exceed the requirements of cost recovery, victim compensation, and asset sharing. It is proposed that the States continue to apply a fund-based structure in order to appropriately manage and distribute these remaining assets.

6.5.2. The continued use of a fund structure to distribute assets is aligned to the best practice promoted by the FATF recommendations on Combatting Money Laundering and the Financing of Terrorism<sup>11</sup> and the G8 Best Practices for the Administration of Seized Assets<sup>12</sup>. It also reflects the mechanisms employed in comparable jurisdictions, such as the Criminal Offences Confiscations Fund in Jersey and the Seized Assets Fund in the Isle of Man. In small jurisdictions, like the Bailiwick of Guernsey and the other Crown Dependencies, the use of a fund offers a proportionate and flexible solution to ensure financial support continues to be provided where it is needed.

6.5.3. In order to ensure funding can be suitably accessed by both internal services and external organisations, it is recommended that forfeited assets be divided between a replacement seized asset fund for internal investment and the Social Investment Fund for community investment. This division will support the assets to have the greatest positive impact across the Bailiwick community. As in the existing arrangements, it would provide both the opportunity for development in important criminal justice services and wider initiatives to address financial crime, and would retain the capacity to support third sector initiatives better positioned to engage different community groups or help repair the damage of crime.

6.5.4. A percentage split is proposed to divide assets between the two funds. This would provide a relatively simple means of initially separating funds and ensure that the criminal justice or wider financial crime benefits available from supporting external initiatives are not put at risk by high demand from internal services. The need for, and potential benefits from, States' initiatives are likely to be greater, as such, the proposed split would favour the use of assets by States' services (including the Law Officers) by allocating 80% to the internal fund and 20% for community purposes, with the ability for the Policy & Resources Committee to allocate these funds to the Social Investment Fund.

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<sup>11</sup> FATF Recommendations, International Standards on Combatting Money Laundering and the Financing of Terrorism & Proliferation

<sup>12</sup> G8 Best Practices for the Administration of Seized Assets

- 6.5.5. This split would be applied to the existing uncommitted contents of the Seized Asset Fund, as well as any future assets recovered. Transferring a percentage of the uncommitted contents will ensure that funding is in place for any ongoing criminal justice or related initiatives.
- 6.5.6. The separate objectives, governance, and reporting arrangements would be in place for States and community allocation to ensure that the operation is as efficient and transparent as possible and that fund applications can be made and assessed effectively.
- 6.5.7. It is proposed that the Policy & Resources Committee be delegated authority to transfer seized asset receipts to the Social Investment Fund. This procedure, which reflects the arrangements for the Channel Islands Lottery Appropriation Account, would enable the Policy & Resources Committee to re-direct the transfer of assets to the Social investment Fund, without the need for legislative change. This will be beneficial in the event that the Social Investment Fund did not require seized asset funding or was no longer the most appropriate vehicle to achieve the desired outcomes.
- 6.5.8. **Conclusion: Any remaining monies should be divided between an internal Seized Asset Fund (80%) and an allocation for community purposes of 20% to the Social Investment Fund, subject to a mechanism for the Policy & Resources Committee to redirect the allocation of assets for community purposes if necessary. The uncommitted assets within the current Seized Asset Fund should be similarly divided.**

6.6. Internal Investment – Operation and Governance

- 6.6.1. It is proposed that the internal investment fund be used to support one-off projects or short-term initiatives aligned to the following objectives:
- **Improving the performance of the criminal justice system (particularly asset recovery) and the effective implementation of standards and initiatives in related areas such as anti-money laundering and terrorist financing (AML/CFT),**
  - **Reducing the crime rate, and**
  - **Repairing the damage caused by crime, including restorative justice measures.**
- 6.6.2. These objectives continue to reflect the positive relationship between the performance of the criminal justice system and the volume of seized assets held. This relationship is recognised internationally and is utilised in the vast majority of asset distribution regimes. In the UK, for example, 50% of funds are dedicated

to the Home Office and 50% are returned to the agencies which contributed to recovering the assets. The importance of this relationship is also commonly recognised in asset sharing agreements where it is often a condition that proceeds are reinvested in asset recovery or law enforcement works.

- 6.6.3. Whilst retaining the link between the asset recovery regime and seized asset distribution, these criteria have been kept intentionally broad. This approach will help ensure that funding can be used where it delivers the most value and, over time, can remain aligned to the Islands' criminal justice needs (including related matters such as AML/CFT), and government policy. Such criteria will also help ensure initiatives are outcome-led and that applications consider the available benefits.
- 6.6.4. **Conclusion: The internal seized asset fund should be reserved for distinct initiatives aimed at improving the performance of the criminal justice system, reducing the crime rate, and repairing the damage caused by crime.**
- 6.6.5. In the current model, significant internal investment is restricted to particular service areas, namely the Law Officers' Chambers and Law Enforcement. Although these services are likely to continue to make the greatest use of seized asset funding, it is proposed to remove the ring-fencing restriction and ensure that seized asset receipts are accessible to the most effective criminal justice or criminal justice-related initiatives, regardless of their origin. For example, this will enable the Committee *for* Home Affairs to apply financial support to criminal justice measures more widely, such as in the prison or the probation service. It will also support the Committee *for* Home Affairs to prioritise the pursuit of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction through the timely identification and tracing of assets and the implementation of an effective AML/CFT framework. This proposal also recognises the positive, if indirect, impact that initiatives in services such as health and education can have on criminal behaviour and addressing the damage caused by crime.
- 6.6.6. Whilst any political Committee would be able to submit a funding application, it is proposed that a single States' Committee be responsible for reviewing and finalising funding requests in line with good governance. This Committee would be subject to well established oversight and scrutiny processes and would have an existing administrative support structure on which to rely. The relatively high frequency of States' Committee meetings would also help to improve internal

access to the fund and ensure that the assets are rapidly dedicated to suitable criminal justice initiatives

- 6.6.7. As the Committee responsible for the allocation of public funds and the Committee most independent from the potential applicants, it is recommended that this role be assigned to the Policy & Resources Committee. This is consistent with the arrangements for States-wide funds such as the Transformation and Transition Fund and the Corporate Housing Programme Fund.
- 6.6.8. The Committee is well positioned to coordinate and approve applications, to ensure that any criminal justice initiatives (and initiatives related to crime more widely) supported by the fund are aligned to other States' work, and to monitor the performance of the fund. Furthermore, the Policy & Resources Committee has visibility and understanding of all States expenditure. It would be able to find the best overall balance between the use of General Revenue and other resources, including seized assets, to ensure that the total funding available to support criminal justice initiatives and initiatives in respect of related matters (e.g. AML/CFT) goes as far as possible.
- 6.6.9. It is acknowledged that the impact of initiatives, particularly indirect initiatives, can be very difficult to determine or demonstrate. It is proposed that specific guidelines are produced by the Law Officers, with support from Law Enforcement, to help the Policy & Resources Committee identify whether an application would support one or more of the three objectives of the Fund. These guidelines would also contain a risk-based policy for dealing with AML/CFT initiatives which would be in line with the risk-based policies of Guernsey's operational authorities in this area.
- 6.6.10. To further support assessment, the Policy & Resources Committee would consult with the Committee *for* Home Affairs before considering any funding proposals. The Committee *for* Home Affairs would need to provide a recommendation based on the Committee's policy and advisory responsibilities for justice policy, law enforcement and crime prevention and the potential impact of the request on the Committee's operational services including Law Enforcement. To support this advice, it is recommended that the President of the Committee *for* Home Affairs would attend Policy & Resources Committee meetings when such applications were being considered.
- 6.6.11. The proposed consultation and advice process is required to help identify duplication or incompatibility between initiatives from different Committees or funded by different means. The involvement of the Committee *for* Home Affairs helps to ensure that initiatives are aligned to wider criminal justice and law enforcement objectives and are deliverable by operational services. It would also



help to reduce any perception that might otherwise arise about the jurisdiction departing from criminal justice matters in allocating the relevant funds.

6.6.12. Both Committees would engage with subject matter experts, such as the Head of Law Enforcement and HM Procureur, as required to inform their recommendations and decisions.

6.6.13. The Policy & Resources Committee would also be required to include a report on the fund and its performance, at an appropriate level of detail, within existing Policy & Resources Committee reports to the States (such reporting is included in the Isle of Man budget<sup>13</sup> and accounts<sup>14</sup>, whilst Jersey publishes decisions and transfers made in regard to the fund<sup>15</sup>).

6.6.14. **Conclusion: The authority for expenditure from the internal seized asset fund should be allocated to the Policy & Resources Committee, subject to appropriate guidelines and consultation requirements, whilst applications for funding should be open to any Committee of the States<sup>16</sup>.**

#### 6.7. Community Investment – Operation and Governance

6.7.1. In order not to create unnecessary duplication, it is proposed that community funding be distributed through the Social Investment Fund. In this case, financial support would be allocated to initiatives which meet the Social Investment Fund's stated outcomes which are aligned to government objectives and seek to enhance the Islands' community. Like seized asset recovery, the Social Investment Fund has a Bailiwick-wide role.

6.7.2. The use of seized assets for wider social purposes is relatively common. Article 10 of EU Directive 2014/42/EU<sup>17</sup> on the freezing and confiscation of instrumentalities and proceeds of crime encourages EU Member States to '*consider taking measures allowing confiscated property to be used for public interest or social purpose*'. Social use in this way helps to improve the level of visibility and transparency around seized asset use. In Scotland, for example, seized assets are used by the Cashback for Communities<sup>18</sup> scheme which supports young people in the communities most effected by crime.

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<sup>13</sup> [Isle of Man - 2019/2020 Budget](#)

<sup>14</sup> [Isle of Man - 2017/2018 Accounts](#)

<sup>15</sup> [States of Jersey - Prison Funding from the COCF](#)

<sup>16</sup> Applications would need to be submitted by political Committees to the Policy & Resources Committee and applications would not be accepted from service leads.

<sup>17</sup> [Directive 2014/42/EU](#)

<sup>18</sup> [Cashback for Communities Website](#)

6.7.3. By channelling resources through the Social Investment Fund rather than a separate committee, the opportunity is generated to support initiatives across the third sector, ensure the availability of funding has a high profile in the community and support charities to have a more streamlined approach to access States' funding (including the possibility to access greater funding for initiatives than would be possible from seized assets alone).

6.7.4. **Conclusion: Community investment should be dedicated to social purposes and should be allocated to the Social Investment Fund for distribution.**

## 6.8. Formalising Fund Operation and Governance

6.8.1. Given the international importance of having a robust and effective regime, not only to deter criminals and maximise the recovery of seized assets, but also to demonstrate the Islands' commitment to addressing the international criminal economy, HM Procureur and HM Receiver General has recommended that the future seized asset arrangements be put on a legislative footing.

6.8.2. Legislation will provide the most clarity in regard to the fund arrangements and will help ensure that its use remains consistent over time. The potential time required for legislation to be drafted and approved however, has the potential to delay any improvements to the arrangements. It is proposed that new arrangements be introduced under States Resolution initially, and then legislation be enacted as soon as possible.

6.8.3. **Conclusion: The new arrangements for the governance and operation of seized asset distribution should be introduced on a policy basis with immediate effect. However, the fund should also be moved onto a legislative footing as soon as possible.**

## 7. **Conclusion**

7.1. In light of domestic and international developments concerning the recovery and use of seized assets, it is proposed that the Bailiwick's model for seized asset distribution be amended to place it on a statutory footing and bring it into line with modern good governance practices.

7.2. The Committee *for* Home Affairs and the Policy & Resources Committee believe that the proposed system for the governance and operation of seized asset funds will be more flexible and efficient whilst retaining the key link with the performance of the criminal justice system and remaining proportionate and pragmatic.

## **8. Compliance with Rule 4**

- 8.1. Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 8.2. In accordance with Rule 4(1), the Propositions in this Policy Letter have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications. She has advised that there is no reason in law why the Propositions should not be put into effect.
- 8.3. To comply with Rule 4(4) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the Propositions attached to this Policy Letter have the unanimous support of the Policy & Resources Committee and the Committee *for* Home Affairs.
- 8.4. In accordance with Rule 4(5), the Propositions relate to the duties of the Policy & Resources Committee and Committee *for* Home Affairs in respect of "fiscal policy, economic affairs and the financial and other resources of the States" and "crime prevention" and "justice policy".

Yours faithfully

### **Policy & Resources Committee**

P T R Ferbrache  
President

H J R Soulsby  
Vice President

M A J Helyar  
J P Le Tocq  
D J Mahoney

### **Committee *for* Home Affairs**

R G Prow  
President

S P J Vermeulen  
Vice President

M P Leadbeater  
C J Le Tissier  
A W Taylor

## APPENDIX 1 – CHANGES SINCE THE CREATION OF THE FUND

### Legislation

Since 1995, in line with the evolution of international standards on financial crime, a number of key pieces of legislation governing asset recovery have come into force, as noted below:

- Domestic confiscation orders in drugs cases – s2 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (this replaced precursor drug trafficking legislation that was in force at the time of the creation of the Fund);
- Domestic confiscation orders in non-drugs cases – s2 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
- Domestic confiscation and civil forfeiture powers in terrorism cases – sections 18 and 19 respectively of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
- Domestic civil forfeiture orders in all kinds of criminal case – s13 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007;
- Overseas confiscation orders in all kinds of criminal case enforced under s49 of the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 and s35 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 respectively;
- Overseas confiscation and civil forfeiture powers in terrorism cases – sections 18 and 19 respectively of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002;
- Overseas civil forfeiture orders in all kinds of criminal case enforced under s49 of the Forfeiture of Money etc. in Civil Proceedings (Bailiwick of Guernsey) Law 2007.

In addition to these enactments that have a direct bearing on the Fund, the Police Property and Forfeiture (Bailiwick of Guernsey) Law 2006 is relevant to asset recovery more widely. It provides for property that comes into the possession of the police through lawful investigation or property used in or derived from an offence to be forfeited and the Police (Property) Regulations 2010 provide, inter alia, for the establishment of the Police Property Law Fund into which the proceeds of the sale of property are paid and administered by the Committee for Home Affairs.

The effect of these various changes is two-fold. First, the proceeds of crime generally, rather than just the proceeds of drug trafficking, may now be seized and confiscated. Second, this may be done without the need for a criminal conviction.

### Operational changes and international engagement

Since 1995 there have been a number of operational changes, in many cases to keep pace with international standards.

Looking first at law enforcement, 2009 saw the creation of the Financial Investigation Unit, which comprised the Financial Intelligence Service (jointly staffed by Guernsey Police and Guernsey Border Agency staff), the Financial Criminal Team and the Civil Forfeiture Team. This was followed not long afterwards by the creation of the Economic Crime Division and new post of Head of Economic Crime.

On the Law Officers' side, in 2010 the first specialist Economic Crime Prosecutor was appointed. A second Economic Crime Prosecutor was appointed in 2020. In 2015, HM Procureur announced the creation of a multi-disciplinary International Cooperation and Asset Recovery team ('ICART'). This was a new pilot project set up in conjunction with law enforcement and it represented a £2 million investment from the Fund. ICART was intended primarily to help undertake proactive asset recovery measures and it is currently investigating cases with a potential asset recovery value in excess of the original £2 million set up costs.

Representatives from the two organisations have made significant contributions to a range of international initiatives dealing with asset recovery and are recognised internationally for their expertise in this area. Initiatives and bodies in which they have participated include -

- The Stolen Asset Recovery Initiative developed jointly by the World Bank and the United Nations Office on Drugs and Crime World Bank
- The Camden Asset Recovery Inter-Agency Network
- The Egmont group of Financial Intelligence Units
- The Arab Forum on Asset Recovery
- The Ukraine Forum on Asset Recovery

### International Developments

The key international instruments on asset recovery are the United Nations Convention against Corruption (UNCAC) and the Financial Action Task Force (FATF) Recommendations on Combating Money Laundering and the Financing of Terrorism.

UNCAC was extended to the Bailiwick in 2009. Article 31(3) requires States parties to adopt, in accordance with their domestic law, such legislative and other measures as

may be necessary to regulate the administration by the appropriate authorities of frozen, seized or confiscated property covered by the Convention.

In 2012, the FATF Recommendations were revised to include a specific requirement for jurisdictions to have in place mechanisms for, among other things, managing and disposing of confiscated property.

In addition to these requirements, a number of international bodies have issued relevant guidance. This includes –

- the Group of Eight Guidelines, a high level document concerning Best Practices for the Administration of Seized Assets guide;
- the Stolen Asset Recovery Initiative developed jointly by the World Bank and the United Nations Office on Drugs and Crime;
- the Global Forum on Asset Recovery Principles for the Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases;
- the FATF Guidance on Best Practices on Confiscation and Framework for Ongoing Work on Asset Recovery.

Also, at EU level, the EU has adopted secondary legislation to harmonise developments concerning cooperation between asset recovery agents in its Member States (e.g. EU Decision 2007/845/JHA and the later Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime).



**Committee *for*  
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21<sup>st</sup> January 2021

Dear Sir

**Election of a Non-Voting member of the Committee *for* Home Affairs**

The Committee *for* Home Affairs is permitted by the terms of its constitution to elect up to two non-voting members who shall not be sitting Members of the States.

I am pleased to inform you that Mr Peter Harwood was elected as non-voting member of the Committee *for* Home Affairs on 20<sup>th</sup> January 2021.

Prior to the election, the Committee was provided with a completed Declaration of Interest and Declaration of Unspent Convictions by each candidate in accordance with Rule 46(2). The Committee is satisfied that the appointment of these persons would not lead to a conflict of interest, or if there was potentially one, it could be managed. The Committee will be lodging the Declarations with the States Greffier.

The Committee would be grateful if you could arrange this letter to be published as an appendix to a future Billet d'État in accordance with Rule 46(2).

Yours faithfully

**Deputy Rob Prow**  
President  
Committee *for* Home Affairs