



BILLET D'ÉTAT

WEDNESDAY, 19th OCTOBER, 2022

XVIII
2022

ELECTIONS AND APPOINTMENTS

Appointment laid before the States

Appointment of a Chairman of the Guernsey Competition and Regulatory Authority

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2. Committee *for* Economic Development - Low Value Debt Relief, P.2022/72

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Legislation laid before the States

The Income Tax (Independent Taxation) (Commencement and Transitional Provisions) Regulations, 2022

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Committee *for* Economic Development – Public Trustee Annual Report and Audited Accounts for the Year ended 31 December 2021

BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY the 19th OCTOBER, 2022 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

4th October, 2022

APPOINTMENT LAID BEFORE THE STATES OF DELIBERATION

APPOINTMENT OF CHAIRMAN OF THE GUERNSEY COMPETITION AND REGULATORY AUTHORITY

In accordance with paragraph 1(4A) of Schedule 1 to the Guernsey Competition and Regulatory Authority Ordinance, 2012, as amended, the following appointment by the Committee *for* Economic Development, to the Guernsey Competition and Regulatory Authority, is laid before the States of Deliberation:

- Mr. John Curran as chairman with effect from 6th September 2022.

Mr. Curran has been appointed as chairman until 5th September 2023.

The States of Deliberation have the power to annul the appointment.

The Committee *for* Economic Development has concluded that Mr. Curran is suitable to be chairman of the Guernsey Competition and Regulatory Authority.

A summarised version of the curriculum vitae of Mr. Curran is provided below.

Mr. John Curran

	Position/company:	Dates:
Career:	Independent consultant.	2012-current.
	Chief Executive, Channel Islands Competition and Regulatory Authority.	2010-2012.
	Director General, Office of Utility Regulation (Guernsey).	2005-2010.
	Deputy Director and Director of Regulation, Office of Utility Regulation (Guernsey).	2003-2005.
	Regulatory Advisor, Telstra Corporation (Sydney).	2002-2003.
	Manager of Operations Division, Commission for Communications Regulation (Comreg) (Dublin).	1997-2001.
	Irish Civil Service.	1990-1997.
Professional qualifications:	Diploma in Company Direction, Institute of Directors.	2010.
	Certificate in Electronic Engineering, Galway Institute of Technology.	1990.
Current/recent Non-Executive Directorships	Chairman, Guernsey Employment Trust.	2021-current.
	Board Member, Guernsey Data Protection Authority.	2018-current.
	Ordinary member, Guernsey Competition and Regulatory Authority.	2018-current.
	Non-Executive Director, Channel Islands Financial	2014-2022.

Services Ombudsman.

Non-voting member, Guernsey Transport Licensing Authority. 2016-2019

Chairman, Guernsey Mind LGB. 2013-2019

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE* ENVIRONMENT & INFRASTRUCTURE

ENVIRONMENTAL POLLUTION (GUERNSEY) LAW, 2004
PART VI – WATER POLLUTION
SUPPLEMENTARY POLICY LETTER

The States are asked to decide whether, after consideration of the Policy Letter entitled "Environmental Pollution (Guernsey) Law, 2004, Part VI – Water Pollution – Supplementary Policy Letter", dated 18th August 2022, they are of the opinion:

1. To approve the amended maximum limits for the concentration of pollutants in surface water and groundwater as set out in Part I of Table 1 in Appendix 1, Part A to the policy letter.
2. To approve:
 - a. the changes to the categories of polluting works or other activities having to comply with listed requirements, breach of which will be an offence, from the broad works and other activities currently requiring a permit under the States Water Supply (Prevention of Pollution) Ordinance, 1966 to more specific works or other activities considered to give rise to a particular risk of water pollution as further detailed in paragraph 5 of, and Appendix 1, Part B to, the policy letter; and
 - b. that the Director of Environmental Health and Pollution Regulation has a power by Regulations to amend the list of polluting works and other activities and the related technical requirements.
3. To approve giving the Director of Environmental Health and Pollution Regulation a power in the new water pollution legislation, to take action to deal with water pollution, or a risk of the same, where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice, so as to replace the current equivalent power held by the States' Trading Supervisory Board which will be repealed when the new water pollution legislation comes into force, as further detailed in paragraph 6 of the policy letter.

4. To rescind resolution 1(e) of the 1st November, 2012 following Article VI of Billet d'État No XX1 of 2012, relating to providing an exemption from the licensing requirement under the Food and Environmental Protection Act 1985.
5. Only if propositions 1 to 4 have been approved, to approve the draft Ordinance entitled "The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022", as set out in Appendix 2 to the policy letter and to direct that the same shall have effect as an Ordinance of the States.
6. Only if propositions 1 to 5 have been approved, to approve the draft Ordinance entitled "The Environmental Pollution (Water Pollution) Ordinance, 2022", as set out in Appendix 3 to the policy letter and to direct that the same shall have effect as an Ordinance of the States.

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)(c) of the Rules of Procedure of the States of Deliberation and their Committees.

EXPLANATORY MEMORANDUM

The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022

This Ordinance commences Part VI (Water Pollution) of the Environmental Pollution (Guernsey) Law, 2004 on 3rd October, 2022. Some of the provisions of the Environmental Pollution (Water Pollution) Ordinance, 2022 are made under Ordinance powers under Part VI.

Part VI also contains substantive provisions relating to water pollution including certain definitions relevant to water pollution and enforcement powers for the Director of Environmental Health and Pollution Regulation in relation to water pollution; these include powers to take samples and serve anti-pollution notices and a definition of the water catchment area which replace comparable provisions in the Prevention of Pollution (Guernsey) Law, 1989 which is to be repealed when Part VI comes into force.

The Water Pollution (Guernsey) Ordinance, 2022

This Ordinance is the third main Ordinance under the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law") and modernises water pollution legislation in Guernsey. Earlier Ordinances under the 2004 Law were made in 2010 in relation to regulation of waste operations and in 2019 in relation to activities likely to result in air pollution. The Ordinance provides for the first time for the licensing of discharges of trade effluent or sewage effluent

into inland waters or the sea and the establishment of water quality standards for surface water and groundwater. It also repeals and replaces the current legislation controlling water pollution under the Prevention of Pollution (Guernsey) Law, 1989 ("the 1989 Law") and makes consequential amendments to other legislation under the 2004 Law. A contravention of a provision of the Ordinance or the carrying on of an activity prescribed as requiring a licence, other than in accordance with a licence, is an offence under section 66, and may result in an offence under section 65, of the 2004 Law.

Section 1(1) prescribes the discharge of sewage effluent or trade effluent into the sea or other waters as operations requiring a licence from the Director of Environmental Health and Pollution Regulation ("the Director") under the 2004 Law subject to certain exclusions. The exclusions include a discharge made in the course of carrying on an activity regulated under section 4 and operations given an exemption from licensing by the Director; those given an exemption will include discharges falling within section 1(1) of the Ordinance which require a licence under the Food and Environment Protection Act 1985 as extended to the Bailiwick; that Act requires a licence, subject to exceptions, for deposits of substances in particular from ships and marine structures into the sea although in practice it is unlikely there would be deposits of sewage effluent or trade effluent from the same in Guernsey. There is a transitional provision in section 12 and Schedule 5 which provides for persons making discharges prescribed under section 1 when the Ordinance comes into force to be treated as licensees provided that they make an application for a licence to the Director within two months of the commencement of section 1.

Section 2 applies certain licensing provisions set out in the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010 to the operations prescribed under section 1(1).

Section 3 and Schedule 1 establish standards for water quality for surface water and groundwater comprising maximum limits for the concentration of listed pollutants in those waters and characteristics which those waters are required to have.

Section 4 regulates activities which are considered likely to present a threat of water pollution but not to require a licence under the 2004 Law. A person must not carry on the activity unless he or she complies with all the requirements for that activity set out in Schedule 2. Section 4 replaces current requirements for permits from the States Trading Supervisory Board (Guernsey Water division) under the States Water Supply (Prevention of Pollution) Ordinance, 1966 for activities within the water catchment area including erection of buildings, construction of works, installation of oil-fired boilers and related equipment and use of premises for carrying on of a trade or business where trade effluent may be discharged. The scope of activities has been changed to cover those in all locations and to give more exact descriptions of activities giving rise to a threat of water pollution.

Section 5 prohibits a person from causing or permitting the contravention of a standard specified under section 3 and from causing or permitting the occurrence of water pollution or the risk of the same. The second prohibition replaces the current, very similar prohibition in section 1 of the 1989 Law. Section 9 sets out defences to offences concerning contraventions of the prohibitions in sections 4 and 5.

Part V and Schedules 3 and 4 provide for consequential amendments and a modification to the enforcement provisions made under the 2004 Law, consequential on the new Ordinance being made and Part VI of the Law relating to water pollution being commenced. Schedule 3 in particular adds provisions to the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019 concerning the content of enforcement notices relating to breaches under the Law in relation to water pollution. It also adds a new section 9A to that Ordinance to give the Director power to take action himself in certain circumstances where action needs to be taken without delay or no person can be found on whom to serve a notice. This will replace the broadly similar power currently held by the States' Trading Supervisory Board under section 7(1) of the 1989 Law except that it will also apply outside the water catchment area.

Part VI makes standard general provisions including the interpretation and repeal provisions.

The Ordinance comes into force on 3rd October, 2022 except for section 4 and certain related provisions which come into force six months later on 3rd April, 2023.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR THE ENVIRONMENT & INFRASTRUCTURE*

ENVIRONMENTAL POLLUTION (GUERNSEY) LAW, 2004
PART VI – WATER POLLUTION
LEGISLATION AND SUPPLEMENTARY POLICY LETTER

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

18th August 2022

Dear Sir

1 Executive Summary

- 1.1 This supplementary Policy Letter seeks approval for amendments to the proposals agreed in November 2012, when the States of Deliberation directed the drafting of legislation proposed to modernise Water Pollution legislation¹. The current legislation in force dates from 1989 or earlier and provides for no standards for the Island's water resources.
- 1.2 The drafting directed included amendments to Part VI of the Environmental Pollution (Guernsey) Law, 2004 ("2004 Law"), in particular to confer functions in relation to regulation of water pollution on the Director of Environmental Health and Pollution Regulation and to extend enforcement powers in relation to water pollution from the water catchment area to the whole island. These amendments were drafted as part of the Environmental Pollution (Guernsey) (Amendment) Law, 2015 and took effect at the end of that year. Although the amendments were made, Part VI was not brought into force as the other legislation directed needs to be in force at the same time before the water pollution legislation currently in force is repealed.

¹ See Article VI of Billet d'État No. XXI of 2012.

1.3 The other drafting directed included:

- the establishment of standards for the Island's water resources. Those standards were listed in the Director's report attached to the Policy Letter (the Director's report)²;
- replacing the permitting and other provisions under the current Prevention of Pollution (Guernsey) Law, 1989 ("1989 Law") with provisions requiring the same to comply with listed requirements breach of which would be an offence³; and
- providing for an exemption for licensing requirements under the Food and Environment Protection Act 1985, as extended to Guernsey, to avoid a need for two licences when operations giving rise to a risk of water pollution are prescribed as requiring a licence under the directed legislation⁴.

2 The Proposed Changes

2.1 The principle of the above proposals remains the same but this policy letter seeks approval for the following changes on points of detail identified in the drafting process:

- amendments to the maximum limits for the concentration of pollutants in surface water and ground water to meet concerns raised by Guernsey Water to adapt the proposed limits to local circumstances and, given the passage of time, following a review by the Director of Environmental Health and Pollution Regulation (the Director) of limits in other jurisdictions;
- changes to the potentially polluting works or activities having to meet listed requirements, the breach of which would be an offence, from those currently requiring a permit under the 1989 Law (Schedule 2 activities);
- giving the Director a power to enter premises to take action to deal with water pollution or a risk of the same where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice; there is a similar power held by the STSB (Guernsey Water) under the current 1989 Law⁵ but only in the water catchment area. It is proposed this power could be

² See resolution 1(c) following the debate.

³ See resolution 1(g) following the debate.

⁴ See resolutions 1(d) and (e) following the debate.

⁵ See section 7(1).

exercised island wide consistent with the other amendments already made to the 2004 Law in 2015; and

- rescinding resolution 1(e), following the 2012 debate, in relation to an exemption from licensing requirements under the Food and Environment Protection Act 1985 (as extended to Guernsey with modifications) whilst still achieving the policy aim of avoiding double licensing remains under existing legislative provisions.

2.2 This policy letter also provides details on the proposed:

- statutory guidance to be issued to those carrying on potentially polluting works or activities which do not require a licence under the 2004 Law but have to meet the requirements listed in the legislation; and
- the later commencement of this Part of the legislation to give people more time to make practical arrangements to meet the listed requirements.

3 The Ordinances

3.1 As the principle of the water pollution legislation was approved and the drafting directed in 2012, approval of the policy for the amendments and approval of the Ordinances are being sought at the same time as set out in paragraph 5.1 of the Directive relating to submission of propositions to the States⁶. The proposed draft Ordinances are attached to the Policy Letter at Appendices 2 and 3.

3.2 The Ordinances provide for:

- Commencement of the Water Pollution Part of the 2004 Law as directed under the 2012 policy⁷; and
- The main water pollution provisions directed in 2012 and as proposed to be amended.

3.3 This Policy Letter is being brought to the Assembly by the Committee *for the Environment & Infrastructure* (CfE&I). Although the Director of Environmental Health and Pollution Regulation is the independent statutory official appointed to carry out the functions, exercise the powers and perform the regulatory functions

⁶ See Directive No. I of 2021 issued by the States' Greffier.

⁷ Resolution 1(b) following the 2012 debate.

under the 2004 Law, CfE&I has the policy mandate for the protection of the natural environment.

4 Proposed Amendments to the Standards for the Island's Water Resources

- 4.1 A technical overview of the amendments is provided in Appendix 1, Part A; the parameters that have been included have been done based on a locally-focused risk assessment, taking into account local activities, water source characteristics and drinking water treatments. Parameters have largely been kept the same but some have been removed (where their inclusion was out-dated, unnecessary or based on drinking water standards rather than environmental standards).
- 4.2 The draft legislation provides powers to the Director (as per the 2012 policy) to amend by Regulations the Water Quality Standards for Surface Water and Groundwater. This will allow any new pollutants to be added to the table of maximum limits or amendments to be made to the limits, as necessary, including to reflect scientific progress or technical developments.

5 Additional categories of potentially polluting works or activities which must comply with listed requirements

- 5.1 The Director's report and 2012 resolutions stated that the States Water Supply (Prevention of Pollution) Ordinance, 1966 and the 1989 Law would be repealed with the permitting provisions they contained being replaced under the new legislation.
- 5.2 It is proposed that the categories of potentially polluting works in the new legislation are more specifically worded than those in the 1966 Ordinance, in order to identify works or other activities considered to raise a particular risk of water pollution, whilst still covering most of the activities currently requiring a permit. This approach aligns with the 2012 policy and similar provisions within UK water pollution legislation (whilst being Guernsey-specific). Details of the proposed changes are provided in Appendix 1, Part B.
- 5.3 It is proposed that activities are covered anywhere on the island and not just in the water catchment area (consistent with the 2012 policy) and that potentially polluting activities carried on by any party are included (not being limited to trade or business activities) in order to be able to address more diverse risks of pollution to any of the island's water bodies.
- 5.4 Discharges of trade effluent or sewage effluent giving rise to the greatest risk of water pollution are prescribed in the main draft Ordinance as requiring a licence

from the Director under the 2004 Law⁸. This reflects resolution 1(d) following the 2012 debate. Certain other works or activities, which give rise to significant risk of water pollution, but are considered not to require control by licence, must instead meet listed requirements set out in Schedule 2 of the draft Ordinance⁹ ("Schedule 2 activities").

5.5 It is also proposed that the Director has a power to amend Schedule 2 setting out the works or other activities and relevant requirements by Regulations, in view of its technical nature.

5.6 The Committee recommends that the States approves the above proposals in relation to controls on potentially polluting works or other activities which will not require a licence under the 2004 Law.

6 Power for Director to take action to deal with water pollution or the risk of the same

6.1 During the drafting stage, it was identified that the Water Pollution Part of the 2004 Law does not include an equivalent to the current power of STSB (Guernsey Water) to enter premises to take action to protect the island's water resources against water pollution or the risk of the same. This power currently only applies in the water catchment area and will be repealed when the new Ordinance comes into force¹⁰.

6.2 Therefore, it was considered that a similar power needed to be given to the Director to enter premises to take action to deal with water pollution or a risk of the same where works need to be carried out without delay or no person can be found on whom to serve an enforcement notice. As in the current provision in the 1989 Law, it is proposed that the States have a power to recover expenses incurred by the States in the Director taking such action from the person who caused or permitted the relevant water pollution or risk of the same.

6.3 Consistent with the 2012 policy, it is proposed that such provisions apply to the whole island and not just in the water catchment area¹¹. The Committee therefore proposes that the States approve adding these provisions to the enforcement provisions in the legislation.

⁸ See section 1 of the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

⁹ See section 4 and Schedule 2 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

¹⁰ See section 7(1) of the 1989 Law.

¹¹ See Schedule 3 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022, paragraph 4.

7 Avoiding a need for two licences under the 2004 Law and the Food and Environment Protection Act 1985 as extended to the Bailiwick

- 7.1 The 2012 policy identified that a licence might be required for a deposit of a substance into the sea under the Food and Environment Protection Act 1985 ("FEPA") as extended with modifications to the Bailiwick and for a discharge prescribed as requiring a licence under the new water pollution Ordinance.
- 7.2 Resolution 1(e), following the 2012 debate therefore, approved the proposal to provide an exemption from the licensing requirements under FEPA for operations depositing substances into the sea, within the territorial waters, which are prescribed under the new Water Pollution Ordinance.
- 7.3 The policy aim of avoiding a need for two licences remains the same but during the drafting process it was decided that it would be preferable to do this by means of providing for an exemption from the licensing requirements under the 2004 Law for a deposit also requiring a licence under FEPA.
- 7.4 The main reasons for this are:
- that FEPA applies throughout the Bailiwick and implements international conventions relating to dumping at sea so that it is preferable to maintain a uniform approach throughout the Bailiwick; and
 - the Provisions in the Water Pollution part of the 2004 Law assume that FEPA will operate alongside the licence requirements under the 2004 Law so that this approach is more consistent with the 2004 Law¹². In particular, the Committee *for* Health and Social Care, will have to comply with the duties in section 47 of the 2004 Law when carrying out its FEPA licensing functions including a requirement to act generally with a view to promoting the purposes and objectives of the 2004 Law and to consult with the Director.
- 7.5 Therefore, the Committee proposes that Resolution 1(e), following the 2012 debate is rescinded as double licensing will be avoided by an exemption from the licensing requirement under the 2004 Law using current Regulation making powers of the Director.

¹² See in particular section 47 of the 2004 Law.

8 Transitional arrangements and guidance

- 8.1 To provide businesses and members of the public with an opportunity to be fully informed and make practical arrangements it is proposed that the parts of the Water Pollution Ordinance relating to Schedule 2 activities are not commenced until 6-months after the rest of the Ordinance. During this six-month period the States Water Supply (Prevention of Pollution) Ordinance, 1966 will remain in force to provide for some regulation of the activities requiring a permit under it.
- 8.2 To assist those affected, the Director proposes to issue guidance on the listed requirements. There was a consultation with the DPA, Guernsey Water and oil providers on the requirements in relation to oil installations and with the States Vet on activities affecting farming and horticulture.
- 8.3 This guidance is intended to assist both businesses and members of the public to ensure that there is a clear understanding of the nature and extent of the requirements that have to be met to prevent water pollution in relation to the activities listed in the schedule. There will also be non-statutory guidance on the proposed approach to enforcement which will be in line with best practice including a proportionate approach.

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):
- a) The Propositions contribute to the States' objectives and policy plans by discharging the Government Work Plan priority of 'meeting international standards' and CfE&I's policy mandate for the protection of the natural environment.
 - b) In preparing the Propositions, consultation has been undertaken with Guernsey Water, the Development and Planning Authority, the States Analytical Laboratory, the States Vets, local oil providers and the Law Officers of the Crown.
 - c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.

- d) The financial implications to the States of carrying the proposals into effect are detailed within sections 9.4 – 9.8 below.

9.3 In accordance with Rule 4(2):

- a) The propositions relate to the purpose and policy responsibilities of CfE&I, as the Committee with the policy mandate for the protection of the natural environment.
- b) The propositions have the unanimous support of the Committee.

9.4 In accordance with Rule 4(1)(d), it is confirmed that the position remains as stated at paragraph 10 of the 2012 Policy Letter i.e. that licence fees will cover the costs of the new prescribed operations relating to discharges of trade effluence or sewage effluent and the costs of administering other new provisions would be met from normal departmental budgetary allocations.

9.5 However, it is recognised that the implementation of the proposed Ordinances will result in new legal requirements for the Director of Environmental Health and Pollution Regulation ("the DEHPR") to administer and it will generate considerable extra workload requiring additional staff time. The DEHPR must be able to administer and enforce the Water Pollution Ordinance once it has come into effect, but the DEHPR currently does not have the staff resources to be able to do so alongside his other functions and other functions carried out by the same officers at the Office of Environmental Health and Pollution Regulation.

9.6 Failing to have qualified and competent staff in place ready to discharge the duties required by the 2004 Law could lead to detrimental impacts on the environment and failure to discharge statutory duties with associated reputational damage both to the DEHPR and the States of Guernsey and also to increased risk of challenge by way of judicial review. One officer was recruited to discharge the Waste functions when they were enacted in 2010 but no other staff were appointed in relation to the Air Pollution functions. The DEHPR is in the process of submitting a request for a new full time equivalent (FTE) post to discharge Environmental Pollution (EP) functions, with a focus or specialism relating to the water environment.

9.7 Licence fees are charged for applications in relation to prescribed operations under the 2004 Law (prescribed under Waste and Air Pollution Ordinances) and additional fees will be collected for applications in relation to operations prescribed under the Water Pollution Ordinance. Annual licences fees are also charged for existing prescribed operations other than waste transport operations to cover the cost of

monitoring and enforcement of licences.

- 9.8 Having considered various options the DEHPR proposes to use the licensing income received (in a transparent form) to offset the wages of the staff that discharge all of the EP functions; fee income would only be used to the extent it reflects work carried out by staff on the relevant types of licence. EP licence fee money is proposed to be used to offset the cost of a new FTE (although the money will be used to counterbalance the resources expended by multiple officers to carry out EP work).
- 9.9 In the event that additional resources are required at a later stage to discharge the functions under the legislation then consideration will be made as to whether changes can be made to the fees that are levied for work in relation to licence applications or whether new fees should be charged for other work. It is also noted that the Policy & Resources Committee has a duty under section 4(2) of the 2004 Law to "ensure that adequate resources are provided for the DEHPR so that he may carry out the functions, exercise the powers and perform the duties created or arising under the Law" and the DEHPR has legal provision to request this funding through the standard States' financial and budgeting arrangements.

Yours faithfully

H L de Sausmarez
President, CfE&I

Sam Haskins
Vice-President, CfE&I

A Cameron
S Fairclough
A Gabriel
Members, CfE&I

Appendix 1 – Technical Annex Detailing Certain of the Proposed Amendments

Part A

Proposed Amendments to the Standards for the Island's Water Resources

Resolution 1(c) following the debate on the 2012 Policy Letter approved proposals to “set standards for the Island's water resources as set out in Appendix 2” of the Director's report.

During the drafting process new staff at Guernsey Water raised concerns regarding the approved standards and considered that the maximum limits specified for certain pollutants required adjustment for the particular circumstances in Guernsey. The Director then decided to review the approved standards including consideration of standards for surface water and groundwater in other jurisdictions.

Guernsey Water and the States Analytical Laboratory were consulted on the amendments to the standards and comments and their views were considered when making the amendments.

Table 1 sets out the proposed revised maximum limits for the concentration of pollutants in surface water and groundwater (Part I). Part II shows the required characteristics for surface water and groundwater which are unchanged from those approved in 2012. The notes at the end of the Table explain the changes made to the maximum limits from those approved in 2012 following the comprehensive review by the Director¹³.

In summary amendments are proposed –

- i. to remove certain proposed limits in particular where those pollutants are unlikely to give rise to significant water pollution locally; and
- ii. to change certain limits specified having had regard to changes in limits in other jurisdictions.

The 2012 policy proposed that the Director would be given a power to amend by Regulations the Water Quality Standards for Surface Water and Groundwater. This will allow any new pollutants to be added to the table of maximum limits or amendments to be made to the limits, as necessary, including to reflect scientific progress or technical developments¹⁴. It should also be highlighted that any pollutant that is present in ground or surface water that presents a significant risk of water pollution can be addressed using the

¹³ See Part I of Schedule 1 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022.

¹⁴ See Part I of Schedule 1 to the draft Environmental Pollution (Water Pollution) Ordinance, 2022 and paragraph 22 and Appendix 2 to the 2012 Director's report.

enforcement provisions under the Law irrespective of whether it is a pollutant for which a maximum limit is specified.

The Committee recommends that the States approve the amended maximum limits for the concentration of pollutants in surface water and groundwater as set out in Part I of Table 1.

Table 1 – Water Quality Standards for Surface Water and Groundwater

Part I – Maximum Limits for the Concentration of Pollutants in Surface Water and Groundwater

Pollutant	Unit of measurement	Standard relating to concentration of pollutant in surface water or groundwater
Aluminium	µg/l	150
Ammonium (as Nitrogen)	mg/l	0.29
Benzene	µg/l	0.75
Cadmium	µg/l	3.75
Chloride	mg/l	188
Chlorine	mg/l	0.5
Chromium	µg/l	37.5
Copper	µg/l	1500
Ethylbenzene	µg/l	300
Fluoride	mg/l	1.13
Glyphosate	ug/l	0.075
Lead	µg/l	7.5
Manganese	mg/l	0.1
Mercury	µg/l	0.75
Nickel	µg/l	15
Nitrate (as NO ₃)	mg/l	42
Perfluorooctanoic acid (PFOA)	µg/l	1
Perfluorooctane sulphonate (PFOS)	µg/l	1

Pesticides individual	µg/l	0.075
Pesticides total (including glyphosate)	µg/l	0.4
Radiation: gross alpha	Bq/l	0.1
Radiation: gross beta	Bq/l	1
Sodium	mg/l	150
Sulphate	mg/l	188
Surfactants (reacting with methyl blue)	mg/l	0.2
Total organic carbon	mg/l	5
Toluene	µg/l	40
Total iron	mg/l	1

Part II – Required Characteristics for Surface Water and Groundwater

Required characteristic	Unit of Measurement	Standard for required characteristic
Biochemical oxygen demand (5 day test)	mg O ₂ /l	3
Colour	mg/1 Pt/Co	50
Chemical oxygen demand, permanganate method	mg O ₂ /l	7
Conductivity	µS/cm	1250
Dissolved oxygen	mg O ₂ /l	7 (minimum)
Odour	Natural odour	Natural odour
Oil products (total)	mg/1	No visible film
pH	pH	6.5-8.5
Turbidity	NTU	20
Water temperature	°C	Natural temperature variations

Notes to Table 1, Part I – Amendments to original Policy Letter

Parameter / substance	Unit	Level	Retained / removed / amended	Reason
Aluminium	µg/l	150	Retained	In line with WFD ¹⁵ & UK groundwater standards
Ammonium (as N)	mg/l	0.29	Retained	In line with WFD & UK groundwater standards
Anthracene	µg/l	N/A	Removed	Unlikely to be an issue locally
Arsenic	µg/l	N/A	Removed	Only naturally occurring and not a local issue
Benzene	µg/l	0.75	Retained	In line with WFD & UK groundwater standards
Boron	µg/l	750	Removed	Only naturally occurring and not a local issue
Bromate	µg/l	N/A	Removed	Unlikely to be an issue locally
Bromine	mg/l	N/A	Removed	Will be included in pesticide analysis
Cadmium	µg/l	3.75	Retained	In line with WFD & UK groundwater standards
Chloride	mg/l	188	Retained	In line with WFD & UK groundwater standards
Chlorine	mg/l	0.5	Retained	Drinking water leaves the main at a level of 1 mg/l. Included as not naturally occurring
Chromium	µg/l	37.5	Retained	In line with WFD & UK groundwater standards
Coliforms faecal	No./100 ml	N/A	Removed	Naturally occurring and may relate to the natural environment. The presence related to sewage contamination (or similar) can be addressed through enforcement provisions
Coliforms total	No./100 ml	N/A	Removed	Naturally occurring and may relate to the natural environment. The presence related to sewage contamination (or similar) can be

¹⁵ Directive 2000/60/EC of the European Parliament and of the Council of 23rd October, 2000 establishing a framework for Community action in the field of water policy as amended – the ‘Water Framework Directive’ (WFD)

				addressed through enforcement provisions
Copper	µg/l	1500	Retained	In line with WFD & UK groundwater standards
Dichloromethane	µg/l	N/A	Removed	Unlikely to be an issue locally
Ethylbenzene	µg/l	300	Retained	Found in petrol, insecticides, paint, ink etc. and included as precautionary measure
Fluoranthene	µg/l	N/A	Removed	Unlikely to be an issue locally
Fluoride	mg/l	1.13	Retained	In line with WFD & UK groundwater standards
Glyphosate*	µg/l	0.075	Retained	Included in original policy letter as an individual pesticide; due to local circumstances individually listed for absolute clarity
Lead	µg/l	7.5	Retained	In line with WFD & UK groundwater standards
Manganese	mg/l	0.1	Retained	Naturally occurring and retained from original Policy Letter
Mercury	µg/l	0.75	Retained	In line with WFD & UK groundwater standards
Naphthalene	µg/l	N/A	Removed	Unlikely to be an issue locally
Nickel	µg/l	15	Retained	In line with WFD & UK groundwater standards
Nitrate (as NO ₃)	mg/l	42	Retained and amended	To account for varying levels across the island
Perfluorooctanoic acid (PFOA)**	µg/l	1	Retained and amended	Reflects DWI levels (see additional note)
Perfluorooctane sulphonate (PFOS)**	µg/l	1	Retained and amended	Reflects DWI levels (see additional note)
Pesticides individual (i)(ii)	µg/l	0.075	Retained	Potential local risk due to collection in drinking water catchment area
Pesticides total (iii)	µg/l	0.4	Retained	Potential local risk due to collection in drinking water catchment area
Phenol	µg/l	N/A	Removed	Unlikely to be an issue locally
Phosphate	µg/l	N/A	Removed	Unlikely to be an issue locally

Radiation: gross alpha	Bq/l	0.1	Retained and amended	In line with Private Water Supply (England) Regulations 2016
Radiation: gross beta	Bq/l	1	Retained and amended	In line with Private Water Supply (England) Regulations 2016
Sodium	mg/l	150	Retained and amended	In line with WFD & UK groundwater standards
Sulphate	mg/l	188	Retained	In line with WFD & UK groundwater standards
Surfactants (reacting with methyl blue)	mg/l	0.2	Retained	In line with original Policy Letter
Suspended solids	mg/l	N/A	Removed	Unlikely to be a local issue
Total organic carbon	mg/l	5	Retained	In line with original Policy Letter
Toluene	µg/l	40	Retained and amended	In line with UK Technical Advisory Group (UKTAG) lowest proposed PNEC (predicted no-effect concentration) level
Total iron	mg/l	1	Retained	Naturally occurring and in line with original Policy Letter
Tritium	Bq/l	N/A	Removed	Unlikely to be a local issue
Xylene	µg/l	N/A	Removed	Unlikely to be a local issue
Zinc	µg/l	N/A	Removed	Unlikely to be a local issue

*Whilst individual and total pesticide levels have been set (0.075µg/l and 0.4µg/l respectively), glyphosate has been included separately (in line with 2012 proposals) to recognise the impact that this specific pesticide has locally and to allow this parameter to be amended in isolation (as necessary) via the Director's powers should this be locally proportionate. It is noted that this level has been set in accordance with the individual pesticide limit, rather than a lower level or a zero tolerance, in line with the Director of Environmental Health and Pollution Regulation's risk assessment, with support by Guernsey Water and in line with the 2019 States policy direction (<https://www.gov.gg/article/169722/States-Meeting-on-16-October-2019-Billet-dtat-XIX--XX>). From 31 October 2022 retailers will no longer be able to sell products containing glyphosate for use in the garden or as an amateur product therefore the local risk should be reduced but inclusion of this parameter facilitates future amendments as necessary and proportionate. Pesticides individual and pesticides total levels have been set in accordance with the original Policy Letter and incorporate a local reduction (based on the UK drinking water standard) due to the sensitivity of water collection in the drinking water catchment area.

**Perfluorooctanoic acid (PFOA), Perfluorooctane sulphonate (PFOS) notes: it should be noted that the levels for PFOA and PFOS have been determined taking into account advice from the UK Technical Advisory Group which states that "the concentration in groundwater below which the danger of deterioration in the quality of the receiving groundwater is avoided is an annual mean of 1 µg/l". This level also aligns with that provided by

the Drinking Water Inspectorate within the Guidance on the Water Supply (Water Quality) Regulations 2016 specific to PFOS (perfluorooctane sulphonate) and PFOA (perfluorooctanoic acid) concentrations in drinking water. The environmental quality standards (EQS) for priority substances and other pollutants used to clarify chemical status stipulates a level for inland surface waters of 0.00065 µg/l. The annual average EQS for PFOS is based on secondary poisoning (humans eating fish) rather than ecotoxicity, due to the potential for PFOS to bio accumulate in the food chain. This level has not been adopted as a groundwater standard as the impact on drinking water is more relevant. Regulatory levels for PFOS and PFOA are continuing to evolve globally and therefore the Director will continue to closely monitor other jurisdictions in relation to PFOA and PFOS levels and ensure that the Water Quality Standards for Surface Water and Groundwater of the Environmental Pollution (Water Pollution) Ordinance, 2022 are amended by Regulations made by the Director where necessary and appropriate.

Part B

Proposed Amendments to Schedule 2 Activities

The current States Water Supply (Prevention of Pollution) Ordinance, 1966, which has effect as if it had been made under the 1989 Law, prohibits a wide range of works and other activities not to be carried out in the water catchment area except in accordance with a permit issued by the STSB (Guernsey Water).

Resolution 1(g) following the 2012 States debate approved proposals to replace the current permitting provisions under the 1989 Law with provisions requiring such works or activities to comply with listed requirements the breach of which would be an offence.

The Director's report stated that the 1989 Law and 1966 Ordinance would be repealed as the new legislation would include the necessary provisions to prevent risk from harm and to protect water resources and that the requirement for a permit would be removed.

The current works and other activities requiring a permit from Guernsey Water are broadly worded in the 1966 Ordinance to include –

- erection of buildings;
- construction of works;
- permanent installation of oil fired boilers and other equipment intended to be used in connection with the supply or storage of oil or heating by oil; and
- use of any premises within the water catchment area for the carrying on of any trade or business where trade effluent may be discharged; the provisions clarify that trade or business premises include those used for agriculture or horticulture.

Certain activities in relation to construction works, oil installations and certain use of premises where trade effluent may be discharged, such as keeping of livestock or cultivation of land, are covered by the new Schedule 2 activities but it is proposed that the categories are more specifically worded than those in the 1966 Ordinance to identify works or other activities considered to raise a particular risk of water pollution.

The list of Schedule 2 activities was identified having regard to provisions in other British jurisdictions and focussed on risk and so it is proposed to add certain activities not clearly included in the 1966 Ordinance. Inclusion in the list also means that the works or activity will not be subject to the more onerous licensing requirement applying to discharges of trade effluent or sewage effluent into water. It is proposed the list now clearly includes the following –

- specified abstraction or dredging works and works to maintain or remove specified structures near certain waters;
- the laying of pipelines or cables by boring beneath water courses and works to control erosion of banks or ditches;
- operation of vehicles or other equipment for specified purposes near water courses;
- discharge of water run off in certain locations;
- discharges of substances into surface water drainage systems;
- discharges of pollutants into groundwaters;
- storage or application of fertiliser or pesticides or operation of sheep-dipping facilities, and
- private burials carried out on private land and not at the crematorium, a parish church or burial ground.

It is proposed that activities are covered anywhere in the island and not just in the water catchment area consistent with the 2012 policy. Also, potentially polluting activities not carried on as a trade or business are also proposed to be included but in practice the requirements will mainly affect activities carried on during construction activities, works relating to or affecting ditches, streams or ditches, carried on in the course of farming or horticulture or in relation to the installation of domestic oil installations. Commercial oil installations are not proposed to be included as it was considered, in consultation with officers at the Development & Planning Authority, that these activities are sufficiently regulated under land planning and building control requirements which provide for more detailed regulation than in relation to domestic oil installations.

The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the extracted water is included as (11) of Part I of Schedule 2. This commonly applies to ground source heat pumps. There is a requirement that '(d) the temperature of the returned water must be reflective of the seasonal ambient ground water temperature'. There are two types of ground source heat pumps that can utilize boreholes; closed loop and open loop systems. Closed loop systems rely on a closed circuit containing a heat transfer fluid. These systems do not abstract groundwater and would therefore fall outside the stated requirements. Open loop systems abstract water which is filtered through a heat pump via a borehole or straight pipe. This water is then discharged back to a distant section of the water source or another acceptable discharge area via a second borehole or open loop straight pipe. This type of system would need to comply with the stated requirements. Open loop systems typically use a larger land area due to the requirement to discharge the abstracted water and land of this size could utilize closed loop horizontal ground source heat pumps as an alternative.

The Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022

THE STATES, in exercise of the powers conferred on them by section 76 of the Environmental Pollution (Guernsey) Law, 2004^a and of all other powers enabling them in that behalf, hereby order:-

Commencement of Part VI of the Environmental Pollution Law.

1. Part VI (Water Pollution) of the Environmental Pollution (Guernsey) Law, 2004 shall come into force on the 3rd October, 2022.

Citation.

2. This Ordinance may be cited as the Environmental Pollution (Guernsey) Law, 2004 (Commencement) Ordinance, 2022.

^a Order in Council No. XIII of 2004. This enactment has been amended.

The Environmental Pollution (Water Pollution) Ordinance, 2022

ARRANGEMENT OF SECTIONS

PART I PRESCRIBED OPERATIONS AND LICENSING

1. Discharges into Guernsey's water resources to be prescribed operations.
2. Application of licensing provisions in 2010 Ordinance.

PART II SURFACE WATER AND GROUNDWATER QUALITY STANDARDS

3. Establishment of water quality standards for surface water and groundwater.

PART III OTHER ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

4. General requirements for other activities likely to present a threat of water pollution.

PART IV PROHIBITIONS IN RELATION TO WATER POLLUTION

5. Prohibitions in relation to water pollution.

PART V CONSEQUENTIAL AMENDMENTS AND MODIFICATION

6. Modification of the Enforcement and Appeals Ordinance.
7. Amendment of the Enforcement and Appeals Ordinance.
8. Other consequential amendments.

PART VI
INTERPRETATION AND GENERAL PROVISIONS

9. Defence to offences concerning contraventions of sections 4 or 5.
10. Interpretation.
11. Relationship with public health legislation.
12. Transitional provisions.
13. Repeals.
14. Extent.
15. Citation.
16. Commencement.

SCHEDULE 1: Water quality standards for surface water and groundwater.

SCHEDULE 2: General requirements for activities likely to present a threat of water pollution.

SCHEDULE 3: Amendment of the Enforcement and Appeals Ordinance.

SCHEDULE 4: Other consequential amendments.

SCHEDULE 5: Transitional provisions.

SCHEDULE 6: Repeals.

The Environmental Pollution (Water Pollution)

Ordinance, 2022

THE STATES, in pursuance of their Resolutions of the 1st November, 2012^a and the ** September, 2022^b, and in exercise of the powers conferred on them by sections 3, 13, 14, 22, 34, 39, 41, 58 to 62, 64, 69(2) and 72 of the Environmental Pollution (Guernsey) Law, 2004^c and all other powers enabling them in that behalf, hereby order:-

PART I

PRESCRIBED OPERATIONS AND LICENSING

Discharges into Guernsey's water resources to be prescribed operations.

1. (1) The following, being operations which, in the opinion of the States, may involve a risk of environmental pollution, are prescribed as operations for the carrying on of which a licence is required under Part III of the Law –

- (a) the discharge into the sea of trade effluent or sewage effluent, and
- (b) the discharge into any water (other than the sea) on or below the surface of the ground including, without limitation, into –

^a Article VI of Billet d'État No. XXI of 2012.

^b Billet d'État No. ** of 2022.

^c Order in Council No. XIII of 2004; this enactment has been amended.

(i) a lake, pond, reservoir, stream, douit or other watercourse (whether natural or artificial), and

(ii) a well or borehole,

of trade effluent or sewage effluent.

(2) Subsection (1) –

(a) is subject to any exemption provided for under section 3 of the 2010 Ordinance, as applied by section 2(1)(a),

(b) does not include a discharge of trade effluent or sewage effluent to the extent that it is made into water within –

(i) a sewer or drain, or

(ii) a water fitting,

but, for the avoidance of doubt, includes the onward discharge of effluent from a sewer, drain or water fitting into other water,

(c) does not include, subject to subsection (3), a discharge made in the course of the carrying out of an activity described in column 1 of the table in Part I of Schedule 2.

(3) For the avoidance of doubt, for the purposes of subsection (2)(c), a discharge into the sea or any other water from a combined sewer overflow is to be treated as falling within subsection (1).

(4) If any operation falls within a description in subsection (1) and in Schedule 2 to the Air Pollution Ordinance it shall, subject to subsection (5), be treated as only being prescribed under the Air Pollution Ordinance.

(5) If any discharge of effluent falls within a description in subsection (1) and in section 1 of the 2010 Ordinance, including an operation treated as being prescribed only under the 2010 Ordinance under section 2(2) of the Air Pollution Ordinance, it shall be treated as –

- (a) falling only within section 1 of the 2010 Ordinance where the principal operations on the site in question relate to disposal of waste in or on land, and
- (b) in any other case, as only being prescribed under this Ordinance.

Application of licensing provisions in 2010 Ordinance.

2. (1) Despite any provisions of the 2010 Ordinance to the contrary, the following licensing provisions of the 2010 Ordinance apply in relation to a description of operation prescribed under section 1 –

- (a) section 3 (exemptions),
- (b) section 4 (licence and related applications and fees),

and

- (c) section 5 (requirements for applications, accompanying plans, maps and other documents),

except that the reference to "environmental pollution" in section 3(1) is to be read as also including water pollution.

(2) For the avoidance of doubt, the Director may specify different requirements under sections 4 and 5 of the 2010 Ordinance in relation to different descriptions of operation set out in section 1.

PART II

SURFACE WATER AND GROUNDWATER QUALITY STANDARDS

Establishment of water quality standards for surface water and groundwater.

3. (1) The standards for water quality for surface water and groundwater in Schedule 1 are established for the purposes of sections 3(3) to (5) and 41 of the Law.

(2) The standards comprise –

- (a) maximum limits for the concentration of pollutants in surface water and groundwater in Part I of Schedule 1, and
- (b) required characteristics for surface water and groundwater in Part II of Schedule 1.

(3) The maximum limit for the concentration in surface water or groundwater of a pollutant described in column 1 of the table in Part I of Schedule 1 is set out in the corresponding entry in column 3 of the table in Part I of Schedule 1 per unit of measurement of water specified in the corresponding entry in column 2 of the table in Part I of that Schedule.

(4) The standard for the required characteristics for surface water or groundwater described in column 1 of the table in Part II of Schedule 1 is set out in the corresponding entry in column 3 of the table in Part II of Schedule 1 per unit of measurement for that required characteristic specified in the corresponding entry in column 2 of the table in Part II of that Schedule.

(5) The Director –

(a) is required to take into account any relevant requirements or maximum limits established under this section in considering an application for a licence in accordance with section 14(3)(b) of the Law, and

(b) may attach to a licence, conditions intended to ensure the attainment of maximum limits prescribed under subsection (3) in accordance with section 16(2)(b) of the Law.

(6) The Director may by regulations amend Schedule 1.

PART III

OTHER ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

General requirements for other activities likely to present a threat of water pollution.

4. (1) A person must not carry out any works or other activities specified in column 1 of the table in Part I of Schedule 2 unless they are carried on in accordance with all the requirements specified for those works or that activity in the corresponding entry in column 2 of the table in Part I of that Schedule.

(2) Part II of Schedule 2 has effect for the purposes of the interpretation of that Schedule.

(3) A person carrying on any works or other activity specified under subsection (1), must have regard to any guidance the Director may issue under this subsection in relation to any requirement specified in relation to that work or activity.

(4) The Director may by regulations amend Schedule 2.

PART IV

PROHIBITIONS IN RELATION TO WATER POLLUTION

Prohibitions in relation to water pollution.

5. (1) A person must not cause or permit the contravention of a standard specified under section 3.

(2) A person must not cause or permit –

- (a) the occurrence of water pollution, or
- (b) a risk of water pollution to arise.

PART V

CONSEQUENTIAL AMENDMENTS AND MODIFICATION

Modification of the Enforcement and Appeals Ordinance.

6. Where any provision of the Enforcement and Appeals Ordinance is exercised in relation to –

- (a) a prescribed operation prescribed under section 1, or
- (b) a prohibition, restriction, requirement or condition imposed under this Ordinance,

any reference to "environmental pollution" in the Enforcement and Appeals Ordinance is to be construed as if it also includes "water pollution" and any reference to "pollutant" is to be construed as if it means a pollutant falling within section 2(3) or section 40(1)(c) of the Law.

Amendment of the Enforcement and Appeals Ordinance.

7. The Enforcement and Appeals Ordinance is amended as set out in Schedule 3.

Other consequential amendments.

8. Schedule 4, which provides for consequential amendments, has effect.

PART VI
INTERPRETATION AND GENERAL PROVISIONS

Defence to offences concerning contraventions of sections 4 or 5.

9. (1) The following defences are available in addition to that under section 69(1) of the Law.

(2) In any proceedings for an offence relating to a contravention of section 4(1) or 5(1) or (2), it shall be a defence for the accused to prove –

- (a) that the accused acted under instructions from the accused's employer and neither knew, nor had reason to suppose, that the acts done by the accused contravened sections 4(1), 5(1) or (2), as the case may be, or
- (b) that the acts alleged to constitute the offence were done in an emergency in order to avoid danger to the public and that as soon as reasonably practicable after they were done, particulars of the acts were furnished to the Director in writing.

(3) In any proceedings for an offence relating to the contravention of section 4(1), it shall be a defence for the accused to prove, in relation to a requirement (however worded) in the table in Part I of Schedule 2 ("**the table**"), not to locate or do anything, or to prevent something occurring, within a specified distance of –

- (a) a spring that supplies water for human consumption,
or
- (b) a well or borehole that is not capped in such a way so
as to prevent the ingress of water,

that the accused has taken reasonable measures to ascertain whether or not there is such a spring, well or borehole within the specified distance and has found no evidence of the same.

(4) In any proceedings for an offence relating to a contravention of section 5(1) or (2), it shall be a defence for the accused to prove that the contravention of a standard or the introduction of a pollutant or the risk of the same, as the case may be, occurred under and in accordance with, or as a result of any act or omission under and in accordance with –

- (a) a licence to carry on a prescribed operation granted
under section 15 of the Law, or
- (b) a licence granted under Part II of the Food and
Environment Protection Act 1985^d.

(5) In any proceedings for an offence relating to a contravention of section 5(1) or (2), it shall be a defence for the accused to prove that –

- (a) the contravention of a standard or the introduction of a
pollutant or the risk of the same, as the case may be,

^d An Act of Parliament, c. 48.

occurred in the course of the carrying on of works or another activity specified in column 1 of the table, and

- (b) that the works or other activity was carried on in accordance with all the requirements for those works or other activity specified in the corresponding entry in column 2 of the table.

Interpretation.

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

"the Air Pollution Ordinance" means the Environmental Pollution (Air Pollution) Ordinance, 2019^e,

"combined sewer overflow" means an overflow from a combined sewer system, into the sea or other water, usually during times of heavy precipitation, of a mix of stormwater and untreated waste water to prevent upstream flooding,

"combined sewer system" means a sewer system that it used to convey both waste water and stormwater in a single pipe to a treatment plant,

"domestic sewage" includes –

- (a) the contents of lavatories,
- (b) water used for washing or cooking (except for water

^e Ordinance No. XXXVIII of 2019.

used for the business of a laundry or for a business of preparing food or drink), and

- (c) surface water except where it is mixed with any effluent falling within paragraph (a) of the definition of trade effluent,

"**drain**" has the meaning given by section 29(1) of the Sewerage (Guernsey) Law, 1974^f,

"**effluent**" means any liquid, including particles of matter and other substances in suspension in the liquid,

"**the Enforcement and Appeals Ordinance**" means the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019^g,

"**groundwater**" means all water which is below the surface of the ground in the saturation zone and in direct contact with the ground or the subsoil,

"**Guernsey**" includes the Islands of Guernsey, Herm and Jethou, all other islands, islets and rocks around the coast of those Islands, whether or not attached at low water, and all of the territorial waters adjacent thereto,

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

^f Ordres en Conseil Vol. XXIV, p. 372; this enactment has been amended.

^g Ordinance No. XXXIX of 2019.

"the 2010 Ordinance" means the Environmental Pollution (Waste Control and Disposal) Ordinance, 2010^h,

"pollutant" means a pollutant falling within section 2(3) or section 40(1)(c) of the Law,

"sewage effluent" includes any effluent from the sewage disposal or sewerage works of the Guernsey Water division of the States' Trading Supervisory Board but does not include surface water,

"surface water" means any water on the surface of the ground including water which has drained from roofs and other structures,

"trade effluent" -

- (a) means any effluent, which is wholly or partly produced in the course of any trade or industry carried on at trade premises, and
- (b) in relation to any trade premises, means any such effluent which is so produced in the course of any trade or industry carried on at those premises,

but does not include domestic sewage,

"trade premises" means, subject to subsection (2), any premises used or

^h Ordinance No. XVIII of 2010; this enactment has been amended.

intended to be used for carrying on any trade or industry,

"**waste**" has the meaning in the Law except that it does not include -

- (a) radioactive waste, or
- (b) any substance which is explosive within the meaning of the Explosives (Guernsey) Law, 1905ⁱ,

"**water**": see section 2(4) of the Law,

"**water fitting**" means a water fitting (including, without limitation, a pipe, tap, cistern, bath, sink, water closet or soil pan) installed or used to convey or receive water but, for the avoidance of doubt, does not include a well or a borehole, and

"**water pollution**" means introduction into Guernsey's water resources of any pollutant.

(2) For the purposes of this Ordinance any land or premises used or intended for use (in whole or in part and whether or not for profit) –

- (a) for agricultural or horticultural purposes or for the purposes of fish farming,
- (b) for scientific research or experiment, or

ⁱ Ordres en Conseil Vol. III, p. 414; this enactment has been amended.

(c) for the carrying on of a hospital,

are deemed to be premises used for carrying on a trade or industry; and the references to a trade or industry in the definition of "**trade effluent**" in subsection (1) include references to agriculture, horticulture, fish farming, scientific research or experiment and the carrying on of a hospital.

Relationship with public health legislation.

11. For the avoidance of doubt, nothing in this Ordinance affects the operation of the Loi relative à la Santé Publique, 1934^j or any enactment made under it.

Transitional provisions.

12. Schedule 5, which makes transitional provision, has effect.

Repeals.

13. Schedule 6, which makes repeals, has effect.

Extent.

14. This Ordinance has effect in Guernsey.

Citation.

15. This Ordinance may be cited as the Environmental Pollution (Water Pollution) Ordinance, 2022.

Commencement.

16. (1) This Ordinance shall, subject to subsection (2), come into force

^j Ordres en Conseil Vol. IX, p.386; this enactment has been amended.

on the 3rd October, 2022.

(2) The following provisions of this Ordinance shall come into force on the 3rd April, 2023 –

- (a) section 4(1) to (3) and Schedule 2, and
- (b) section 13 and paragraph 1 of Schedule 6, insofar as they repeal the States Water Supply (Prevention of Pollution) Ordinance, 1966^k and the States Water Supply (Prevention of Pollution) (Amendment) Ordinance, 1977^l.

^k Recueil d'Ordonnances Tome XIV, p.311; this enactment has been amended.

^l Recueil d'Ordonnances Tome XXI, p.6.

SCHEDULE 1

Section 3

WATER QUALITY STANDARDS FOR SURFACE WATER AND GROUNDWATER

PART I

MAXIMUM LIMITS FOR THE CONCENTRATION OF POLLUTANTS IN SURFACE WATER AND GROUNDWATER

Pollutant	Unit of measurement	Standard relating to concentration of pollutant in surface water or groundwater
Aluminium	µg/l	150
Ammonium (as Nitrogen)	mg/l	0.29
Benzene	µg/l	0.75
Cadmium	µg/l	3.75
Chloride	mg/l	188
Chlorine	mg/l	0.5
Chromium	µg/l	37.5
Copper	µg/l	1500
Ethylbenzene	µg/l	300
Fluoride	mg/l	1.13
Glyphosate	µg/l	0.075
Lead	µg/l	7.5
Manganese	mg/l	0.1
Mercury	µg/l	0.75
Nickel	µg/l	15
Nitrate (as N0 ₃)	mg/l	42

Perfluorooctanoic acid (PFOA)	µg/l	1
Perfluorooctane sulphonate (PFOS)	µg/l	1
Pesticides individual	µg/l	0.075
Pesticides total (including glyphosate)	µg/l	0.4
Radiation: gross alpha	Bq/l	0.1
Radiation: gross beta	Bq/l	1
Sodium	mg/l	150
Sulphate	mg/l	188
Surfactants (reacting with methyl blue)	mg/l	0.2
Total organic carbon	mg/l	5
Toluene	µg/l	40
Total iron	mg/l	1

PART II

REQUIRED CHARACTERISTICS FOR SURFACE WATER AND GROUNDWATER

Required characteristic	Unit of Measurement	Standard for required characteristic
Biochemical oxygen demand (5 day test)	mg O ₂ /l	3
Colour	mg/1 Pt/Co	50
Chemical oxygen demand, permanganate method	mg O ₂ /l	7
Conductivity	µS/cm	1250
Dissolved oxygen	mg O ₂ /l	7 (minimum)
Odour	Natural odour	Natural odour

Oil products (total)	mg/l	No visible film
pH	pH	6.5-8.5
Turbidity	NTU	20
Water temperature	°C	Natural temperature variations

Notes to the Schedule.

1. In this schedule, unless the context requires otherwise -

"**MCPA**" means 2-methyl-chlorophenoxyacetic acid,

"**Pesticides**" means –

- (a) any organic insecticide,
- (b) any organic herbicide,
- (c) any organic fungicide,
- (d) any organic nematocide,
- (e) any organic acaricide,
- (f) any organic algicide,
- (g) any organic rodenticide,

- (h) any organic slimicide, and
- (i) any substance related to any of those set out in items (a) to (h) including a growth regulator and any substance which is a relevant metabolite, degradation product or reaction product of a substance falling within items (a) to (h), and

"Pesticides total" means the sum of the concentrations of the individual pesticides detected and quantified.

(2) In this Schedule, unless the context requires otherwise –

- (a) **"Bq/l"** means becquerels per litre,
- (b) **"Mg/l"** means milligrams per litre,
- (c) **"Mg O₂/l"** means the mass of dissolved oxygen consumed per litre of water,
- (d) **"Mg/1 Pt/Co"** means 1 miligram per litre of platinum as chloroplatinate ion,
- (e) **"NTU"** means Nephelometric Turbidity Units,
- (f) **"pH"** means a figure expressing acidity or alkalinity on a logarithmic scale on which 7 is neutral, lower values are more acid and higher values more alkaline,

- (g) " $\mu\text{g/l}$ " means micrograms per litre, and
- (h) " $\mu\text{S/cm}$ " means micro-siemens per centimetre.

SCHEDULE 2

Sections 1(2)(c), 4(1) and (2) and 9

GENERAL REQUIREMENTS FOR ACTIVITIES LIKELY TO PRESENT A THREAT OF WATER POLLUTION

PART I

WORKS OR OTHER ACTIVITIES AND RELATED REQUIREMENTS

Category of works or other activity	Requirements
(1) The abstraction from a borehole, or well and any subsequent discharge of the abstracted water.	(a) the abstraction must not cause the entry of - <ul style="list-style-type: none"> (i) pollutants, or (ii) water of a different chemical composition from the body of groundwater it enters, into any body of groundwater, and (b) in the case of abstraction from a borehole, when a borehole is not being used for abstraction, it must be back filled or sealed to the extent necessary to avoid loss of groundwater from any aquifer.
(2) The dredging of a douit, stream or ditch.	(a) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification, (b) any vegetation removed must not be disposed of into the channel, (c) all reasonable steps must be taken to prevent the transport of sediments or other matter disturbed by the works into waters beyond the worked stretch, and (d) all reasonable steps must be taken to avoid increased erosion of the bed or banks of the douit, stream or ditch as a result of the works.
(3) The construction, maintenance or removal of – <ul style="list-style-type: none"> (a) a bridge over a douit, stream or ditch, or (b) a surface water 	(a) vegetation on any bank of the douit, stream or ditch must be removed or modified only to the extent necessary to carry out the works, (b) any vegetation removed must not be disposed of into the channel, (c) all reasonable steps must be taken to ensure that the

<p>drainage system outfall which discharges into a douit, stream or ditch.</p>	<p>works do not result in increased erosion of the bed or banks of the douit, stream or ditch,</p> <p>(d) the activity must not result in any water pollution, and</p> <p>(e) in the case of the construction of any outfall, any outfall and associated works must be designed and constructed to be no larger than is necessary for the proper operation of the outfall.</p>
<p>(4) The laying of a pipeline or cable by boring beneath the bed and banks of a douit, stream or ditch.</p>	<p>(a) the bed and banks of the douit, stream or ditch must not be altered as a result of the works other than in accordance with requirements (b) and (d),</p> <p>(b) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification,</p> <p>(c) any vegetation removed must not be disposed of into the channel, and</p> <p>(d) as far as reasonably practicable, within 12 months of the commencement of the works, the bed and banks of the douit, stream or ditch must be reinstated to their condition prior to the commencement of the works.</p>
<p>(5) Works to control the erosion of a bank of a douit, stream or ditch by revetment.</p>	<p>(a) all reasonable steps must be taken to ensure that the works do not result in increased erosion of either bank of the douit, stream or ditch,</p> <p>(b) the works must not result in the destabilisation of the bed of the douit, stream or ditch upstream or downstream of the works,</p> <p>(c) vegetation on any bank of the douit, stream or ditch may be removed or modified only to the extent that the works cannot reasonably be carried out without such removal or modification,</p> <p>(d) any vegetation removed must not be disposed of into the channel,</p> <p>(e) revetments must be constructed from one or more of the following: vegetation; geotextiles; wood other than wood treated with preservatives or non-grouted stone rip-rap,</p> <p>(f) the length of any revetment must be no more than 10 metres or one channel width, whichever is the greater,</p> <p>(g) if wood or stone rip-rap is used for a revetment, the wood or rip-rap must be placed at the toe of the bank,</p> <p>(h) the works must not result in the heightening of either bank, and</p> <p>(i) the revetments must be maintained in the state of repair</p>

	required to avoid increased erosion of the banks or destabilisation of the bed.
(6) Operating any vehicle, plant or other equipment for the purpose of undertaking any activity falling within category (2) to (5) of this table.	<p>(a) any vehicle, plant or other equipment must only operate in water where it is impracticable for it to operate on dry land,</p> <p>(b) the refuelling of vehicles, plant or other equipment must be undertaken at least 10 metres from any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland,</p> <p>(c) any static plant or equipment used within 10 metres of any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland,</p> <p>must be positioned on a suitably sized and maintained impervious drip tray with a capacity equal to 110% of the capacity of the fuel tank which is supplying the tank or equipment,</p> <p>(d) any vehicle, plant or other equipment used in or near any douit, stream, ditch, pond or wetland must not leak any oil, and</p> <p>(e) the washing of vehicles, plant or other equipment must be undertaken at least 10 metres away from any -</p> <p>(i) douit, stream, ditch or pond as measured from the top of the bank, or</p> <p>(ii) wetland.</p>
<p>(7) Discharge of water run-off from -</p> <p>(a) a surface water drainage system into Guernsey's water resources from buildings, roads, yards or any other built structures,</p> <p>(b) construction sites for buildings and other structures falling within category (7)(a), or</p> <p>(c) the construction or maintenance of any</p>	<p>(a) all reasonable steps must be taken to ensure that the discharge does not result in water pollution,</p> <p>(b) the discharge must not contain any trade effluent or sewage effluent and must not result in visible discolouration, iridescence, foaming or growth of sewage fungus in Guernsey's water resources,</p> <p>(c) the discharge must not result in the destabilisation of the banks or bed of the receiving waters,</p> <p>(d) the discharge must not contain any water run-off from—</p> <p>(i) fuel delivery areas or areas where vehicles, plant or equipment are refueled,</p> <p>(ii) vehicle loading or unloading bays where pollutants are handled, or</p> <p>(iii) oil and chemical storage, handling or delivery areas,</p> <p>(e) in the case of discharge of water run-off from the construction or maintenance of a surface water outfall, all</p>

<p>water outfall in or near to inland surface water which forms, or will form, part of a surface water drainage system.</p>	<p>reasonable steps must be taken to ensure that any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid water pollution is prevented from entering the drainage system.</p>
<p>(8) Discharge of any substance into a surface water drainage system.</p>	<p>(a) oil, paint, paint thinners, pesticides, detergents, disinfectants or other pollutants must not be disposed of into a surface water drainage system or onto any surface that drains into a surface water drainage system,</p> <p>(b) any matter liable to block, obstruct, or otherwise impair the ability of the surface water drainage system to avoid water pollution must not be disposed of into a surface water drainage system or onto a surface that drains into a surface water drainage system,</p> <p>(c) trade effluent or sewage effluent must not be discharged into any surface water drainage system, and</p> <p>(d) on construction sites –</p> <p>(i) any area of exposed soil from which water drains into a surface water drainage system as described category (7)(b), and</p> <p>(ii) the period of time during which such water drains, must be such as is the minimum reasonably required to facilitate the construction works being undertaken at that site.</p>
<p>(9) The direct discharge of pollutants into groundwater as a result of construction or maintenance works in or on the ground which come into contact with groundwater.</p>	<p>(a) no solid or liquid materials coming into contact with groundwater may contain any pollutant which may cause significant water pollution, and</p> <p>(b) despite requirement (a), drilling fluids used during the works may come into contact with groundwater if necessary to facilitate any drilling provided this does not result in water pollution.</p>
<p>(10) The abstraction and subsequent return of groundwater for the purpose of extracting geothermal energy from the extracted water.</p>	<p>(a) the abstracted water must be returned to the same part of the geological formation from which it was abstracted,</p> <p>(b) any volume of water may be abstracted but the volume of water abstracted and not returned must not exceed 10m³ per day,</p> <p>(c) the chemical composition of the abstracted water must not be altered prior to its return to the geological formation,</p> <p>(d) the temperature of the returned water must be reflective</p>

	<p>of the seasonal ambient ground water temperature,</p> <p>(e) there must be a means of demonstrating that the net abstraction is not more than 10m³ in any one day, and</p> <p>(f) water leakage must be kept to a minimum by ensuring that all pipe work, storage tanks and other equipment associated with the abstraction and use of the water are maintained in a good state of repair.</p>
<p>(11) The storage or application of fertiliser other than –</p> <p>(a) that carried out in accordance with a licence granted under section 15 of the Law,</p> <p>(b) that which is exempt from the requirement for a licence granted under section 15 of the Law by virtue of an exemption made by regulations or written notice under section 3 of the 2010 Ordinance, or</p> <p>(c) that which is stored or used in accordance with the Control of Poisonous Substances (Guernsey) Regulations, 2014^m.</p>	<p>(a) no fertiliser may be stored, including temporarily in a mobile tank or bowser, on land that –</p> <p>(i) is within 10 metres of any douit, stream, ditch or pond, as measured from the top of the bank, or of any wetland,</p> <p>(ii) is within 50 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water,</p> <p>(iii) is waterlogged, or</p> <p>(iv) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, unless the fertiliser is stored in an impermeable container, except where the fertiliser is stored in a building which is constructed and maintained to such a standard as is necessary to prevent run-off or seepage of fertiliser from the building,</p> <p>(b) no organic fertiliser may be applied to land that –</p> <p>(i) is within 10 metres of any douit, stream, ditch or pond, as measured from the top of the bank, or of any wetland or opening into a surface water drainage system,</p> <p>(ii) is within 50 metres of –</p> <p>(A) any spring that supplies water for human consumption, or</p> <p>(B) any well or borehole that is not capped in such a way so as to prevent the ingress of water,</p> <p>(iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations,</p> <p>(iv) is frozen (except where the fertiliser is farm yard manure), waterlogged, or covered with snow, or</p>

^m G.S.I. No. 18 of 2014; this enactment has been amended.

	<ul style="list-style-type: none"> (v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any douit, stream, ditch, pond or wetland, towards which the land slopes, (c) no inorganic fertiliser may be applied to land that– <ul style="list-style-type: none"> (i) is within 2 metres of any douit, stream, ditch or pond as measured from the top of the bank or of any wetland or opening into a surface water drainage system, (ii) is within 5 metres of any spring that supplies water for human consumption or any well or borehole that is not capped in such a way so as to prevent the ingress of water, (iii) has an average soil depth of less than 40 centimetres and overlies gravel or fissured rock, except where the application is for forestry operations, (iv) is frozen, waterlogged, or covered with snow, or (v) is sloping, unless it is ensured that any run-off of fertiliser is intercepted (by means of a sufficient buffer zone or otherwise) to prevent it from entering any douit, stream, ditch, pond or wetland, towards which the land slopes, (d) fertilisers must not be applied to land in excess of the nutrient needs of the crop, (e) any equipment used to apply fertiliser must be maintained in a good state of repair, and (f) fertiliser must be applied on land in such a way and at such times that the risk of water pollution is minimised.
(12) Keeping of livestock.	<ul style="list-style-type: none"> (a) significant erosion or poaching of any land which is within 5 metres of any of the following must be prevented– <ul style="list-style-type: none"> (i) a stream, douit, pond or ditch as measured from the top of the bank, (ii) a wetland, (iii) a spring that supplies water for human consumption, or (iv) a well or borehole that is not capped in such a way so as to prevent the ingress of water, and (b) livestock must be prevented from entering any land that is within 5 metres of any spring which supplies water for human consumption or within 5 metres of any well or

	borehole that is not capped in such a way as to prevent ingress of water.
(13) Cultivation of land.	<ul style="list-style-type: none"> (a) no land may be cultivated for crops that is - <ul style="list-style-type: none"> (i) within 2 metres of any stream, ditch or pond, as measured from the top of the bank, or of any wetland, (ii) within 5 metres of any - <ul style="list-style-type: none"> (A) spring that supplies water for human consumption, or (B) well or borehole that is not capped in such a way so as to prevent the ingress of water, (iii) waterlogged, (b) moling of land must not be carried out on slopes that - <ul style="list-style-type: none"> (i) have an overall gradient in excess of 4.5°, and (ii) slope towards any douit, stream, ditch, pond or wetland, and (c) land must be cultivated in a way that minimises the risk of water pollution.
(14) The application or storage of pesticides.	<ul style="list-style-type: none"> (a) the preparation of pesticide for application and the cleaning or maintenance of pesticide application equipment must be undertaken in a manner which prevents any spillages, run-off or washings from entering Guernsey's water resources, (b) pesticide application equipment must be maintained in a good state of repair, (c) pesticide application equipment must not be filled with water taken from any douit, stream, ditch, pond or wetland unless - <ul style="list-style-type: none"> (i) a device preventing back siphoning is fitted to the system, or (ii) the water is first placed in an intermediate container from which the equipment is filled, (d) pesticide-treated plants must not be stored or soaked in any douit, stream, ditch, pond or wetland, and (e) pesticide, including any used packaging that has been stored in contact with pesticide, must not be stored on an impermeable surface draining to a surface water drainage system.
(15) Operating sheep dipping facilities or operating sheep handling facilities where - (a) sheep are held immediately after	<ul style="list-style-type: none"> (a) a sheep must be prevented from having access to any douit, stream, ditch, pond or wetland while there is a risk of transfer of sheep dip fluid from its fleece to such places, (b) sheep dipping facilities must not discharge underground and must not leak or overspill,

<p>dipping,</p> <p>(b) pour-on parasite treatments are applied, or</p> <p>(c) sheep are held immediately after the application of pour-on treatments.</p>	<p>(c) sheep dipping facilities must not be filled with water taken from any douit, stream, ditch, pond or wetland unless –</p> <p>(i) a device preventing back siphoning is fitted to the system, or</p> <p>(ii) the water is first placed in an intermediate container, and</p> <p>(d) sheep dip facilities must be emptied as soon as is reasonably practicable following completion of dipping.</p>
<p>(16) The burial of human remains (excluding ashes) except where carried out at a crematorium, cemetery, churchyard or parish burial ground.</p>	<p>(a) no part of the burial site may be located –</p> <p>(i) within 50 metres of any well, borehole or spring supplying water for human consumption,</p> <p>(ii) within 30 metres of any spring, douit, stream or other watercourse that is not used for human consumption or the production of food or drink, or</p> <p>(iii) within 10 metres of any field drain,</p> <p>(b) a grave must be dug so that –</p> <p>(i) there is at least 1 metre between the base of the grave and the highest level of the water table which is reasonably predictable taking into account seasonal variations in the level of precipitation and the likelihood of extreme weather events,</p> <p>(ii) there is no standing water in the grave when it is dug, and</p> <p>(iii) at least 1 metre of soil will cover the top of the coffin or body,</p> <p>(c) a grave must not be dug –</p> <p>(i) in unaltered or unweathered bedrock, or</p> <p>(ii) in areas susceptible to groundwater flooding,</p> <p>(d) the body must –</p> <p>(i) not be treated with chemicals such as embalming fluids, and</p> <p>(ii) be placed in a biodegradable coffin or shroud.</p>
<p>(17) The installation of an oil tank, for the storage of fuel oil, which –</p> <p>(a) is made of plastic, fibreglass, steel or stainless steel, and</p> <p>(b) has a maximum</p>	<p>(a) in the case of the installation of a tank with a top outlet, the tank must be installed so that –</p> <p>(i) it has a secondary containment of not less than 110% of the capacity of the tank, and</p> <p>(ii) an isolation valve and anti-siphon device is fitted inside the secondary containment,</p> <p>(b) in the case of the installation of a tank with a bottom outlet or which is single skinned, the tank must be</p>

<p>capacity of no more than 3,500 litres, including testing before first use and installation and testing before first use of any associated equipment including fill pipelines and catchpits, to serve one dwelling for a single household.</p>	<p>installed so that it is sited over a catchpit,</p> <p>(c) in the case of the installation of a tank made primarily from plastic or fibreglass, the tank must not be wholly or partly buried below the ground,</p> <p>(d) in the case of the installation of an open-bunded tank, the tank must be installed so that –</p> <ul style="list-style-type: none"> (i) a vent pipe is fitted that it is directed downwards into the bund, (ii) any fixed draw-off line or feed line does not pass through the bund wall, (iii) any flexible draw-off pipe is fitted with an automatic closure device, (iv) a permanent outlet is fitted with an isolation valve and the outlet valve is shut when not in use, and (v) an automatic closing cut-off valve is fitted, <p>(e) in the case of the installation of a totally enclosed bunded tank, the tank must be installed so that –</p> <ul style="list-style-type: none"> (i) there is a fill point cap and an overfill cut-off, (ii) there is a top draw-off with an isolation valve and anti-siphon device, and (iii) it is vented to the outside air, <p>(f) in the case of the installation of a tank over a catchpit, the tank must be installed so that it has adequate support to ensure that –</p> <ul style="list-style-type: none"> (i) the loading on the base of the tank is equally distributed, and (ii) the supports are capable of supporting the weight of the tank at full capacity, <p>(g) where a catchpit is installed with the tank, the catchpit must be installed so that –</p> <ul style="list-style-type: none"> (i) it is watertight, (ii) the joint work between any block work and the base of the catchpit is visible above ground level, (iii) any block work is rendered inside and out, (iv) there is no damp course, (v) in the case of a fibreglass catchpit, it is sited on – <ul style="list-style-type: none"> (A) a concrete pad which is at least 100mm thick, or (B) paving slabs which are at least 40mm thick, and (vi) in the case of an installation of a catchpit below a single skinned oil tank, it has a capacity of 110% of
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	<p>the capacity of the oil tank,</p> <p>(h) oil feed lines running from the oil tank to a boiler must be installed in such a way as to prevent water pollution,</p> <p>(i) where remote offset fill pipelines are installed with the tank, the remote off set fill pipelines must be –</p> <p>(i) fitted with an isolating valve, a non-return valve at the fill point and a screw-on cap,</p> <p>(ii) before first use, pressure-tested to 1 Bar and left to stand for 15 minutes,</p> <p>(iii) in the case of remote offset fill pipelines installed above ground –</p> <p>(A) made of a material that is considered safe for use delivery of fuel oils having regard to industry good practice from time to time, and</p> <p>(B) resistant to corrosion.</p>
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PART II

INTERPRETATION

1. In this Schedule, unless the context requires otherwise –

"**abstraction**" means the doing of anything whereby any water is removed or diverted by mechanical means, pipe or any engineering structure or works from any part of Guernsey's water resources, whether temporarily or permanently, including anything by which the water is so removed or diverted for the purposes of being transferred to another part of Guernsey's water resources, and includes –

- (a) the construction or extension of any well, borehole, water intake or other work by which water may be abstracted, and
- (b) the installation or modification of any machinery or apparatus by which additional quantities of water may

be abstracted by means of a well, borehole, water intake or other work,

"channel" means the course of a douit, stream or ditch,

"channel width" means the straight line distance that is between opposite bank tops of a douit, stream or ditch and which spans the bed of a douit, stream or ditch, including any exposed bars or vegetated islands,

"crop" includes any plant grown for a commercial purpose,

"cultivation" includes the preparation of any land prior to planting and the harvesting of any crop,

"cut-off valve" means a valve used for shutting off the flow of oil from a tank,

"ditch" means an open channel which collects and conveys drainage water from surface or subsurface drainage to other surface water,

"draw-off pipe" means a pipe used to withdraw oil from a tank,

"farm yard manure" means a mixture of bedding material and animal excreta in solid form arising from the housing of livestock (except such arising from the keeping of birds for the production of food),

"fertiliser" means any substance containing nutrients, excluding forestry brash, which is used on land to enhance plant growth,

"**field drain**" includes a buried pipe or a dry ditch which drains a field,

"**forest**" means land of an area of more than 0.5 hectares –

- (a) with a tree canopy of more than 20 per cent,
- (b) which is planted with trees which collectively have the capacity to provide a tree canopy cover of more than 20 per cent, or
- (c) which meets all the following criteria –
 - (i) it was used in the last five years as land described in item (a),
 - (ii) it is to remain fallow of trees for a maximum of four consecutive years, and
 - (iii) when replanted with trees, it will be replanted as land described in item (b),

"**forestry operations**" means operations carried out on land with a tree canopy cover of more than 10 per cent over an area of land of more than 0.5 hectares,

"**fuel oil**" includes liquified petroleum gas and kerosene,

"**livestock**" means –

(a) cattle, sheep, pigs, equines, goats, llamas or alpacas, or poultry, and

(b) any animal kept for the production of food, wool, skin or fur or for use in the farming of land,

"moling" means a cultivation method where an implement is used to open a conduit within the soil along which water may flow,

"oil" means any kind of liquid oil including fuel oil, waste oil, biofuel mixtures, vegetable oil, plant oil, lubricant oil and hydraulic oil,

"pesticide" means any pesticide or other substance declared to be a poisonous substance under regulation 2 of the Control of Poisonous Substances (Guernsey) Regulations, 2014,

"pesticide application equipment" means pesticide sprayers and other devices used to apply pesticide,

"poultry" means birds of the following species –

(a) domestic fowls, turkeys, geese, ducks, guinea-fowls and pigeons, and

(b) quails, pheasants and partridges,

"revetment" means the modification of the bank of a douit, stream or ditch that increases the resistance of the bank to lateral erosion,

"rip-rap" means irregular shaped stones placed along the bank of a douit, stream or ditch for the purposes of increasing the resistance of the bank to erosion,

"secondary containment" means a drip tray, an area surrounded by a bund or catchpit or any other system for preventing fuel oil, which has escaped from an oil storage tank, from escaping further from the place where it is stored,

"surface water drainage system" means a system that is used to collect and drain water run off from premises and transport it to, and discharge it into, Guernsey's water resources, and may include, any surface water sewers and associated inlets, outlets, guillies, manholes, oil interceptors, silt traps, and attenuation, settlement and treatment facilities,

"toe of a bank" means the point where the slope of a bank of a douit, stream or ditch meets the bed of that douit, stream or ditch,

"vent pipe" means a pipe open to the atmosphere which exposes the tank to atmospheric pressure,

"water for human consumption" means water that may be ingested by humans, used in the preparation of food or drink, or used in the cleaning of materials involved in the storage or consumption of food or drink,

"waterlogged" means soil which is at water retaining capacity, except in a forest where it means water which is visible on the soil surface,

"**water run-off**" means any water from rainfall or any meltwater from ice or snow flowing over or horizontally through the surface of the ground and any matter picked up by that water as it does so,

"**well**" includes a permeable underground collection tank, and

"**wetland**" means an area of ground the ecological, chemical and hydrological characteristics of which are attributable to frequent inundation or saturation by water and which is directly dependent, with regard to its water needs, on a body of groundwater or a body of surface water.

SCHEDULE 3

Section 7

AMENDMENT OF THE ENFORCEMENT AND APPEALS ORDINANCE

1. After section 8 (compliance notices in relation to provisions of the Air Pollution Ordinance) insert –

"Content of anti-pollution notice.

8A. A compliance notice which is an anti-pollution notice issued under section 44 of the Law must –

(a) state that the Director considers that the person on whom the notice is served is causing or permitting –

(i) the occurrence of water pollution, or

(ii) a risk of water pollution to arise,

in contravention of section 5(2) of the Water Pollution Ordinance,

(b) specify the –

(i) acts or omissions or proposed acts or omissions, or

(ii) use or proposed use of any thing,

by reason of which the Director considers that the person on whom the notice is served is causing or permitting the occurrence of water pollution or the risk of water pollution to arise,

(c) specify any steps that must be taken to eliminate or reduce the occurrence of water pollution or eliminate or remove the risk of water pollution arising,

(d) identify by name or description the person required to take the steps specified under paragraph (c),

(e) specify the period within which the steps specified under paragraph (c) must be taken, and

(f) specify that a person who causes or permits the occurrence of water pollution or a risk of water pollution to arise in contravention of section 5(2) of the Water Pollution Ordinance, is guilty of an offence under section 65(1) of the Law.

Compliance notice in relation to provisions of the Water Pollution Ordinance.

8B. (1) If the Director is of the opinion that –

- (a) a person is contravening or is likely to contravene any prohibition, restriction, requirement or condition imposed on that person under the Water Pollution Ordinance, other than one in relation to which a compliance notice may be served under section 7, or
- (b) a person is contravening or is likely to contravene any term, condition or proviso of any exemption or disapplication (however worded) from any prohibition, restriction or requirement under the Water Pollution Ordinance,

the Director may serve a compliance notice on that person.

(2) A compliance notice issued under subsection (1) must –

- (a) state that the Director is of the opinion that a contravention of –
 - (i) any prohibition, restriction, requirement or condition referred to in subsection (1)(a), or
 - (ii) any term, condition or proviso of any exemption or disapplication referred to in subsection (1)(b),

as the case may be, is taking place or is likely to take place,

- (b) specify the matters –
 - (i) constituting the contravention, or
 - (ii) making it likely that a contravention will take place,
- (c) specify the steps that must be taken -
 - (i) to remedy the contravention, or
 - (ii) to remedy the matters making it likely that the contravention will arise,
- (d) identify by name or description the person required to take the steps specified under paragraph (c), and
- (e) specify the period within which the steps specified under paragraph (c) must be taken."

2. For the heading to section 9 substitute –

"General requirements for compliance notices."

3. In section 9 -

- (a) omit "issued under section 7 or 8",
- (b) in paragraph (a) for "this Ordinance" substitute "the Law or this Ordinance",
- (c) in paragraph (b), after the first reference to "the Law" insert "or of that section as applied by section 44 of the Law", and
- (d) in paragraph (b)(i) after "the Law" insert "or under that section as applied by section 44 of the Law".

4. After Part II insert –

"PART IIA

POWERS TO TAKE ACTION IN RELATION TO WATER POLLUTION

Powers of Director to take action in relation to water pollution.

9A. (1) This section applies where it appears to the Director that–

- (a) water pollution has occurred or is occurring, or
- (b) a risk of water pollution has arisen.

(2) In a case where it appears to the Director that water pollution has occurred or is occurring, the Director is entitled to enter land and take such action as appears necessary for any of the following purposes –

- (a) removing or disposing of a pollutant,
- (b) remedying or mitigating any water pollution caused by the introduction of a pollutant into the water, or
- (c) restoring (so far as is reasonably practicable to do so), the water, including any flora and fauna dependent on the aquatic environment of the water, to its state immediately before the pollutant became introduced into the water.

(3) In a case where it appears to the Director that a risk of water pollution has arisen, the Director is entitled to enter land and take such action as appears necessary for the purpose of preventing water pollution from occurring.

(4) The powers conferred by this section are only exercisable in a case where –

- (a) the Director certifies that it is necessary to carry out the works or other actions without delay, or
- (b) it appears to the Director, after reasonable enquiry, that no person can be found on whom–

- (i) an anti-pollution notice under section 44 of the Law, or
- (ii) a compliance notice under section 7 or 8B,

may be served in relation to the water pollution, or risk of water pollution, in question.

(5) The expenses reasonably incurred by the States as a consequence of any action taken by the Director under this section are recoverable as a civil debt due to the States from any person who caused or permitted the occurrence of water pollution, or the risk of water pollution, in question.

(6) In this section, "**pollutant**" means a pollutant falling within section 2(3) or section 40(1)(c) of the Law."

5. In section 21 (interpretation) –

- (a) in the definition of "**prescribed operation**" omit "and" and after "Air Pollution Ordinance" insert "and section 1 of the Water Pollution Ordinance",
- (b) after the definition of "**specified**" insert –

""**steps**" includes, for the avoidance of doubt, requirements to discontinue or refrain from an action or activity," and

- (c) after the definition of "**vice-President**" omit "and" and
after the definition of "**water**" insert –

""**water pollution**": see section 10(1) of the Water Pollution
Ordinance , and

"**the Water Pollution Ordinance**" means the Environmental
Pollution (Water Pollution) Ordinance, 2022.".

SCHEDULE 4

Section 8

OTHER CONSEQUENTIAL AMENDMENTS

Amendment of the 2010 Ordinance.

1. After section 1(2) (waste disposal etc. to be prescribed operations) of the 2010 Ordinance insert –

"(3) This section is also to be construed in accordance with section 2(2) of the Environmental Pollution (Air Pollution) Ordinance, 2019 and section 1(5) of the Environmental Pollution (Water Pollution) Ordinance, 2022."

Amendment of the Air Pollution Ordinance.

2. After section 2(2) (operations in schedule 2 to be prescribed operations) of the Air Pollution Ordinance, insert –

"(2A) This section is also to be construed in accordance with section 1(4) and (5) of the Environmental Pollution (Water Pollution) Ordinance, 2022."

Amendment of the Environmental Pollution (Public Register) Regulations, 2010.

3. (1) The Environmental Pollution (Public Register) Regulations, 2010ⁿ are amended as follows.

(2) In regulation 1 (particulars to be kept on the register) –

ⁿ G.S.I. No. 52 of 2010; this enactment has been amended.

- (a) in subparagraph (g)(i), after "issued under" insert "section 44 of the Law or",
- (b) in subparagraph (g)(ii), after "the Law" insert "or under that section as applied by section 44 of the Law",
- (c) at the end of subparagraph (h) omit "and" and after that subparagraph insert –

"(ha) in relation to enforcement, inspection and monitoring activities concerning water pollution, brief particulars of any water pollution enforcement activities carried out by the Director; and such particulars shall -

(i) include the number of occasions in each calendar year in which such activities have been carried out on a particular premises, and

(ii) be added to the register as soon as reasonably practicable after the end of the calendar year in question, and".

(3) In regulation 3 (interpretation) –

- (a) for the definition of "**compliance notice**" substitute –

""**compliance notice**": see sections 44 and 62(1) of the Law and sections 7 to 8B of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019,"

(b) in the definition of "**a prescribed operation**", for all the words from "and" to the end substitute ", section 2 of the Environmental Pollution (Air Pollution) Ordinance, 2019 and section 1 of the Environmental Pollution (Water Pollution) Ordinance, 2022," and

(c) after the definition of "**waste**" insert –

""**water pollution enforcement activities**" means any action taken by the Director–

(a) under section 45 of the Law,

(b) pursuant to a warrant issued by the Bailiff under section 45B of the Law, or

(c) under section 9A of the Environmental Pollution (Enforcement and Appeals) Ordinance, 2019,".

SCHEDULE 5

Section 12

TRANSITIONAL PROVISIONS

Transitional provision in relation to operations prescribed under section 1.

1. (1) Subject to subparagraph (2), where an operation prescribed under section 1 is being carried on immediately before the commencement of section 1 of this Ordinance, such operation shall, on or after the commencement of section 1 of this Ordinance, be deemed to be one in respect of which a licence has been issued under Part III of the Law to the person carrying on the operation provided that an application for a licence to carry on such operation is made to the Director -

- (a) in accordance with section 4 and 5 of the 2010 Ordinance as applied by section 2 of this Ordinance, and
- (b) within two months starting from the date of the commencement of section 1 of this Ordinance.

(2) The person carrying on the operation in question shall be treated as a licensee for the operation in question under subparagraph (1) until -

- (a) the application to carry on the prescribed operation in question is granted by the Director (whether or not subject to conditions), or
- (b) if such an application is refused -
 - (i) the expiry of the period for appealing against

the refusal under section 25(5) of the Law, or

- (ii) where an appeal is duly instituted against the refusal, the date the appeal is finally determined or withdrawn; and an appeal is finally determined when the appeal and any further appeal is finally determined.

Permits issued under the States Water Supply (Prevention of Pollution) Ordinance, 1966.

2. For the avoidance of doubt, any permit granted under section 2 of the States Water Supply (Prevention of Pollution) Ordinance, 1966, shall lapse on 3rd April, 2023, when the repeal of that 1966 Ordinance is commenced under section 16(2).

SCHEDULE 6

Section 13

REPEALS

Repeal of the Prevention of Pollution (Guernsey) Law, 1989 and subordinate legislation made under it.

1. The Prevention of Pollution (Guernsey) Law, 1989^o, the States Water Supply (Prevention of Pollution) Ordinance, 1966, the States Water Supply (Prevention of Pollution) (Amendment) Ordinance, 1977 and the Animal Carcasses (Control of Burial) Ordinance, 1998^P are repealed.

Repeal of 1932 Ordinance.

2. The Ordonnance relative au dépôt de décombres de carrière, d'immondices et d'autres debris sur les Côtes de cette Ile, 1932 is repealed^q.

^o Ordres en Conseil Vol. XXXI, p. 500; this enactment has been amended.

^P Recueil d'Ordonnances Tome XXVIII, p. 153; this enactment has been amended.

^q Recueil d'Ordonnances Tome VI, p. 128.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

LOW VALUE DEBT RELIEF

The States are asked to decide:-

Whether, after consideration of the policy letter titled 'Low Value Debt Relief' dated 15th August, 2022, they are of the opinion:-

1. To agree to the implementation of Low Value Debt Relief Orders, as described in the Policy Letter titled "Low Value Debt Relief" dated 15th August 2022, of the Committee *for* Economic Development.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR ECONOMIC DEVELOPMENT

LOW VALUE DEBT RELIEF

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

15th August, 2022

Dear Sir

1 Executive Summary

- 1.1 This policy letter seeks the approval of the States to the introduction of legislation to allow for the remission of low levels of unsecured personal debt where an individual has no reasonable prospect of being in a position to repay such debts.
- 1.2 Low value debt relief orders (“**LVDROs**”) are intended to help some of the most financially insecure individuals in society make a new start, and improve their well-being, by providing for a resolution when faced with debts which they cannot pay. They provide a fresh start for those trapped in debt, who meet the eligibility criteria, as set out in this policy letter.
- 1.3 The introduction of LVDROs would complement the changing legislative landscape toward increased consumer protection, such as the Lending, Credit and Finance (Bailiwick of Guernsey) Law, 2022 which was approved by the States on 13th July, 2022¹.

2 Background

2.1 Rationale for introduction of LVDROs in Guernsey

- 2.1.1 Citizens Advice Guernsey (“**CAG**”) works with a significant number of people in its debt advisory work who have no prospect of being able to pay their debts. CAG reports that this is often a result of a change of circumstances and/or through no fault of the

¹ [Billet d'État No. XII of 2022, Article 14](#)

individual involved.

- 2.1.2 One of the services offered by CAG is a financial restitution negotiation service (the “RNS”). CAG acts as an intermediary between the client and the client’s creditors to negotiate a repayment plan, manageable by the debtor and acceptable to the creditor. No debts are relieved, so there may be no end to the re-payment period. There is no legal requirement for parties to submit to the process and as such, it is dependent on the good faith of both the debtor and creditor, to be successful. As part of the process CAG assists clients in assessing all income and debts and with creating a reasonable expenses budget.
- 2.1.3 CAG advised the Committee *for* Economic Development (the “**Committee**”) in 2019 that there were 104 clients of the RNS. Those 104 service users collectively had £4.34 million of unaffordable debt, comprising of £2.7 million of secured debt and £1.64 million of unsecured debt and equated to an average total debt of £42,000 per client, with £16,000 of that debt being unsecured².
- 2.1.4 CAG further reported that it assessed causes of debt amongst those clients as follows:
- (a) Poor budgeting – 24%;
 - (b) Reduced income – 22%;
 - (c) Relationship breakdown – 21%;
 - (d) Job loss – 14%;
 - (e) Health issues – 12%; and
 - (f) Family problems – 7%.
- 2.1.5 The Committee acknowledges the potential impact of unmanageable debt on the mental well-being, and health, of individuals. The Committee has also noted that research into the relationship between debt and health has identified that unsecured debt, such as credit card debt, was linked to a more than 3-fold increased risk of mental health problems. There is also a strong negative relationship with suicide and drug and alcohol abuse.³
- 2.1.6 CAG stated, in response to a consultation undertaken by the Committee⁴, that low value debt relief such as that proposed in this policy letter “*addresses the heart of the problem area and where the need is greatest*”. In addition, a low value debt relief procedure should be ‘stand-alone’ both in terms of legislation and the operation of the process.

² Based on 2018 figures.

³ Richardson, T., Elliott, Peter and Roberts, R. (2013) “The relationship between personal unsecured debt and mental and physical health: a systematic review and meta-analysis.” *Clinical Psychology Review*, 33 (8), 1148-1162.

⁴ In 2014 the Commerce and Employment Department of the States of Guernsey carried out a public consultation on potential changes to Guernsey’s insolvency regime, including both corporate and individual insolvency.

- 2.1.7 The Committee notes that during informal consultation, some local lenders did not consider that the introduction of legislation to provide low value debt relief was necessary. This was on the basis that lenders would be unlikely to pursue debt where it was apparent that an individual was unable to pay and, as such, they would be likely to write the debt off. Nevertheless, the Committee believes that the introduction of legislation is necessary to provide certainty and to protect individuals from less compassionate lenders.
- 2.1.8 The Committee further believes that the disadvantage to lenders of introducing LVDROs would be mitigated by LVDROs only being available, by way of restrictive eligibility criteria, to those who would not realistically be in a position to pay the debts in the present, or the foreseeable future, and where in reality it would not be commercially advantageous for the lender to pursue the debts in any event.
- 2.1.9 The Committee acknowledges that there is a possibility that the introduction of LVDROs in Guernsey may reduce the willingness of some lenders to offer credit in some cases. However, the Committee is of the view that lenders already assess risk on the basis that there will always be a small number of debtors from whom recovery is unlikely as part of the decision to lend process and does not believe that equivalent procedures in other jurisdictions, including England, Scotland, and Jersey⁵, have materially reduced the availability of credit.

2.2 Personal insolvency processes currently available in Guernsey

Current processes available in Guernsey where an individual is unable to pay his, or her, debts include:-

- 2.2.1 **Désastre** and **Saisie** – These are customary law provisions which provide processes for judgment creditors to take a judgment debtor's property⁶ in satisfaction of a judgment debt. They are a means of enforcing a judgment and, as such, whilst they provide creditors with a means of realising assets, they do not include other functions of modern personal insolvency proceedings. Désastre does not ordinarily result in any discharge of the debtor from indebtedness, unless creditors are paid in full and creditors retain the right to institute further proceedings at a later date. Saisie is an enforcement process against real property in the Bailiwick which involves an irrevocable election to proceed against the debtor's realty and thus does not itself touch upon the debtor's personal property.
- 2.2.2 The **Loi ayant rapport aux Débiteurs et à la Renonciation (the "1929 Law")** and **Ordonnance relative à la Renonciation**. The 1929 Law provides creditors with a process to recover monies owed by individual debtors, as well as a process for a debtor to apply

⁵ The Committee notes that no debt remission orders have been issued in Jersey as at the date of this policy letter but has been unable to ascertain why.

⁶ Désastre relates to a debtor's personalty and saisie relates to real property.

to Court to be declared insolvent. An insolvent debtor also has an ability to apply to Court for the benefit of renunciation - a discharge from outstanding debt acquired prior to the declaration of insolvency.

The 1929 Law is the Guernsey equivalent to bankruptcy in the UK but the Committee is advised that it is unpopular and has only been used a handful of times since implementation. The reasons why are not entirely clear, but feedback includes that the procedure under the 1929 Law is expensive, out-dated and time consuming.

3 Proposals for reform

3.1 The Committee has considered legislation implementing the English and Jersey low value debt relief regimes⁷ as a starting point when considering what LVDRO characteristics would be appropriate for Guernsey. The Committee proposes, and asks the States to support, the introduction of LVDROs with the following key features.

3.2 Key features of a LVDRO

3.2.1 *Moratorium*

It is proposed that a Guernsey LVDRO would, in common with Jersey and England, create a moratorium period of a year⁸ where creditors would be prevented from pursuing qualifying debts⁹ that have been included in the LVDRO. If the debtor's situation has failed to improve at the end of the moratorium, the debts would be written off.

3.2.2 *Eligibility criteria*

3.2.2.1 The Committee proposes the following eligibility criteria. Applicants must be unable to pay their debts and:

- (a) have no more than £30,000 qualifying debt¹⁰;
- (b) be at least 18 years old;
- (c) ordinarily have been a Guernsey resident for at least 2 years;
- (d) not had a LVDRO issued, or been the subject of any personal insolvency proceedings, in Guernsey or elsewhere, in the last 5 years;
- (e) have no more than £5,000 in value of assets (excluding a motor vehicle with a value of up to £2,000); and
- (f) have a disposable income of no more than £100 a month after the payment of tax, social insurance, and reasonable household expenses; and
- (g) have acted in good faith.

⁷ For England, see Part 7A of the Insolvency Act 1989 and for Jersey, the Debt Remission (Individuals) (Jersey) Law 2016.

⁸ The Committee envisages the Court would have a power to extend the moratorium period in appropriate circumstances.

⁹ See paragraph 3.2.3 of this policy letter.

¹⁰ See paragraph 3.2.3 of this policy letter.

3.2.2.2 The Committee proposes that there should be a power for the eligibility criteria to be amended, by regulation, to ensure that the criteria remain appropriate to the needs of the community.

3.2.3 *Qualifying debts and excluded debt*

3.2.3.1 Certain debts should be excluded from the scope of an LVDRO¹¹. The Committee proposes that excluded debts should be:

- (a) secured debts;
- (b) criminal fines;
- (c) child maintenance;
- (d) damages for negligence, nuisance, or a breach of duty payable by way of Court order; and
- (e) any other category prescribed, by the Committee, by regulation as being excluded.

3.2.3.2 Only debts listed in the LVDRO will be protected from creditors and subsequently written off at the end of the moratorium period. Any debts not listed, or those acquired after the LVDRO is in place, will not be included in the LVDRO.

3.2.3.3 The Committee notes that although Jersey's legislation specifies, as part of its eligibility criteria, that an applicant may not have more than £20,000 of qualifying debts¹², England increased this figure from £20,000 to £30,000 on 29th June 2021¹³.

3.2.3.4 The Committee was further assisted by updated figures provided by CAG which suggested that setting the qualifying debt figure at £20,000 would mean that approximately one third of CAG clients as at April 2021 might be eligible to apply, whereas setting the amount at £30,000 might mean that nearly half of CAB clients would be eligible to apply¹⁴.

3.3 Proposed process and administration of LVDROs

3.3.1 An advantage of a LVDRO as a personal insolvency process is that it is intended to be a relatively quick and affordable administrative process.

3.3.2 The Committee envisages that an application will be made, in a standard format, and that an intermediary may be appointed to advise and/or assist applicants. CAG have expressed to the Committee a willingness to undertake this role. The Committee further intends that a modest fee should be payable on application and proposes that an ability to prescribe such a fee is included in the implementing legislation.

¹¹ All other debts would be qualifying debts which could be covered by a LVDRO.

¹² Article 4(1)(e) of the Debt Remission (Individuals) (Jersey) Law, 2016.

¹³ The Insolvency Proceedings (Monetary Limits) (Amendment) Order 2021.

¹⁴ Based on clients being assisted by the CAG in April 2020. A total of 12 people may be eligible for a LVDRO if the qualifying debt figure was set at £20,000 and 18 people may be eligible if it was set at £30,000.

3.3.3 In the UK, the application is made to the Official Receiver, and in Jersey the application is made to the Viscount. As neither of these roles, or offices, exist in Guernsey, the Committee considers that issuance of LVDROs would most appropriately be undertaken by a Jurat.

3.3.4 The Committee anticipates that many applications for an LVDRO could be considered by a Jurat on the basis of the documents received and without oral representations by the parties.

3.3.5 If the Jurat was satisfied that the applicant met the eligibility criteria, and that no creditor had submitted a successful objection to the making of the LVDRO having received notice of the application, a Jurat would make a LVDRO.

3.4 Challenging a LVDRO

3.4.1 The Committee considers that it would be appropriate for creditors to have an opportunity to object to the making of the LVDRO, or the inclusion of that creditor's debt in the LVDRO, on receiving notice of the debtor's application for a LVDRO. Objections could only be validly made on the grounds that the applicant did not meet the eligibility criteria, or that the creditor's debt was not a qualifying debt.

3.4.2 A creditor should also have an ability to apply for a LVDRO to be revoked, or amended, if the debtor's circumstances have changed within the moratorium period, such that he or she is no longer unable to pay his or her debts.

3.4.3 The Committee proposes that the legislation makes specific provision for any interested party to make an application to the Court if he or she is dissatisfied by any act or decision of a Jurat in connection with a LVDRO, in addition to an ability for a Jurat to refer any matter to the Court for directions.

3.5 Register of LVDROs

The Committee proposes that a private register of LVDROs should be maintained by the Greffier, with disclosure of information on the Register permitted to parties who have a legitimate interest. Further consideration would be given to the parameters for disclosure and it is proposed that the Committee should have the power to make provision in this regard by regulation.

3.6 Restrictions on applicant while LVDRO in place

3.6.1 Certain restrictions should be placed on an individual who has been issued with a LVDRO whilst it is in place, such as acting as a director of a Guernsey registered company, without leave of the Court to do so.

3.6.2 The Committee also considers that individuals should be required to notify a potential creditor of the existence of the LVDRO and be prevented from obtaining credit in excess of £500 during the time that a LVDRO is in place, again without leave of the Court to do so.

3.7 Miscellaneous provisions

3.7.1 *Regulations of the Committee*

3.7.1.1 The legislation should include a power for the Committee to make regulations, as set out in this policy letter and also as necessary, or expedient, for carrying into effect the proposals contained in this policy letter.

3.7.2 *Offences*

3.7.2.1 Legislation would need to make appropriate provision for offences.

3.7.3 *Impact of a Guernsey issued LVDRO on foreign debt*

3.7.3.1 The Committee acknowledges that some unsecured personal debt will likely be governed by the law of another jurisdiction ("**foreign debts**"). In particular, the Committee anticipates that issuers of credit and store cards are most likely to be based in England and as such, agreements with those creditors will sometimes be governed by English Law.

3.7.3.2 The Committee understands that the question of the recognition, and effectiveness, of a Guernsey LVDRO in other jurisdictions involves potentially complicated issues of private international law.

3.7.3.3 The effectiveness of a Guernsey LVDRO in respect of foreign debt is not straightforward but the Committee is of the view that it is nonetheless appropriate to proceed given the certainty that could be provided as a matter of Guernsey Law. The Committee proposes that foreign debts should be eligible to be listed in a Guernsey LVDRO, as some creditors may choose to recognise the effect of the order and their inclusion may be recognised by the Courts of another jurisdiction in some circumstances. It will also be important for the debtor to declare all debt, including foreign debts, for the purposes of establishing whether the eligibility criteria threshold is met.

3.7.3.4 The Committee also recommends that the legislation should provide that no legal proceedings may be commenced in the Guernsey Courts against a debtor in respect of a debt listed in a Guernsey LVDRO (including a foreign debt), except with the permission of the Court.

4 Consultation

- 4.1 The Committee was approached by industry in the summer of 2020, with a suggestion that the options and processes available to individuals in Guernsey on becoming insolvent should be reviewed.
- 4.2 The Committee confirmed that it would consider proposals for reform and an industry led working group was established consisting of (i) insolvency practitioners, (ii) advocates specialising in personal insolvency matters (iii) HM Sheriff and (iv) a representative of CAG (the “**Working Group**”).
- 4.3 In recognition of the scope of work involved to implement an entirely new personal insolvency regime in Guernsey, the Working Group fed back that they would report proposals for reform to the Committee in stages.
- 4.4 The Working Group presented its first report to the Committee in June 2021, concerning low value debt relief and is continuing to review options for further reform of personal insolvency in Guernsey, including bankruptcy and individual voluntary arrangements.
- 4.5 The Committee is very grateful for the detailed work undertaken by the Working Group and has carefully considered the proposals submitted in the preparation of the policy proposals contained in this policy letter.

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 appended to propositions laid before the States.
- 5.2 In accordance with Rule 4(1):-
 - 5.2.1 the propositions contribute to the States’ objectives and policy plans set out within the Government Work Plan by attempting to alleviate some of the economic after-effects of the Covid pandemic on some of Guernsey’s most financially vulnerable citizens;
 - 5.2.2 the Committee consulted (i) the Working Group, (ii) CAG, (iii) Her Majesty’s Greffier and (iv) the Royal Court in the development of the proposals;
 - 5.2.3 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):-
 - 5.3.1 the propositions relate to the Committee’s purpose and policy responsibilities as they relate to (i) regulation in the economy and (ii) the reputation of the island as a centre

for commerce and industry; and

5.3.2 the propositions are supported unanimously by the members of the Committee.

Yours faithfully

N R Inder
President

S J Falla
Vice-President

A Kazantseva-Miller
N G Moakes
S P J Vermeulen

A Niles
A Mancini
Non-States Members

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

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

THE INCOME TAX (INDEPENDENT TAXATION) (COMMENCEMENT AND TRANSITIONAL PROVISIONS) REGULATIONS, 2022

In pursuance of section 203A of the Income Tax (Guernsey) Law, 1975, as amended, "The Income Tax (Independent Taxation) (Commencement and Transitional Provisions) Regulations, 2022" made by the Policy & Resources Committee on 30th August 2022, are laid before the States.

EXPLANATORY MEMORANDUM

These Regulations bring the Income Tax (Independent Taxation) (Guernsey) (Amendment) Ordinance, 2020 into force on the 1st January, 2023. The Regulations also make savings provisions in respect of individuals currently benefiting from, or acting on, the open market and Alderney tax caps, and clarify that the doubling of the amount of interest on which tax relief can be claimed for a married couple in respect of the purchase of a principal private residence will cease, with each party able to claim individual relief in their own right.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE FORFEITURE OF MONEY, ETC. IN CIVIL PROCEEDINGS (BAILIWICK OF GUERNSEY)
(AMENDMENT) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 ("the Law"). Section 1 of the Ordinance sets out the amendments to the Law. The effect of the amendments is as follows:

- a summary forfeiture procedure is introduced for what are commonly described as "no consent" cases. These are cases where the law enforcement authorities have refused to consent to a transaction involving particular property. The summary forfeiture procedure will enable the court to make an order for the forfeiture of assets in a Bailiwick bank account where a relevant consent request has been made and refused at least a year previously. Such an order may only be made on the application of HM Procureur, on the basis that he or she has reasonable grounds to believe that the property is linked to criminality, and provided that the owner of the property has not satisfied the court to the contrary.
- the burden of proof in standard civil forfeiture applications is reversed, so that where the court has previously frozen assets that are suspected to be linked to criminality and HM Procureur then applies for a forfeiture order, the court must make a forfeiture order unless satisfied on the balance of probabilities that the assets are not linked to criminality.
- the Committee for Home Affairs has the power to make regulations (after consultation with other authorities) to introduce a procedure under which a forfeiture order can be reconsidered if new evidence comes to light.
- the authorities are not liable for costs or damages in respect of a civil forfeiture application (this is without prejudice to an award of damages under the Human Rights (Bailiwick of Guernsey) Law, 2000).

- an existing power under the Law for the court to award compensation under the Law has been revised to specify that it applies to loss as a result of an act or omission made in bad faith.

Section 2 of the Ordinance contains a transitional provision. This makes it clear that where assets are already the subject of refusal of consent when the relevant amendment comes into force, the time that has passed since that refusal may be taken into account in calculating the 12 month period for the purposes of a summary forfeiture application. Section 2 also makes clear that the amendments to the forfeiture provisions at section 13 of the Law apply to money detained or frozen under the Law before the commencement of the Ordinance, except where an application for forfeiture has been made in respect of that money before the commencement.

Sections 3, 4 and 5 deal respectively with extent, citation and commencement.

The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022

THE STATES, in pursuance of their Resolution of ** September, 2022^a, and in exercise of the powers conferred on them by sections 63 and 64 of the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007^b, and all other powers enabling them in that behalf, hereby order:-

Amendment of the Civil Forfeiture Law.

1. (1) The Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 ("**the Law**") is amended as follows.

(2) After section 12, insert -

"Summary forfeiture notice

12A. (1) In any case that comes within subsection (2), His Majesty's Procureur may serve a summary forfeiture notice in accordance with subsection (3) upon the holder of an account held at a bank in the Bailiwick.

(2) A case is within this subsection if –

(a) His Majesty's Procureur has reasonable grounds to believe that funds in the account

^a Article ** of Billet d'État No. ** of 2022.

^b Ordres en Conseil Vol. XXXIX, p. 137. This enactment has been amended.

are-

- (i) any person's proceeds of unlawful conduct, or
 - (ii) intended by any person for use in unlawful conduct,
 - (b) in relation to the bank account or any funds in the bank account, a consent request has been made by any person,
 - (c) the requested consent has been refused by a member of the Financial Intelligence Unit within the meaning of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2021^c, and
 - (d) notification of the refusal of the requested consent was given to the person making the request at least 12 months before the date on which the summary forfeiture notice is to be served.
- (3) A summary forfeiture notice shall be in writing and

^c Order in Council No. XII of 2022.

shall –

- (a) state the name of the holder of the bank account to whom it is addressed,
- (b) specify the details of the bank account and of the funds in the bank account which in the opinion of His Majesty's Procureur are -
 - (i) any person's proceeds of unlawful conduct, or
 - (ii) intended by any person for use in unlawful conduct,
- (c) state a date on which, and a place and time at which, the holder of the bank account is required to attend a hearing of the Royal Court to show cause why the funds so specified are not within subsections (b)(i) or (ii), and should not be forfeited, and
- (d) be served on -
 - (i) the holder of the bank account, and
 - (ii) the bank at which the account in question is held,

and if an address for service on the holder of the bank account is not known, service on the bank only shall be taken as sufficient for the purposes of this subsection.

(4) For the purposes of this section, a "consent request" means a request under –

(a) section 38, 39 or 40 of the Criminal Justice (Proceeds of Crime) Bailiwick of Guernsey Law, 1999^d for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under the section in question in the absence of such consent, or

(b) section 14 of the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002^e for consent to do any act or deal with property held in the bank account in any way which would comprise an offence under section 8, 9, 10, 11 or 11A of that Law in the absence of such consent.

Summary forfeiture procedure.

12B. (1) If the person ("P") on whom a summary forfeiture notice under section 12A is served fails to attend the hearing as required by the

^d Ordres en Conseil Vol. XXXIX, p. 137. This enactment has been amended.

^e Ordres en Conseil Vol. XLII, p. 427. This enactment has been amended.

summary forfeiture notice, His Majesty's Procureur may apply forthwith to the Royal Court for a forfeiture order, and the Court may make such an order, without further notice to P.

(2) If P appears at the hearing (whether in person or by a legal representative), P may -

(a) at the hearing, satisfy the Court that the funds are not -

(i) any person's proceeds of unlawful conduct, or

(ii) intended by any person for use in unlawful conduct, or

(b) request that the question of whether or not the funds are within (a) (i) or (ii) be determined at such later date as the Court may order.

(3) Where P fails to satisfy the Royal Court on the balance of probabilities (whether at a hearing under subsection 2(a) or at such later date as the Court may order) that the funds are not within subsection (2)(a)(i) or (ii), the Court shall, on the application of His Majesty's Procureur, make a forfeiture order in relation to the funds specified in the summary forfeiture notice or any part of them."

(3) In section 13 –

- (a) for the heading, substitute "Standard forfeiture",
- (b) in subsection (1), delete the words "sitting as an Ordinary Court (**"the Royal Court"**)", and
- (c) for subsection (2), substitute –

" (2) The Royal Court shall order the forfeiture of the money or any part of the money unless satisfied on the balance of probabilities, by the person against whom such an order is proposed to be made, that the money or the part is not –

- (a) any person's proceeds of unlawful conduct, or
- (b) intended by any person for use in unlawful conduct."

- (4) After section 14, insert the following –

Reconsideration based on new evidence.

14A. (1) The Committee for Home Affairs may, by regulations made after consultation with the Policy and Finance Committee of the States of Alderney, the Policy and Finance Committee of the Chief Pleas of Sark, the Royal Court and His Majesty's Procureur, make provision for any party affected by a forfeiture order to make an application to the Royal Court for the matter to be reconsidered in the light of new evidence.

(2) Any provision made by regulations made under this section shall be without prejudice to the right of appeal under section 14, and

shall be construed accordingly."

(5) For section 17, substitute the following –

"Limitation of liability.

17. (1) Subsection (2) applies to –

- (a) His Majesty's Procureur,
- (b) His Majesty's Sheriff,
- (c) the Director of the Economic and Financial Crime Bureau,
- (d) the Head of the Financial Intelligence Unit,
- (e) a police officer or senior officer, and
- (f) any member, officer, servant or agent of any of the aforesaid.

(2) Subject to subsection (4), and without prejudice to section 17A, a person to whom this subsection applies is not liable in costs or damages for anything done or omitted to be done in relation to an application under this Part.

(3) For the avoidance of doubt, an act or omission in relation to an application under this Part includes any act or omission in the exercise of any related investigatory functions or powers under this Law.

(4) Subsection (2) does not apply so as to prevent an award of damages made in respect of an act or omission on the ground that it was unlawful as a result of section 6(1) of the Human Rights (Bailiwick of Guernsey) Law, 2000.

Compensation in case of bad faith.

17A. (1) Where it is shown that anything done or omitted to be done by a person within section 17(1) in relation to an application under this Part was done in bad faith, the person to whom the property belongs may make an application to the Royal Court for compensation.

(2) The Royal Court may, on an application under subsection (1), order compensation to be paid to the applicant if –

- (a) the Court is satisfied that the person has suffered loss as a result of the said act or omission, and
- (b) having regard to all the circumstances the Court considers it appropriate to make such an order.

(3) The amount of compensation to be paid under subsection (2) is the amount the Royal Court thinks reasonable having regard to the person's loss and to any other relevant circumstances.

(4) Compensation ordered to be paid under this section shall be paid by the States of Guernsey."

Transitional provision.

2. For the avoidance of doubt -
 - (a) in any case where a notification of refusal of a requested consent, within the meaning of section 12A(2)(d) of the Law, was given before the commencement of section 1(2) of this Ordinance, the time that has passed between the giving of the notification and the commencement of section 1(2) shall be taken into account for the purposes of calculating the 12 month period referred to in section 12A(2)(d) of the Law, and
 - (b) the amendments to section 13 of the Law made by section 1(2) of this Ordinance shall apply to any money detained or frozen under the Law before the commencement of section 1(2), except where an application for forfeiture has been made in respect of that money before the commencement of that section.

Extent.

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

Citation.

4. This Ordinance may be cited as the Forfeiture of Money, etc. in Civil Proceedings (Bailiwick of Guernsey) (Amendment) Ordinance, 2022.

Commencement.

5. This Ordinance shall come into force on the day appointed for this purpose by regulations made by the Committee for Home Affairs; and different dates

may be appointed for different provisions and for different purposes.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

**THE ECONOMIC AND FINANCIAL CRIME BUREAU AND FINANCIAL INTELLIGENCE UNIT
(BAILIWICK OF GUERNSEY) LAW, 2022 (COMMENCEMENT) ORDINANCE, 2022**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (Commencement) Ordinance, 2022", and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance commences the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 on the 20th October, 2022.

**The Economic and Financial Crime Bureau and
Financial Intelligence Unit (Bailiwick of Guernsey)
Law, 2022 (Commencement) Ordinance, 2022**

THE STATES, in exercise of the powers conferred on them by section 19 of the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022^a, and all other powers enabling them in that behalf, hereby order:-

Commencement of the Law.

1. The Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 shall come into force on 20th October, 2022.

Citation.

2. This Ordinance may be cited as the Economic and Financial Crime Bureau and Financial Intelligence Unit (Bailiwick of Guernsey) Law, 2022 (Commencement) Ordinance, 2022.

^a Order in Council No. XII of 2022.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

POPULATION & IMMIGRATION POLICY REVIEW

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Population & Immigration Policy Review', dated 5th September 2022 they are of the opinion:-

1. To note the objective findings of the Review, and the evidence presented in sections 5 and 6 of this Policy Letter, that suggests an average net migration level of +300 per year over the next thirty years is required to sustain the Island's workforce at its 2020 level, and to agree that the economic competitiveness of the Island should be supported through the strategic population objective that:

"The States of Guernsey will assume, for the purpose of planning future infrastructure and service provision, that net migration will average up to +300 per year over the next thirty years. This assumption will support the capacity of the Island's workforce so that it remains a desirable and competitive jurisdiction, and will ensure that the Island can meet the needs of the economy with the necessary housing and infrastructure."

2. To agree that the strategic population objective shall be reviewed by the Committee *for* Home Affairs, in consultation with stakeholder committees, no later than December 31st, 2027.
3. To rescind Resolutions 3 and 4 of Billet d'État XXIV of 2015 ("Maintaining Guernsey's Working Population") and its accompanying strategic population objective.
4. To direct the Committee *for the* Environment & Infrastructure to include, in the work on market interventions that will be made by the States of Guernsey in respect of housing, specific reference to enabling the delivery of general housing units and stock, as well as social and key worker housing units and stock before the end of 2023.
5. To note that the Human Capital Development Plan will be published by Q2 2023, and to direct the Committee *for* Economic Development and the Committee *for* Education, Sport & Culture to ensure that the Plan supports the relevant aspects and recommendations of this Review.

6. To direct the Committee *for* Employment & Social Security to consider any recommendations in the areas of workforce participation where contributions and benefits may assist future outcomes, and to return to the States with any proposals before the end of 2023.
7. To direct the Policy & Resources Committee to lead a review of the options for any bespoke arrangements that ensure those who are new to a community, and who may only be staying and working in that community for a fixed period rather than on a permanent basis, access public services in a fair and transparent way, and to report its conclusions and make any recommendations to the States before the end of 2023.
8. To direct the Policy & Resources Committee to review whether any greater flexibility or benefits in kind could be applied to finance sector roles that are directly linked to Guernsey meeting its economic substance requirements, in order to include any new arrangements as part of the 2024 Budget Report.
9. To note the Committee *for* Home Affairs' intention to make any necessary policy changes to the Employment Permit Policy and the Immigration Work Permit Policy in line with the steps set out in paragraph 7.6 of this Policy Letter.
10. To agree that the Population Management (Guernsey) Law, 2016, shall be amended to provide that:
 - a) Short-Term Employment Permits may continue to be granted for a period of up to one year and may be renewed upon expiry by the Administrator until the holder reaches up to three years' consecutive residency;
 - b) An individual who has previously lived in Guernsey on the basis of a Short-Term Employment Permit for up to three consecutive years may be issued with a further Short-Term Employment Permit provided they have taken a "recognised break in residency", as defined under the Law; and
 - c) Medium-Term Employment Permits are removed from the Law.
11. To note the intention of the Committee *for* Home Affairs to develop and implement an improved end-to-end service through the merging, where appropriate, of Population Management and Immigration at the policy and operational level, and to further note that there may be consequential amendments to the Immigration Rules and resource requirements, including a minor capital funding request, to facilitate this and Proposition 10.
12. To note that one of the principal duties of government is to maintain the safety and security of the Island and its residents, and the ongoing roles and

coordination of the Population Management and Immigration regimes in contributing to this duty will be continually reviewed by the Committee *for* Home Affairs.

13. To direct the Committee *for* Home Affairs to conduct a review of the routes to Permanent Residency under Sections 3 and 6 of the Population Management (Guernsey) Law, 2016, particularly in respect of so-called 'birth-right privilege', and to report its conclusions and make any recommendations to the States before the end of the current political term.
14. To note that the Committee *for the* Environment & Infrastructure is in the process of developing proposals for an Open Market inscriptions policy and the Open Market Transfer Register, and will seek to make any necessary recommendations to the States before the end of 2023.
15. To agree that Section 8 of the Population Management (Guernsey) Law, 2016, should be amended to make clear that Open Market householders may accommodate Seasonal Employment Permit holders.
16. To note that the Committee *for* Home Affairs considers it essential for the Population Management regime to apply as a level playing field for all business entities across Guernsey and Herm, and that it intends to consider, following the necessary consultation and engagement, how Herm can be included within the Population Management (Guernsey) Law, 2016, reporting back to the States by the end of 2023.
17. To rescind Resolution 2 of Billet d'État VII of 2017 ("The Population Management (Guernsey) Law, 2016 (Commencement) Ordinance, 2017").
18. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

POPULATION & IMMIGRATION POLICY REVIEW

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

5th September 2022

Dear Sir

1 Executive Summary

- 1.1 Guernsey faces a significant challenge in maintaining its economic competitiveness and security over the next 10 years and beyond. Global challenges such as the increasing demand for skilled workers, accelerating digitisation, taxation and economic substance mean that the States of Guernsey needs to consider the shape and size of its workforce in the long-term.
- 1.2 These issues are compounded by the infrastructure and economic challenges that Guernsey faces and feels the impact of, leading to further obstacles in areas such as the recruitment and retention of workers, including key workers. The scope of the Population & Immigration Policy Review ('the Review') was such that it could not address all of these challenges itself, but it has sought to ensure that it makes recommendations which actively support their resolution where it is appropriate.
- 1.3 Guernsey's innovative business sector has had success in diversifying the finance sector as well as the wider economy, and the States of Guernsey continues to take forward transformation initiatives to change the way that public services are provided. However, the need to ensure fiscal resilience and to reinvest in our economy and public services means that we need to ensure we do all we can as a jurisdiction to protect and enhance our long-term economic competitiveness.
- 1.4 Guernsey's productivity, if measured by GDP, is ahead of many comparable jurisdictions and also that of the United Kingdom. But global challenges mean that we must do all that we can to sustain that position. In addition, it is clear that more can be done to increase participation in our economy, and government's role must be to support our Island's businesses in achieving that.

Therefore, in proposing a revised strategic population objective, the Committee for Home Affairs ('the Committee') is mindful of the other work that Committees of the States are taking forward in these areas.

- 1.5 One of the central workstreams of the Review focused on providing data to inform these strategic questions. Future population and workforce modelling was conducted to provide objective insight through data-based forecasts. Following extensive discussions on the matter, this work led to the proposal of a new strategic population objective, reflected in Proposition 1 as:

"The States of Guernsey will assume, for the purpose of planning future infrastructure and service provision, that net migration will average up to +300 per year over the next thirty years. This assumption will support the capacity of the Island's workforce so that it remains a desirable and competitive jurisdiction, and will ensure that the Island can meet the needs of the economy with the necessary housing and infrastructure."

- 1.6 The revised strategic population objective is neither a target nor a cap. Nor is it the mechanism which automatically increases Guernsey's working population, not least as Guernsey's working population level is subject to myriad external factors. Instead, it is an assumption based on analysis undertaken to evaluate what the Guernsey economy will need to remain competitive. It does not seek to list who the Island needs, when it needs them, and which year that they need to arrive. What it does do is set out, at a high level, the framework in which government will need to consider its population in the next 10-30 years, not least to ensure appropriate planning can be taken in respect of housing and planning; the provision of public services; investment in infrastructure; and maintaining fiscal balance.
- 1.7 This Review and the recommendations that it sets out follow from that starting point, and the Committee has worked closely with the Island's numerous stakeholders and their often understandably competing interests to set out a constructive position for future decision-making by the States of Guernsey. The Review further sought to ensure it supported other areas of work and planning that the Committees of the States and the public service are undertaking.
- 1.8 Given the global challenges that Guernsey faces and how they impact on the Island's economy, in June 2021 the States' Assembly agreed the Government Work Plan ('GWP') 2021-2025: Investing in Islanders, Our Island and Our Future, which set the course of government work over the current political term. As a part of the GWP, the Assembly agreed ten critical recovery actions and decisions for government to be progressed as priority work. One of the top 10 recovery actions was to:

"Assess the fitness for purpose of our population and immigration framework"

while recognising the need to balance economic needs with maintaining quality of life.”¹

- 1.9 The Committee convened a cross-Committee Steering Group (‘the Steering Group’) to guide the Review that stemmed from this top 10 GWP action. The Steering Group comprised members of the Policy & Resources Committee and the Committees for Home Affairs; Economic Development; Employment & Social Security; Environment & Infrastructure; and Education, Sport & Culture.
- 1.10 Whilst much of the Review’s focus was centred on the question of economic migration to sustain the Island’s workforce, it further considered the effectiveness and functionality of the Population Management and Immigration regimes across a range of areas, and recognised their vital contribution to maintaining the safety and security of the Island.
- 1.11 The Review considered the link between Population Management and Immigration, particularly in light of Brexit. This work proposed changes to the Employment Permit Policy (‘EPP’) and the Immigration Work Permit Policy, which sought to address post-Brexit issues of ‘settlement’ for individuals working in the Island in certain job types whilst utilising the opportunity to change the regimes in such a way that benefited the Island and its businesses. These benefits are principally achieved through tying the Immigration Work Permit Policy to the EPP for third country nationals, rather than only EU/EEA nationals as per current arrangements, granting local businesses access to a global pool of workers from which to recruit.
- 1.12 The Review considered other policy areas of the Population Management (Guernsey) Law, 2016 (‘the Law’).² In respect of the routes to Permanent Residency under the Law, the Steering Group agreed, by a majority, that some of the routes could be considered discriminatory on the basis that those born with local ties are treated more favourably under the Law than those born without. In recognition of the considerable public interest in this area and the extensive consultation that would be required, the Steering Group agreed that the issue should be considered in full, separately from the Review.
- 1.13 The work of the Review also focused on a number of Open Market policy areas. The Steering Group is supportive of the significant contribution that the Open Market and its residents make to the community and the economy. Work that was undertaken in this area had the overall objective of clarifying and strengthening the Open Market’s positive role, particularly through; inscriptions onto the Open Market Housing Register (‘the Register’); work to clarify the rights of Open Market residents; and Open Market lodging. In some of these areas, the

¹ [Billet d’État XV of 2021](#) and its [Resolutions](#)

² [The Population Management \(Guernsey\) Law, 2016](#)

work of the Review led to new policies being implemented or developed. In others, however, the Steering Group determined that the current provisions of the Law, or its underlying policies, were sufficient. At all times, the Review remained cognisant of the potential impact any policy change would have on the Open Market and Local Market, and ensured that neither would be negatively impacted.

- 1.14 The role of the Population Employment Advisory Panel ('PEAP'), and its function under the Population Management regime, was examined by the Steering Group. Following Brexit and as a result of Covid-19, there has been increased direct engagement between industry and government which has proven beneficial. Coupled with a revised approach to the development of the EPP, the functions previously performed by PEAP have been impacted. PEAP's role will therefore be required to evolve with these changes, and its function and purpose should move to ensuring they are implemented and embedded in the Island's community effectively, continuing to act as a body through which businesses can raise concerns.
- 1.15 A separate workstream of the Committee considered the status of Herm, and explored whether and how the Population Management regime could apply to it. This workstream was not prioritised as a part of the Review, which focused its efforts on providing relief to businesses through substantive changes to the regime. However, the Committee believes it is essential that the Population Management regime applies as a level playing field for all business entities operating across Guernsey and Herm, and will consider, with the appropriate consultation and engagement with Herm, how it can be included in the Law.
- 1.16 With the support of the Steering Group, it was agreed that, as the work of the Review progressed, the Committee would prioritise and implement policy changes where it was recognised that they could provide immediate support to individuals or businesses.³

2 Scope of the Population & Immigration Policy Review

- 2.1 Following the States' decision that the Review would be a top 10 priority in the GWP, the Terms of Reference for the Review were established.⁴ These Terms of Reference, which can be found in full in Appendix 1, centred the Review on a single project ambition, namely:

"To have a population management regime that can respond quickly to the

³ For example, the early work of the Review led to considerable policies being agreed by the Committee. See [Media Release: Committee for Home Affairs introduces further changes to Population Management policies in support of businesses](#)

⁴ [Terms of Reference – Population and Immigration Policy Review](#)

Island's changing economic, social and environmental demands and support recovery."

- 2.2 The Steering Group was well-represented across the majority of Principal Committees, highlighting the strategic importance of the Island's population policy. The full membership of the Steering Group can be found in Appendix 1.
- 2.3 In accordance with the Terms of Reference and project ambition, the Review was squarely focused on the Island's population management policy, at both the strategic and operational level. However, it is important to acknowledge the role of other influencing factors which fall outside the scope of this Review.
- 2.4 Principally, there are interdependencies between population policy and other top 10 priorities of government, such as the volume of residential development required to adequately house the population, as demonstrated by the work to develop the States' Strategic Housing Indicator, and work on skills through the Human Capital Development Plan. Population policy further has an impact on the States' finances; a larger population would contribute to the amount of revenue generated from taxation, however it would also add to the cost of providing public services and infrastructure upon which the community and economy rely.
- 2.5 These interdependencies were influencing factors throughout the Review, and particularly fed into the revised strategic population objective (see sections 5 and 6). A joined-up approach was adopted to ensure these influencing priorities of government were progressed in alignment to the greatest degree. However, the substance of these issues ultimately falls outside of the scope of the Review, which was squarely focused on the management of the population through the Population Management and Immigration regimes.
- 2.6 It is therefore important to note, for the avoidance of doubt, that the objectives and ambitions of this Policy Letter will not be realised solely through the outcomes of the Review, and are heavily dependent upon a range of enabling factors.
- 2.7 In this sense, the outcomes of the Review are emblematic of the wider reality of the Population Management and Immigration regimes; although they provide some tools by which the population can be managed, they are limited in their extent, and the actual size and makeup of the population is influenced by myriad other factors. The strategic population objective and wider conclusions of the Review, if agreed by the States' Assembly, will consequently only be achieved through broader action across government initiatives.
- 2.8 The Committee acknowledged the work that took place during the last political term, which focused on the operational effectiveness of the Law. This work,

resulting from a 2017 Resolution,⁵ was paused as the Island went into its first lockdown.

- 2.9 The 2017 Resolution that led to the review in the previous political term was superseded by the new direction of the Assembly, as agreed via the GWP top 10 action, to conduct the Review. This Resolution is therefore proposed for rescission through this Policy Letter.

3 Background – The Population Management and Immigration Regimes

- 3.1 The Commencement of the Law in 2017 followed nearly a decade of policy development that sought to introduce a new regime to replace the previous Housing Control (Guernsey) Law, 1992 ('the HCL').

- 3.2 In contrast to the main objective of the HCL – namely to protect the Local Market – the primary objective of the new Population Management regime was instead centred on the effective management of the size and make-up of the Island's population, with the protection of the Local Market as a secondary aim.⁶

- 3.3 The responsibilities of the Committee and the Administrator of Population Management ('the Administrator') are set out in the Law. The Administrator is appointed by the Committee and is responsible for exercising the functions assigned under the Law. In taking decisions under the Law, the Administrator has to take into account:

- the strategic objectives of the States;
- States-approved policies regarding population size, make-up and housing availability; and
- the Committee's policies relating to the management of the population.

- 3.4 Whilst the Administrator must take into account the States and Committee policies, they are not bound by them. However, they are subject to an absolute duty to "act compatibly with Convention rights, and with fairness and impartiality" under section 1(6) of the Law.

- 3.5 The Population Management regime is necessarily interlinked with the Island's Immigration policy and legislation, which in turn is linked with, and strongly guided by, the UK's Immigration policy and legislation, as extended to the Bailiwick of Guernsey. The prominence and impact of this interdependency has become more apparent as a consequence of Brexit.

- 3.6 Much of the Review's focus was centred on the question of economic migration

⁵ [Resolutions, Billet d'État VII of 2017](#), Resolution 2

⁶ [Billet d'État XII of 2013](#), section 5.3

to sustain the Island's workforce, however it is also important to recognise that the Population Management and Immigration regimes are useful tools in supporting the attraction of individuals who will otherwise contribute to the Island and its community, and enable the relocation of residents' family members.

- 3.7 Furthermore, the Population Management and Immigration regimes play pivotal roles in contributing to the ongoing safety and security of the Island – one of the principal duties of government. They achieve this through the checks and processes that are in place to ensure that those who are deemed non-conducive to the public good – such as individuals with serious criminal convictions – are unable to come and live in Guernsey. This remained a key consideration throughout the Review.
- 3.8 Effective immigration and population controls are a core focus of many jurisdictions, and in an island where space and land are at a premium, and where infrastructure and public services are limited, it is essential for these controls to be in place. Together, the Population Management and the Immigration regimes are the only active levers that the States of Guernsey can use to exert some, albeit limited, control over the size of the working population. They do so by allowing non-residents to work in roles for which there is a local labour shortage, and to reside in Local Market accommodation for the duration of their Employment Permit (along with any immediate family members for the holders of certain types of Employment Permits).
- 3.9 Guernsey's migration patterns are largely demand-led; when the economy is performing well and jobs are available, net immigration may be high (as it has been over the last two years). However, the reverse is also true. When Guernsey's economy is less strong, periods of net emigration occur (as happened between 2012 and 2017). It is unlikely that any policy or legislation will remove this volatility, although it may seek to influence its impact.
- 3.10 The Steering Group recognised that, following Commencement, some aspects of the Law had been subject to criticism, and it thus committed to identifying and reviewing those areas. However, the Steering Group also acknowledged that the regime had demonstrated its considerable benefits in other ways, such as the Committee's ability, under the Law, to exercise policy control over Employment Permits. This had meant that it was possible to quickly respond to the challenges presented by Covid-19, and also as a consequence of Brexit, to meet the needs of individuals and the business community. The full list of policies implemented by the Committee from the beginning of the first lockdown has been included as Appendix 2.
- 3.11 Post-Brexit, it remains essential that the Island has a fair and transparent regime that seeks to manage the size and makeup of the population. Whilst the UK made

considerable changes to its post-Brexit immigration policy through the implementation of a points-based system, given the unique context and demands of the Island's economy, deviating away from this points-based system and accessing a wider recruitment pool is extremely beneficial to the Island.

- 3.12 In the absence of the Population Management regime and the EPP, the only controls on population and inward migration for the Island would be the Immigration regime, which is largely based on the UK's, with some deviations allowed for the Immigration Rules and the Immigration Work Permit Policy.
- 3.13 The restrictions of Immigration policy and legislation do not apply to British or (generally) Irish nationals, or those who already possess Leave to Remain in a Common Travel Area ('CTA') jurisdiction⁷ and their ability to live in the Island (subject to any conditions of their leave). Immigration controls also do not apply to inward movements into the Bailiwick from another CTA jurisdiction. This has been the crucial benefit of having a bespoke Population Management regime for the Island, enabling Guernsey to control the inward migration of all non-local residents, rather than only those from outside the CTA and who are subject to Immigration controls, and do not have Leave to Remain in another CTA jurisdiction.
- 3.14 The Steering Group therefore noted the critical importance of retaining a bespoke population management policy regime to enable government to effectively control the population. In light of the current regime's considerable benefits and its flexibility in key areas, as evidenced in the years following Commencement, the Steering Group agreed at the outset of the Review that it would not look to replace the Law or the Population Management regime.
- 3.15 Whilst the Population Management regime has demonstrated its flexibility in certain areas, it is important for the provisions of the Law and its underlying policies to be proactively reviewed, and additional policies created, in light of the changes that have taken place since Commencement, to ensure that it continues to meet the needs of the community through the changing contextual factors.
- 3.16 This formed the basis of the work of the Review, with the Steering Group acknowledging that, notwithstanding its agreement that the principles of the Law remain valid, it should not hesitate to make considerable changes to the Law or the Population Management policies that underpin it if required. In particular, it was acknowledged that the Law can appear complicated, and the work of the Review was focused on simplifying it where possible.
- 3.17 Similarly, the impact of Brexit has required the Population Management and Immigration offices to work in closer coordination with one another. Although

⁷ UK, Isle of Man, Jersey, and the Bailiwick.

the two regimes continue to operate under separate legislation, at an operational and policy level they are becoming more joined up, and the work of the Review – particularly section 7 of this Policy Letter – will further embolden this. The Committee has therefore utilised the opportunity to encourage the merging of the two regimes where it is possible and practicable to do so. This remains ongoing at the operational level, and the Committee may further make amendments to the Immigration Rules, and require resources, to facilitate this merging and the proposals contained in section 7.

4 Stakeholder Consultation

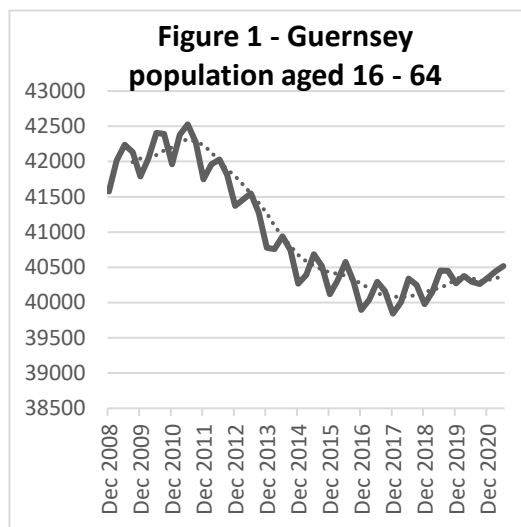
- 4.1 In the early stages of the Review, the Steering Group consulted key stakeholders to seek their feedback and experiences of Population Management and Immigration policy and processes. A targeted consultation was issued, and 249 responses were received, representing positive engagement by business and industry stakeholders. This section will provide a brief overview of the themes of the consultation findings.
- 4.2 The vast majority of respondents said that they currently recruited from the local workforce. However, four out of five of those who recruit from the local workforce reported challenges in doing so. The most common reasons were due to a lack of available on-Island applicants; insufficient skills/experience of applicants; and high or unrealistic salary expectations.
- 4.3 Over half of respondents stated that they recruited from outside the Island, with a majority of those reporting challenges in doing so. The most cited challenges included the cost or availability of housing, and the Immigration and Employment Permit processes.
- 4.4 Almost half of respondents stated that they had applied for Employment Permits in the last two years. The majority of comments on the Employment Permit application process were positive, with some noting positive experiences working with the staff at the Population Management Office, or stating that the application process was user-friendly.
- 4.5 Almost two thirds of respondents noted that they had concerns about staff retention in their business. In order to support employers to attract and retain workers to the Islands, respondents' top priorities for the States of Guernsey or Population Management policy were to:
- Improve the availability and provision of housing;
 - simplify the application process;
 - address concerns about the cost of living in Guernsey;
 - reduce fees; and

- allow more Permit extensions.

4.6 The findings of the consultation results helped to inform the strategic and policy work of the Review, particularly as it sought to make significant changes to the Employment Permit Policy and Immigration Work Permit Policy in such a way that would benefit the Island's businesses. These changes have been set out in full in section 7 of this Policy Letter.

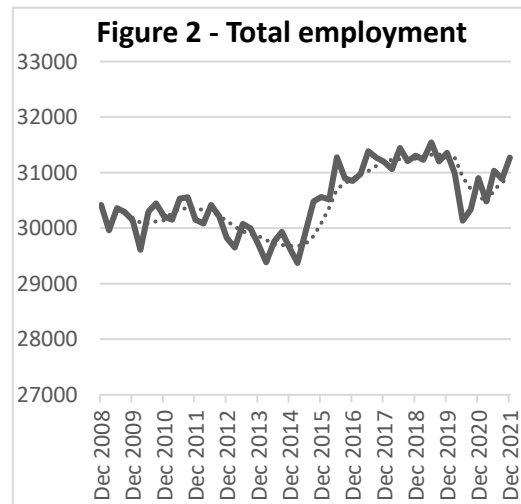
5 Strategic Population Objective – Forecast Population and Workforce Requirements

5.1 Through the data collection and forecasting methods of government, it is known that Guernsey faces significant long-term financial pressures due to the ageing population and the steady decrease of economically active residents in the Island's workforce.



5.2 This is occurring because, each year, there are more people retiring from the workforce than there are young people entering it. Net migration meets some of this gap, and it is enough to maintain or even increase the population aged between 16 and 64 in some years (as it has been in the last twelve-month period reported). However, on average over the last decade, this has not been the case. The population aged between 16 and 64 in June 2021 was 2,009 people smaller than at its peak in June 2011.

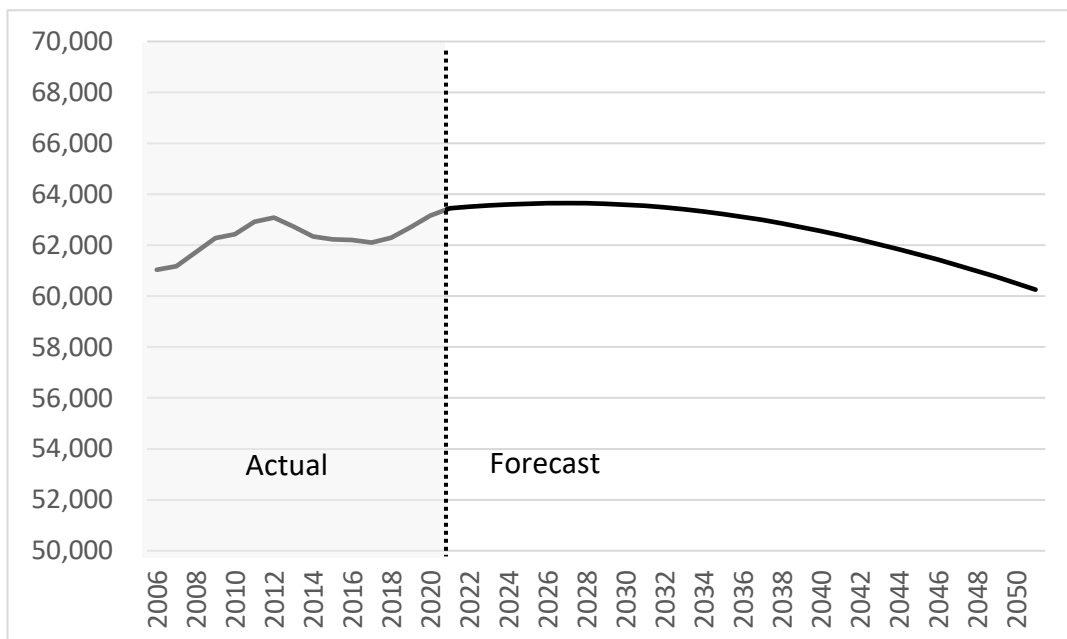
5.3 To date, this has been mitigated by an increase in participation (particularly between 2015 and 2017) and, more recently, by the increase in the age at which people can begin claiming the States' pension, which means employment has actually increased over the same period (see Figure 2). However, the participation rate had plateaued prior to the outbreak of Covid-19; it then fell during the pandemic and has yet to recover, despite the fall of unemployment



numbers to their pre-pandemic levels.⁸

- 5.4 Whilst this is a reality and a challenge that the Island must face, it is not alone in having to address this problem. The ageing demographic is increasingly recognised as a global issue that governments across the world must contend with. A declining number of workers is likely to become an issue for much of the developed world, and competition to attract workers is likely to increase. Further analysis in relation to current population trends in the Island has been included in Appendix 3.
- 5.5 The future population and workforce modelling undertaken in the Review sought to provide strategic insights into Guernsey's medium- to long-term population requirements, particularly in respect of the workforce and in light of the ageing demographic. It ultimately sought to develop a new strategic population objective, recommended for adoption by the States' Assembly, setting the course for the Island's future population policy and guiding other workstreams of government that are interlinked.
- 5.6 The findings of the modelling identified that, under a central scenario of an average annual net migration level of +100 (the average level experienced over the past 12 years), by 2050 Guernsey's population will decline by 5% (to c. 60,000 people, down from c. 63,000 today). At the same time, the population will age substantially. This has been shown through Figure 3, below.

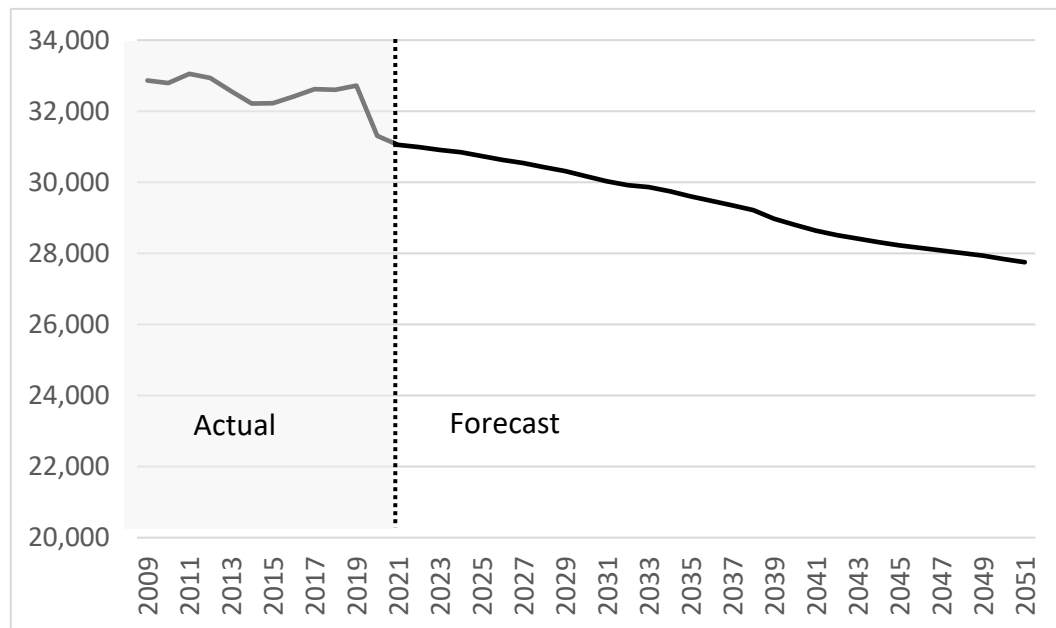
Figure 3 – Central population forecast (net migration: +100; fertility rate: 1.5)



⁸ Other jurisdictions have reported an increase in early retirement; it is likely something similar has occurred in Guernsey. "Long Covid" may also be a contributing factor. The drop in the participation rates for those aged 16-64 represents a loss of about 500 people from the workforce.

- 5.7 As a result of the ageing demographic, under the central scenario the size of Guernsey's workforce is forecast to fall at a faster pace than the size of the population, declining by 15% (to c. 26,000 workers, down from c. 30,000 today) as older residents leave the workforce and are not replaced by an equivalent number of younger, economically active people from within the Island or through migration. This has been shown through Figure 4, below.

Figure 4 – Central workforce forecast (net migration: +100; fertility rate: 1.5)



- 5.8 The Island is currently seeing record low levels of unemployment, with relatively high levels of participation (albeit slightly lower than prior to Covid-19). There may be some opportunity to marginally increase overall participation rates, and to significantly increase the amount of work undertaken by those who are currently only active for a limited number of hours (typically women with younger children) by improving access to the workplace. Notwithstanding these opportunities, there remains a real risk that Guernsey's economy will shrink significantly over the next 30 years under the central workforce forecast.
- 5.9 The future workforce modelling found that, in principle, an average level of around +300 net inward migration per annum, over the next 30 years, would be required to maintain a stable workforce and hence help sustain the Island's GDP at current levels (all other things remaining constant). It should further be added that the States of Guernsey's data indicates that, if there was +300 net migration, 85 of every 100 people who move to Guernsey would be economically active and filling vacant roles in the economy (see Appendix 3).
- 5.10 However, this level of net migration would also cause the population to rise by around 5,000 people, to close to 68,000 by 2050 (an 8% increase). This would

have a significant impact on the Island's environment, housing stock, infrastructure requirements and living standards, which on balance may offset the benefits to the economy that a stable workforce would bring. In consideration of these findings, the Steering Group remained cognisant of the clear tension between managing the decline in Guernsey's workforce and maintaining the Island as an attractive place to both live and relocate to. The findings of the modelling across various average annual net migration levels have been set out in Figures 5a and 5b, below.

Figure 5a: Population forecasts

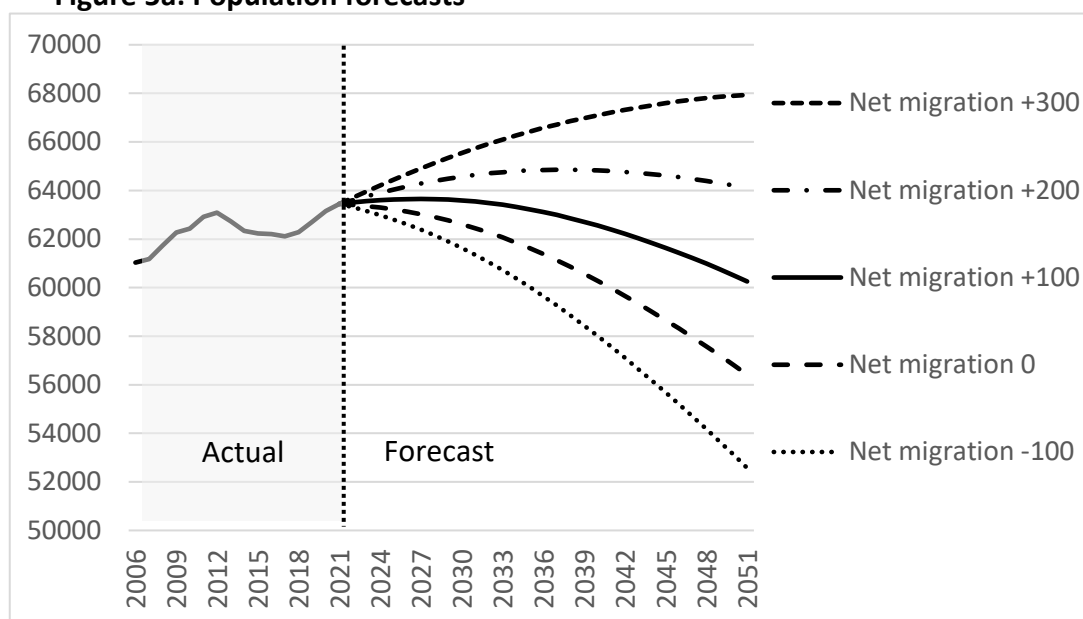
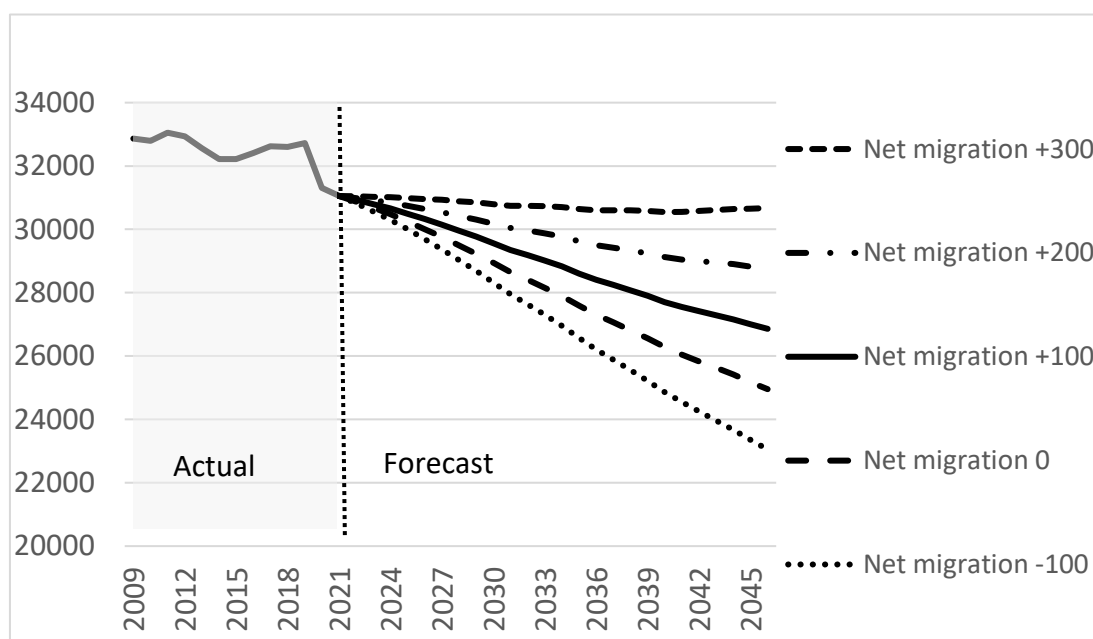


Figure 5b: Workforce forecasts



- 5.11 Work was also undertaken to forecast the overall dependency ratio under the three positive net migration scenarios (see Figure 6). The international standard used for the dependency ratio is:

$$\frac{\text{People aged 15 and under} + \text{Aged 65 and over}}{\text{People aged 16 to 64}}$$

- 5.12 However, as a consequence of Guernsey's decision to increase the pension age to 70 by 2049, Figure 6 also presents a second dataset adjusted for the increase in the pension age:

FIGURE 6: OVERALL DEPENDENCY RATIO ACROSS NET MIGRATION SCENARIOS

	Unadjusted			Adjusted for increased pension age		
	+100	+200	+300	+100	+200	+300
2021	0.58	0.58	0.58	0.57	0.57	0.57
2025	0.61	0.60	0.60	0.57	0.57	0.57
2030	0.66	0.65	0.64	0.59	0.58	0.57
2035	0.72	0.70	0.69	0.61	0.60	0.59
2040	0.77	0.74	0.72	0.63	0.62	0.60
2045	0.77	0.74	0.71	0.63	0.60	0.58

- 5.13 These figures provide a useful indication of the general balance in the population between those generally considered most likely to be economically active, and those who are more likely to be dependent on government services. However, they do not account for:

- Participation in the workforce above pension age. Currently there are 968 people aged 65 or over in the workforce (7.3% of the total in this age group); and
- Non-participation below pension age. Workforce participation peaks at 84% in age groups from 30 to 49, but drops to 63% in the 60 to 64 age group.

- 5.14 Allowing for both the impact on revenue and expenditure of a larger population, high-level initial analysis has found that +300 may only reduce the net revenue requirement by between £14m and £23m per year by 2040. This is a relatively modest sum and highlights the fact that maintaining the size of the workforce, on its own, will not suffice in responding to the Island's financial needs.

- 5.15 There is a considerable amount of natural volatility in net migration levels. Guernsey is currently undergoing a period of net migration well above the average observed over the last 12 years, but periods of net emigration have also been recorded, including a 5-year period between 2012 and 2017. There are

various factors affecting the levels of net migration, but they primarily cycle with the local economy, and in particular the strength of the job market relative to other jurisdictions that people may seek to relocate to.

- 5.16 Other jurisdictions are facing similar challenges and increasingly seeking net immigration of economically active people – particularly those with much sought after skills – to support their own demographic challenges. It should be further noted that high levels of net inward migration have a tendency to become self-limiting because of the price pressure it creates on housing. This collectively means that sustaining higher levels of net immigration over an extended period is likely to become increasingly difficult.
- 5.17 While considering an assumption of +300 net per annum to be theoretically sound, it therefore presents a challenge in practical terms, as it is unlikely that Guernsey could secure such numbers of economically active people on an annual basis, particularly given competition with other jurisdictions. A number of reports have been undertaken in previous years on Guernsey’s attractiveness to new workers in different sectors, and it is clear that there should be no expectation that this assumption will be met year-on-year from year one; nor that all of the levers are in place in order to attract these prospective new arrivals.
- 5.18 On that basis, the States of Guernsey will need to work closely with local businesses to understand what steps need to be taken to attract critical employees to Guernsey, just as work is being undertaken in the public sector to do the same in respect of key workers. However, this is not to create a situation where the States of Guernsey is chasing a target, which is not the recommendation of the Review. Rather, it is to ensure that the States focuses on how to enable critical and key workers to come to the Island more readily.
- 5.19 During the course of 2022-23, the States will make further progress on meeting the Island’s housing requirements through market interventions, and on enhancing workforce participation and increasing productivity through the Skills and Human Capital Development Plan work. Some of this work will take time to complete, but the Committee will continue to review the effectiveness of the Population Management and Immigration regimes as this work is developed and implemented.
- 5.20 The Steering Group emphasised the importance of both maximising the participation rate in the Island and increasing productivity in the existing workforce, such as through the upskilling of workers and the digitisation of certain job roles to enable the re-deployment of existing staff to more productive roles. It is important to ensure that employers can access skilled and productive employees from within the Island’s resident population, both now and in the future.

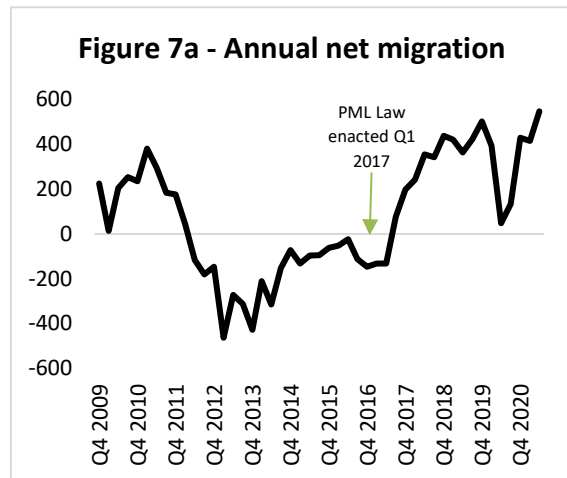
- 5.21 Inward migration should support the economic sectors with the most need and/or future growth potential. For example, the healthcare sector already needs to attract more workers to the Island to meet existing demand, and it will need an increasing number to support the Island in the future as the population ages. In addition, there is the potential for growth in a number of economic sectors, including the finance sector, professional services, and digital services, where targeted economic migration should be focused. Enabling inward migration to achieve policy objectives will need to complement the future actions to develop skills of the existing and future Island workforce.
- 5.22 It is currently understood that the Human Capital Development Plan will be published by Q2 2023, which will include consideration of how the States of Guernsey can support the Island's businesses in increasing productivity, and how productivity can be measured. However, it should be noted that Guernsey's businesses are already highly productive based on GDP measures, with Guernsey's productivity being 65 per cent higher than that of the UK and 29 per cent higher than Jersey.
- 5.23 The Review is recommending that the Committee *for* Employment & Social Security consider ways that government can support increased workforce participation where contributions and benefits may assist future outcomes, augmenting ongoing work in areas such as the Longer Working Lives strategy, the Supporting Occupational Health & Wellbeing ('SOHWELL') strategy and areas such as more employment friendly childcare schemes and policies.

6 Strategic Population Objective – Impact on the Island's Infrastructure

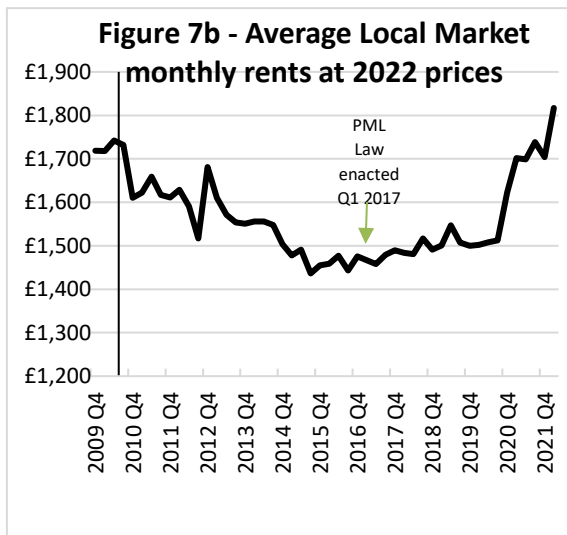
- 6.1 The size and makeup of the Island's population and workforce is heavily interlinked with a range of enabling factors and separate workstreams of government that fall outside the scope of this Review. However, the Review – through the Steering Group – has considered these matters, and the interconnections between this Review and other areas of priority work being undertaken across the States. The view of the Steering Group was clear that the Review itself was only one part of the long-term solution to the Island's demographic challenges.

Housing

6.2 The size and makeup of the population has a direct impact on the demand for housing in Guernsey, but there is often a delay before this is evident in pricing data. The period of net emigration which occurred between 2012 and 2017 was followed by falling prices (in real terms) in both Local Market rental prices (2012-2016) and property prices (2013-2018). The period of net immigration recorded since late 2017 has, at a slight lag, led to an increase in both rental and purchase prices.



6.3 The Commencement of the Law could have contributed in part to increased pressure on the Local Market, as there are more roles which lead to long-term permits (Medium-Term Employment Permits ('MTEPs') and Long-Term Employment Permits ('LTEPs')), enabling holders to live as householders in the Local Market

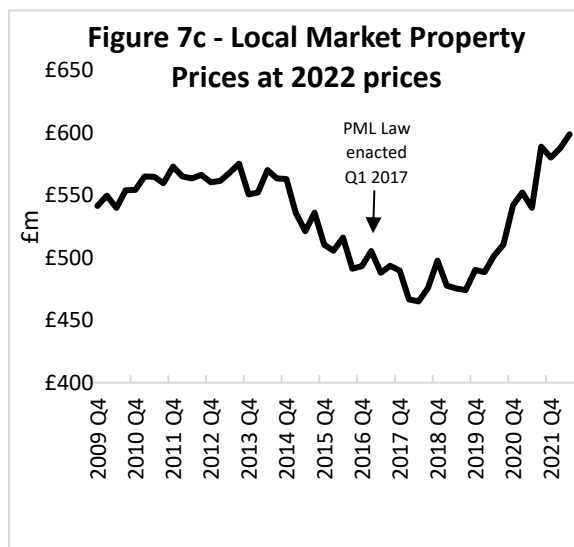


and, in the case of LTEPs, offering a pathway to Established Residency. This use of MTEPs and LTEPs has largely been received positively by businesses, allowing them to recruit and retain skilled staff.

6.4 However, in other areas the Law has maintained existing policy under the previous HCL regime, for example by continuing to allow Short-Term Employment Permit ('STEP') holders to live in the Local Market on a lodging basis. In some cases, it has gone further than the HCL, such as by enabling Employment Permit holders to live as lodgers in the Open Market. The impact of the Law's Commencement on the Local Market is therefore likely to be limited, with the

existing pressures on the Island's housing supply a result of Guernsey's increased economic stability and attractiveness as a jurisdiction to relocate to, particularly as a consequence of the pandemic.

6.5 The rising cost and lack of availability of housing is becoming increasingly cited as a limiting factor to local recruitment, as set out in section 4. Even if there are vacancies in the employment



market and people willing to fill them, the population cannot expand if there is nowhere suitable for people to live. The implication is that if sustaining the Island's economy and public services requires a higher level of net migration, it also requires more residential accommodation and the infrastructure to support it.

6.6 The data below presents the provisional outcome of the States Strategic Housing Indicator project. At this stage, it is understood that the States will debate this in late 2022 or early 2023 once a firmer direction is evident following debate of this Policy Letter, so that a more accurate outcome can be reached. Figure 8 shows that, in order to maintain the current average level of net migration experienced over the last 12 years (+100 people per annum), the creation of a further 1,327 residential housing units by 2026 would be required. If it is assumed that the level of net migration can be sustained at +300 people per annum over the next five years, this increases to 1,705 units by 2026. If these projections were extended to 2040, Guernsey would need to accommodate 3,370 additional units by 2040 to sustain a higher level of net migration over a long period.

Figure 8 – Provisional States' Strategic Housing Indicator outcome: Required number of new residential housing units across migration scenarios

Annual migration	New housing units by 2026	New housing units by 2040	2026 Difference with +100	2040 Difference with +100
+100	1,327	1,761	N/A	N/A
+200	1,517	2,565	190	804
+300	1,705	3,370	378	1,609

6.7 This data excludes the provision of key worker housing, which is being reviewed separately, although it is envisaged that a significant proportion of the additional migration will be key workers, such as nursing and care staff, and so there will be

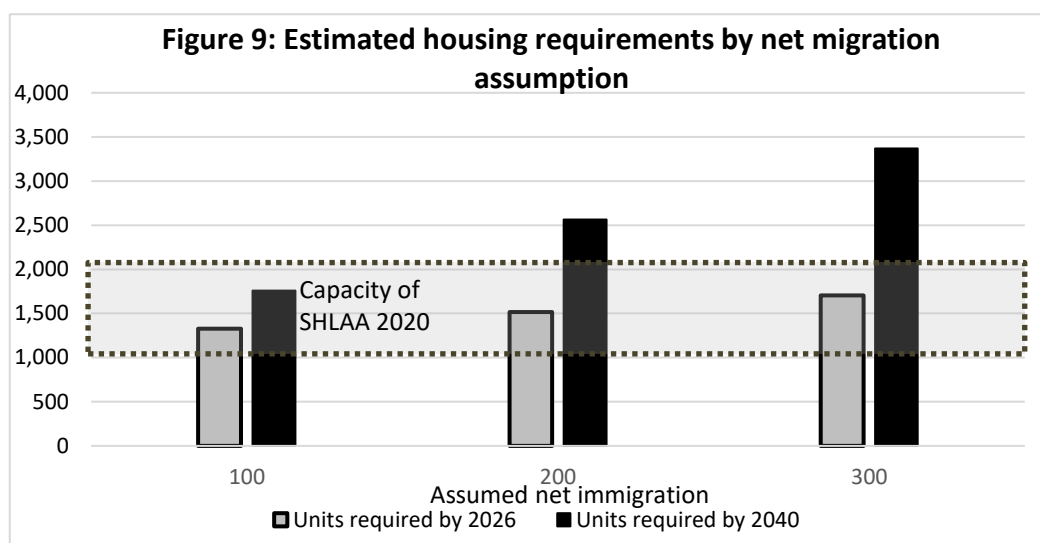
some overlap. Provision of key worker housing, which is particularly important to the ability to recruit and retain staff in health and education services, is expected to add a further requirement.

- 6.8 A significant increase in the required supply of residential accommodation implies a substantial level of new residential development. The Strategic Land Use Plan sets a spatial strategy for the distribution of development which concentrates development in the two main urban centres with more limited development in identified local areas where this would enable community growth. The boundaries of the Main and Local Centres are designated in the Island Development Plan ('IDP'). Other than in exceptional circumstances, the land supply for new residential development, and therefore capacity for new housing, is limited to housing land supply within these centres. Therefore, a significant increase in the requirement for housing land supply is likely to require the States to revisit the Main and Local Centre boundaries through a review of the IDP or, more fundamentally, the spatial strategy, which would have implications for the sustainability of development overall.
- 6.9 The provision of further housing needs not only physical space to build, but capacity within the transport and utility networks and services, as well as access to open space and amenity areas, to service these additional households. If development is not planned to align with the desired population policy, efforts to encourage skilled individuals to the Island will be limited by its ability to accommodate them.
- 6.10 As such, it is recommended that for the purposes of medium- and long-term infrastructure and land use planning, it should be assumed that net migration will be +300 per annum in line with the Island's requirements, and that this should be reviewed at least once every five years by the States. It is noted that this level of net migration may lead to an increased impact on social rental housing, which could negatively impact the long social housing waiting lists and result in the requirement for more social housing.
- 6.11 The Review also recommends, given the requirement for general housing units set out above, that the work on market interventions to be undertaken by the Committee *for the* Environment & Infrastructure includes specific reference to enabling the delivery of general housing units and stock as well as social and key worker housing units and stock.
- 6.12 The IDP 2016 sets out that there will be a review of housing land supply after five years unless monitoring indicates a more urgent need to review the land supply sooner. The States resolved in 2020 to pause the review, in the context of the Covid-19 pandemic, in order to "ensure that the review focuses on matters which are critical to strategic recovery and will support the future States' priorities to ensure that land use policies do not stand in the way of the States' recovery

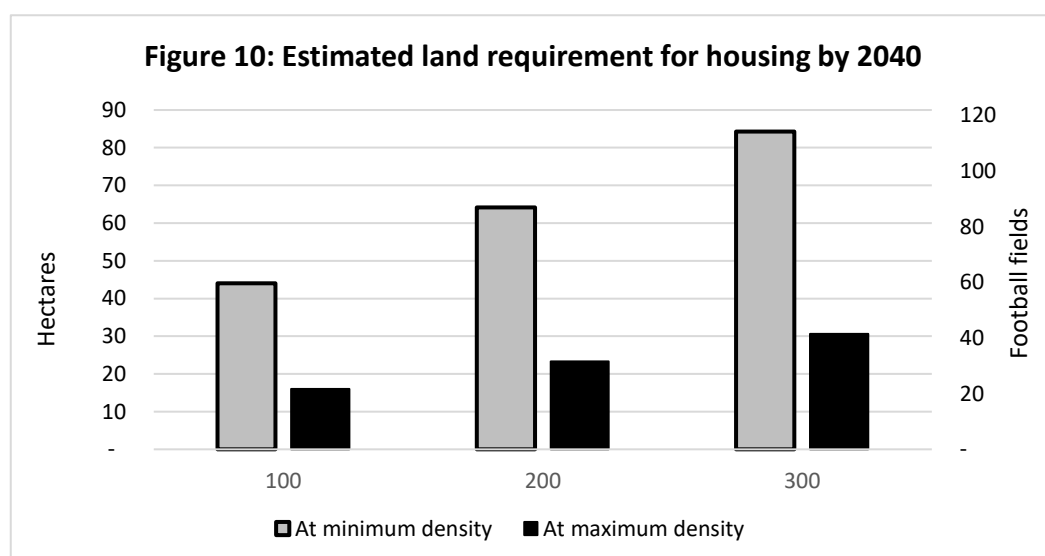
strategy”.⁹ The States Strategic Housing Indicator, once approved by the States, will provide up to date information to inform the review of housing land supply.

- 6.13 The GWP includes an action to carry out a focused and proportionate statutory review of the IDP between 2023 and 2025, and the review of demand and housing land supply, and how it will be provided, will form an important part of this. The overall housing land supply, the pipeline supply of planning permissions, and the annual rate of completions of dwellings will need to be considered, alongside the new Indicator, in the review of the IDP. The outcomes of this Review could have a significant impact on the demand for housing and therefore housing land supply, so will need to be taken into account as part of IDP review.
- 6.14 The Strategic Housing Land Availability Assessment ('SHLAA') was produced in June 2014 and is part of the evidence base that informed the preparation of the draft IDP. It is effectively a 'stock check' of the supply of potential development sites for housing in Guernsey in the Main Centres. It provides information on the suitability and availability of each site; whether the development of a site is considered to be achievable; and if there are any significant constraints to development. It also demonstrates whether there is an adequate supply of land to meet the Island's Strategic Housing Indicator over the life of the IDP.
- 6.15 Most recently, the 2014 SHLAA was updated to inform the draft 2021 IDP Annual Monitoring Report ('AMR'). The remaining undeveloped sites from the 2014 SHLAA and sites in Main Centres with a Development Framework that are without an extant planning consent, and the Regeneration Areas designated in the IDP, have been assessed for their development potential (i.e. the number of dwellings that could be achieved on the site, or 'yield').
- 6.16 The estimated development potential is presented as a lower and higher range for the number of dwellings that could be achieved. The total estimated yield from the remaining 26 sites is 968 to 1,954 dwellings. The SHLAA includes the housing allocation sites; the yield identified in the SHLAA update excluding the allocated sites is 342 to 951 dwellings (however it is important to note that not all eligible sites, which are privately owned, can be guaranteed to come forward for development). This demonstrates that the capacity in the existing Main Centres is sufficient only to meet, roughly, the requirement to 2026 at a level of +300 net migration if developed to current design specifications/expectations. By 2040 the requirement for housing will exceed the maximum assessed capacity of the land supply identified in the SHLAA by more than 1,300 units (see Figure 9).

⁹ [Resolutions of Billet d'État X of 2020](#), Resolution 2



- 6.17 The SHLAA uses a range of housing density assumptions, depending on the size and nature of the sites identified, of between 40 and 110 dwellings per hectare. Applying these densities to the forecasts suggests that, to accommodate an average net migration level of +300 per year, a total of between 31 and 84 hectares – in other words, between 41 and 114 football fields, or 25% and 75% of L'Ancrese Common – would need to be allocated to housing development by 2040 (see Figure 10).



- 6.18 It is therefore likely that there will be a substantial requirement to develop land, including likely green field sites, if the current model of building in terms of building heights, density, and off-street parking is continued. This may mean that there is a requirement to refocus in terms of building form and density in order to minimise the impacts of substantial levels of new residential development.

- 6.19 A new SHLAA will be required to inform the review of the IDP, with this potentially including another 'Call for Sites' public consultation exercise, if required, on the availability of sites for development to provide additional information on the potential supply of land for housing.

Human Capital Development Plan

- 6.20 Whilst net migration forms part of the solution to the Island's workforce requirements, the Steering Group noted that increasing the productivity of the local and existing workforce also plays a pivotal role. This ambition is currently being driven through separate workstreams of government, principally the Human Capital Development Plan, which is being drafted to include proposals to:
- Upskill and re-skill the local workforce, and maximise participation;
 - Increase productivity in the economy;
 - Develop Guernsey's human capital through data-led and joined-up actions; and
 - Ensure Guernsey's learning and skills system meets customer needs.
- 6.21 The work of the States, and others, to develop Guernsey's human capital, and to meet the needs of the economy through inward migration, must be complementary to achieve the best outcomes for the Island. In order to ensure that this is done effectively, it is recommended that, as a part of the ongoing work to develop the Human Capital Development Plan, the Committees *for* Economic Development and Education, Sport & Culture ensure that the Plan is aligned with and supportive of the relevant aspects and recommendations of this Review, as agreed by the States. This should set out clear steps that government in Guernsey should take in order to provide an environment for business and the community to increase participation and productivity in the Island's economy.

Balancing the Demand on Public Services

- 6.22 The Review was cognisant of the matters set out above in considering the recommendation of a strategic population objective. It was also cognisant that an increase in migration will have an effect on the cost of, delivery of, and therefore access to public services. As recognised through the proposed strategic population objective below, the States of Guernsey's approach to its population requirements has a consequential effect on the delivery of public services. Ensuring capacity within the Island's workforce to continue to meet the needs of the economy through net migration will increase demand for public services already operating to limited resources and, in turn, require further increase in the public sector workforce.

- 6.23 The adoption of the strategic population objective therefore provides an opportunity to consider how public services are arranged, accessed, and funded, considering what level of services are provided and who is entitled to access them. While arrangements need to ensure that the Island remains an attractive place to work and live, anticipated increases in demand further illustrate the importance of ensuring that all islanders have a clear understanding of the services they can, and cannot, expect to receive and the cost of doing so where relevant. A number of workstreams across government are considering how to manage this need, not least in the health and care arena where the ageing demographic is having the most immediate and acute effect on demand and expenditure.
- 6.24 At a government level, there is a need to consider how public resources can be more effectively targeted through, for example, further means testing (for example restricting access to Family Allowance for households with an income above £120,000), or restricting the entitlement to some services on the basis of residency period or contribution record. If this is not addressed, increased net migration will put more pressure on the funding of those services. This provides opportunity to improve social inclusion for those receiving the targeted support and, by considering alternative routes of access for those falling outside the eligibility criteria such as possible insurance models, retain a universal ability to access core services in a way which is fair and equitable to the population as a whole. It should be stressed that this work will not include access to universal entitlements, such as access to education and school.
- 6.25 Given the cross-government considerations, it is considered that this work is most effectively coordinated through the Policy & Resources Committee, with engagement with the Principal Committees, so to provide a coordinated and consistent approach. This work will be deliverable through existing resources.

Strategic Population Objective

- 6.26 The Steering Group discussed the issues set out in sections 5 and 6 at length, noting in particular the key interdependencies between the size of the population and the Island's ability to accommodate it in terms of its infrastructure and housing. Furthermore, members of the Steering Group wished to place more emphasis on increasing productivity of the existing workforce prior to targeting increased levels of migration.
- 6.27 The Committee notes that these interdependencies ultimately fall outside of the scope of the Review, and notwithstanding their relevance to a new strategic population objective, it maintained that the outcomes of the Review should remain centred on the population through the proposal of a new, pragmatic, and practicable strategic population objective. The enabling factors and interdependencies can consequently stem from this new objective, if it is agreed

by the States' Assembly, enabling the States of Guernsey – and indeed the Island as a whole – to plan for the long-term.

- 6.28 The Committee consequently drew upon the objective findings of the modelling to draft and propose a new strategic population objective that:

“The States of Guernsey will assume, for the purpose of planning future infrastructure and service provision, that net migration will average up to +300 per year over the next thirty years. This assumption will support the capacity of the Island’s workforce so that it remains a desirable and competitive jurisdiction, and will ensure that the Island can meet the needs of the economy with the necessary housing and infrastructure.”

- 6.29 The stabilisation of the workforce over the next ten years (to 2032) is expected to lead to a slight increase in the population to between 64,500 and 66,000 inhabitants (from around 63,000 currently). However, it is important to note that positive net migration does not necessarily mean that the population will increase by the same amount, as natural fluctuations (births/deaths) will also influence the size of the population.

- 6.30 The proposed strategic population objective could have substantial implications for the necessary investment needed in infrastructure and service delivery. If net migration averaging +300 per year is achieved, it will ensure that the infrastructure planned has the capacity to meet the Island’s needs. However, if this level of net migration is not forthcoming, it may result in an over-provision of infrastructure which we may not require, implying a potentially significant overspend on infrastructure projects and the development of more land resources than necessary.

- 6.31 The adoption of this strategic population objective by the States' Assembly will supersede the existing population objective, as agreed by the States in 2015, that “as far as practicable, Guernsey’s population should, in the long-term, be kept to the lowest level possible to achieve ‘The Statement of Aims’ in this [the States’ Strategic] Plan”.¹⁰

- 6.32 Although this population objective referred to “The States’ Strategic Plan”, it has since been deemed to equally apply to the relevant strategic plan of government at the time, as set out in the Policy & Resource Plan – Stage 2 Policy Letter.¹¹ In the absence of a new strategic population objective having been agreed in the previous political term, the population objective agreed in 2015 has thus remained the same in the lead up to this Policy Letter.

¹⁰ [Billet d’État XXIV of 2015](#) and its [Resolutions](#)

¹¹ [Billet d’État XII of 2017](#), p.126

- 6.33 It is consequently recommended that Resolutions 3 and 4 of Billet d'État XXIV of 2015,¹² which respectively agreed the population objective and directed all Committees to take account of it when developing policies and business plans, and which both remain ongoing principles, are rescinded by the States' Assembly.

Supporting Guernsey's Economic Substance Requirements

- 6.34 As a jurisdiction, Guernsey is committed to meeting international standards and norms in respect of economic substance. This is a critical component of the approach to corporate taxation and the long-term strategy for resilience and growth in the finance sector, which is the engine of the economy. It is also supported by the Guernsey Financial Services Commission's framework in respect of mind and management.
- 6.35 The population approach must continue to support the Island's economic substance requirements. In order to do that, and following discussions with representatives of the finance sector, it is clear that the States can do more to help businesses attract individuals that help to ensure Guernsey's finance sector meets the Island's economic substance requirements.
- 6.36 For that reason, in order to ensure that Guernsey is competitive in maintaining economic substance, the Review is recommending that the Policy & Resources Committee undertakes a review of arrangements to ensure the competitiveness of Guernsey as a place for those individuals who are critical to finance sector business' economic substance, and to make any changes that are required. Initial discussions with finance sector representatives indicate that useful areas to consider would be assessing if any greater flexibility can be applied to the tax treatment of relocation packages and benefits in kind that are offered to new posts and employees brought to the Island to help meet economic substance requirements. Any findings and recommendations should be included in the 2024 Budget Report.

7 Employment Permit Policy/Immigration Work Permit Policy Review – Settlement

- 7.1 The UK's post-Brexit immigration policy clearly shifted its focus toward attracting skilled immigration, as set out in the Skilled Worker Visa: Eligible Occupations list ('the UK list').¹³ Provided they are employed in a role identified in the UK list, any EU/EEA or third country national may live and work in the UK and, after five years' residency, qualify for Indefinite Leave to Remain (herein referred to as 'settlement').

¹² [Billet d'État XXIV of 2015](#) and its [Resolutions](#)

¹³ [Skilled Worker visa: eligible occupations and codes](#)

- 7.2 Given the unique needs of the Island and its workforce, the Island's post-Brexit policy deviated from that of the UK. In contrast to the UK list, the Island ties the Immigration Work Permit Policy to the EPP for EU/EEA nationals, enabling them to relocate to Guernsey provided they work in a role identified in the EPP. This currently only applies to EU/EEA nationals, with stricter requirements and narrower job types for 'rest of world'/third country nationals.
- 7.3 Although there is a considerable degree of alignment between the EPP and the UK list, there are some roles in the EPP that are not identified in the UK list. After five years' residence living and working in Guernsey, an individual who is working in Guernsey – including Employment Permit holders who are working in roles that are not aligned with the UK list – may reasonably apply for settlement provided that certain conditions are met, which would enable them to permanently live and work anywhere in the CTA.
- 7.4 In this sense, in light of Brexit, Guernsey potentially offers a pathway to settled status for EU/EEA nationals working in some job types who would not qualify for settlement in the UK. The Review sought to amend the Population Management and Immigration regimes in such a way that this would not be possible.
- 7.5 Whilst the Review focused on addressing this issue, the Steering Group also used the opportunity to amend the Population Management and Immigration regimes to benefit the Island's businesses who recruit from outside the Island. These benefits are principally achieved through tying the Immigration Work Permit Policy to the EPP for third country nationals, rather than only EU/EEA nationals as currently. In doing so, local businesses seeking to recruit to roles listed in the EPP would have access to a global pool of workers, as they will now be able to recruit to these roles from anywhere in the world rather than being restricted to EU/EEA countries.
- 7.6 A number of proposals to amend the Population Management regime and Immigration policy were considered and agreed by the Steering Group and the Committee. These proposals have been set out, with a short rationale and explanation, below:

a. The Immigration Work Permit Policy will be tied to the EPP for both EU/EEA and third country nationals, rather than only EU/EEA nationals.

This proposal is intended to realise the main benefit of the revised EPP and Immigration Work Permit Policy framework, and will enable third country nationals and EU/EEA nationals to be treated equally for the benefit of local businesses seeking to recruit from outside the Island. Under this proposal, if a person is approved for a Seasonal Employment Permit ('SEP'), STEP or LTEP, the person will be eligible for an Immigration entry clearance (visa), if

needed, and an Immigration Work Permit. This process will be merged into a single combined Population Management and Immigration application, streamlining the application process.

This represents a significant change from the existing situation, where there are a much more limited number of job types that third country nationals can be recruited to, as set out in the Immigration Work Permit Policy.¹⁴ Tying the Immigration Work Permit Policy to the EPP for third country nationals will thus grant access to prospective workers from across the world for all job types contained in the EPP, rather than just EU/EEA nationals. This proposal seeks to make it as easy as possible for businesses to access the workers they need to recruit, enabling recruitment on a global scale for a large number of roles that would have previously been limited to EU/EEA nationals.

- b. STEPs will continue to be granted for periods of one year at a time, but will only be renewable up to a maximum of three consecutive years, rather than five aggregate years as currently provided. After a recognised break in residence, someone who has previously held a STEP may re-apply for a further STEP.**

This step is crucial in order to address the issue of settlement for roles not identified in the UK list, and ensure these roles do not offer a pathway to settlement across the CTA after five years. Revising the maximum length of time that a STEP holder may reside in Guernsey down to three years may, at first sight, appear to be restrictive. However, through the change in (a) above, the pool of workers from which an employer can recruit is significantly wider. STEPs being capped at a maximum of three years residency may lead to a higher turnover, however this would be offset by there being much more scope and opportunity for overseas recruitment. Opening up easier recruitment on a global scale for third country nationals would not be possible without this change due to settlement issues and the Island's responsibilities as a member of the CTA.

This change is further recommending that STEP holders may be issued with a STEP until they have reached three years' **consecutive** residency, rather than five years **aggregate** residency as currently provided. After five years' aggregate residency, irrespective of when that residency was accrued, a STEP holder is currently no longer eligible to hold a further STEP in their lifetime. Amending the Law to provide for a maximum of three years' consecutive residency for STEPs will thus enable a STEP holder to take a "recognised break

¹⁴ [Immigration Act 1971 – Work Permit Policy](#) – 'Sector-Based Scheme'

in residence”¹⁵ before being eligible to apply for a further STEP, for another three consecutive years if desired.

These proposals are being recommended as amendments to the Law.

- c. **The job roles within the EPP will be reviewed: those roles that do not align with the UK list will be categorised as STEPs unless otherwise agreed (as the case may be for some job types), while roles that are aligned with the UK list will continue to be STEPs or LTEPs as needed, based upon Guernsey’s domestic needs.**

This step will re-categorise the roles in the EPP, ensuring that those roles that are not aligned with the UK list are categorised as STEPs, and may not surpass more than three years’ consecutive residence. Meanwhile, other roles that are aligned with the UK list will be categorised as a STEP or LTEP as required by the Island. It is important to note that initial work has identified roughly 75% of job types contained within the EPP are aligned with the UK list, and thus only a quarter of roles will be necessarily categorised as STEPs.

Furthermore, as implementation work has progressed, it has become clear that there are a very small number of roles in the EPP that do not feature on the UK list which would be unsuitable as STEPs due to the nature, seniority, or requirements of the job type. These roles will be addressed individually as implementation work continues, however the Committee wishes to flag, at this stage, that appropriate consideration and arrangements will be made in respect of them.

- d. **MTEPs are removed from the Law, while LTEPs are maintained as they currently exist, leaving only STEPs (issued for one year, up to 3 consecutive years) and LTEPs (up to 8 years, generally granting pathway to Established Residency) as the two main Employment Permits that will be issued by the Population Management Office.**

The removal of MTEPs from the regime will provide greater certainty to those looking to relocate to the Island and the businesses for which they work by offering LTEP holders a route to Established Residency and settlement. Provided they are working in a role that is aligned with the UK list (or where otherwise agreed for exceptional job types), an individual will be issued with an LTEP for 8 years, after which they may apply for an Established Resident Certificate to remain in the Island permanently. This proposal to remove MTEPs is being recommended as an amendment to the Law. Transitional

¹⁵ Defined under section 78 of the Law as “a period of time during which a person is not resident that is of a duration equal to, or exceeding, that person’s last period of residence.”

arrangements and other matters in respect of this change have been addressed in this section below.

- e. All STEP holders, including UK nationals, will be required to leave the Island at the end of the three-year period, unless they are subsequently granted a LTEP should they have upskilled in the course of those three years.**

This clarifies the continuation of the existing EPP system in this respect. If the holder of a STEP has upskilled in the course of the three years living and working in the Island, and they are now working in a role that is categorised as an LTEP, they should be granted an extension to an LTEP and allowed to remain in the Island. This provides a significant avenue for businesses to seek to retain certain staff where career progression exists.

- 7.7 Following the decisions of the Steering Group and Committee to approve these changes to the EPP and Immigration Work Permit Policy, implementation work has been ongoing which has included correspondence with the UK.
- 7.8 The proposals in part represent changes to policy, and can be implemented by the Committee under its mandate with regard to Population Management and Immigration policy, however amendments to the Law will also be required. These have been referenced in the proposals above, however in summary they seek the States' Assembly's agreement to amend the Law to provide that:
- STEPs may continue to be granted for a period of up to one year and may be renewed upon expiry by the Administrator until the holder reaches up to three years' consecutive, rather than aggregate, residency;
 - Individuals who have previously held a STEP may re-apply for a further STEP after taking a recognised break in residence, even if they have previously reached three years' consecutive residency; and
 - MTEPs are removed from the Law.
- 7.9 Similarly, depending on the exact details of the changes made to the Immigration Work Permit Policy, minor amendments may be needed to the Immigration Rules. The Immigration Rules are made by, and fall under the mandate of, the Committee, and any changes that may be needed can be implemented by it.
- 7.10 The Committee currently anticipates making progress on the necessary changes to the EPP and Immigration Work Permit Policy simultaneously with the drafting of the required amendments to the Law, should they be approved by the Assembly, in order for the policy changes to be made at the same time as the Commencement of the amendment legislation.

Transitional Arrangements and Other Matters

- 7.11 Some of the proposed changes in paragraph 7.6 will require transitional arrangements from the current regime, for example for current MTEP holders who will see their Employment Permit removed from the regime, or will otherwise require changes from the status quo. This section will summarise these provisional working transitional arrangements and other changes.

a) Transitional Arrangements – MTEPs and STEPs

- 7.12 If the holder of an MTEP is working in a job which will be categorised as an LTEP under the new EPP following its re-structure, their employer – who applies for the Employment Permit on the behalf of the employee – will be eligible to convert their MTEP to an LTEP when the new system is in place. As set out in paragraph 7.6, initial work has suggested that the vast majority of job types that qualify for an MTEP could be re-categorised as qualifying for LTEP roles. It is therefore likely that the vast majority of current MTEP holders will be eligible for an LTEP under the new system.
- 7.13 Where an MTEP holder is working in one of the few job types that may be categorised as a STEP under the newly re-structured EPP, transitional arrangements will be put in place to enable them to continue to live in Guernsey until the time prescribed on their original MTEP. This may include, for example, issuing ‘out of policy’ permits to MTEP holders once MTEPs have been removed from the Law.
- 7.14 Transitional arrangements will also be required for some STEP holders as the length of residency permitted under a STEP is amended from five years aggregate to three years consecutive residency. These transitional arrangements will be agreed by Committee policy as the changes move toward implementation. Further consideration will also be required in respect of Employment Permit holders who have accessed the Extension Policy,¹⁶ and have resided in Guernsey for in excess of five years.

b) Risks around the removal of MTEPS

- 7.15 Although the removal of MTEPs from the Law is likely to benefit the Island’s employers, enabling them to recruit and retain staff without the need to replace them after five years and thereby lowering turnover rates, it is also noted that there could be some budgetary consequences for employers, including the

¹⁶ [Population Management – Business Support Policies](#); the Employment Permit ‘Extension’ Policy was implemented by the Committee to assist employers in mitigating the impact of Covid-19. This policy allows for STEP and MTEP holders who have reached their five-year limit to apply for a further 12-month Employment Permit on or before 31st December 2022.

States of Guernsey. This will need to be a factor considered by the employer at the point of appointment, requiring them to weigh up the potential costs and benefits of experienced staff against potentially lower remuneration coupled with relocation costs.

- 7.16 Whilst the Committee acknowledges the potential consequences of the removal of MTEPs, the terms and conditions of a contract offered to those coming to work locally is a matter for the employer to determine. The offer of a post does not have to mirror the length of an Employment Permit, albeit in relation to STEPs where the length of employment cannot be extended beyond the Employment Permit's validity.
- 7.17 It is also noted that the removal of MTEPs and consequential increase in LTEPs is likely to result in more family groups relocating to Guernsey due to the removed uncertainty around the potential need to relocate at key stages of a child's education. This is likely to impact the proportion of pre- and school-aged children arriving in the Island for whom English is an additional language ('EAL'). Although EAL is seen as an educational advantage in the long-term, in the short-term any significant increase in EAL students would have resource implications for the Committee *for* Education, Sport & Culture to support those students.

C) Open Market Employment Permits and Other Permits

- 7.18 The proposals set out earlier in this section are principally centred on amendments to the EPP and the Immigration Work Permit Policy, however it is important to note that Open Market Employment Permits ('OMEPS') have also been impacted by Brexit.
- 7.19 In summary, OMEPs – which can be issued for either Parts A, B or C of the Open Market – allow the holder to work full-time in a named job for a named employer, and are conditional on the holder living on-site within the Open Market property. This type of Permit can be issued indefinitely, in 5-year increments, and is not tied to a job type in the EPP. These Permits are thus not aligned with the principles of the EPP, namely to fill identified gaps and shortage occupations in the Island's skills and workforce, as they can be issued to any job types.
- 7.20 The use of OMEPs – in addition to further Open Market Permits such as Open Market House of Multiple Occupancy Resident Permits (Part D) – will be adapted by the Committee in light of the issues regarding settlement rights set out in section 7.3. Whilst this Policy Letter is not recommending that they are removed from the regime as in the case of MTEPs, it is considered at this stage that EU/EEA nationals, third country nationals, or those not already holding valid Leave to Remain in a CTA jurisdiction will be encouraged to apply for an identified job in the EPP, which will lead to the granting of immigration clearance and the relevant

visa.

- 7.21 This will not only address potential issues of settlement rights for these Permits, but will further benefit the Island by ensuring that any job role is identified as a shortage occupation in the EPP, assisting Guernsey in filling known gaps in its workforce. It is further important to note that, under the Law, anyone who holds an Employment Permit under the EPP can reside in the Open Market should they wish to, and should that accommodation be most suitable for them.
- 7.22 Any changes or transitional arrangements needed to Population Management or Immigration policy as a result of the arrangements set out in this section will be enacted by the Committee, under its mandated responsibilities to create and amend policy within these regimes.

8 Permanent Residency Under the Law

- 8.1 One of the criticisms of the Law since its Commencement has been that it is overly complex, with one such area considered to be the Law's routes to Permanent Residency.
- 8.2 The Law includes 26 pathways leading to Permanent Residency qualification, which are explored in more detail in Appendix 4, along with a more detailed summary of the Steering Group's considerations in respect of these routes.
- 8.3 In general, these residency pathways cover three categories:
- 1) section 3 of the Law – 'Population Management' routes:** Pathways to residency with qualifying periods that start and finish after Commencement of the Law;
 - 2) section 6 of the Law – 'Transitional' routes:** Pathways to residency for individuals with qualifying periods that hold a degree of crossover from pre- and post-Commencement of the Law; and
 - 3) section 6(1)(K) and 6(1)(L) of the Law – 'Housing Control Law' routes:** For individuals who would have, or already were, qualified under the previous Housing Control Law.
- 8.4 Initially, the Steering Group considered whether it would be beneficial to remove or simplify any of the existing routes to Permanent Residency. Unlike other areas of the Law, the Administrator has no discretionary powers to issue Permanent Resident Certificates; he may only grant a Permanent Resident Certificate to an individual who meets the criteria set out in one of the statutory pathways. The removal, therefore, of any of those pathways could impact an individual's right to qualification, who has clear and identified links to the Island.
- 8.5 On this basis, the Steering Group concluded that there were no benefits that

derived from the removal of any of the routes to Permanent Residency, and the routes included in the Law offered proportionate and justified pathways to residency. However, further discussion in respect of these routes to Permanent Residency considered the issue of so-called 'birth-right privilege'.

- 8.6 The concept of 'birth right privilege' is centred on more favourable qualification routes for residents who are born in the Island (or who come to the Island subsequently) who have local heritage as compared with residents with different heritage. This is an issue with considerable background in the initial proposals for the Population Management regime.¹⁷
- 8.7 Several options scoping how the routes to Permanent Residency could be changed in respect of 'birth right privilege', if at all, were presented at a high level to the Steering Group. Whilst the Steering Group did not wish to progress these options as a part of the Review, it did, by a majority, note its general disagreement with the Permanent Residency routes as set out in the current Law, with Members stating that they were arguably discriminatory by disadvantaging those with no or few familial ties to the Island. This is explored more fully in Appendix 4.
- 8.8 The Steering Group consequently agreed that the issue warranted closer and more focused investigation, in addition to considered and extensive public consultation. The Review therefore seeks direction from the States' Assembly for this work to be carried out by the Committee as a further and separate workstream.

9 The Open Market

- 9.1 Much of the secondary work of the Review was centred on Open Market policy areas, particularly; inscriptions onto the Register; work to clarify the rights of Open Market residents; and Open Market lodging. In some of these areas, the work of the Review led to new policies being implemented or developed. In other areas, however, the Steering Group determined that the current provisions of the Law, or its underlying policies, were sufficient.
- 9.2 The Open Market has recently undergone a period of increased activity, largely as a result of the Covid-19 pandemic increasing Guernsey's attractiveness as a safe destination. The Review was cognisant of, and encouraged by, this increased activity, and its work was centred on both continuing to develop the Open Market as an economic enabler for the Island whilst ensuring that the Local Market remains protected.
- 9.3 When considering the role of the Open Market in relation to the Bailiwick's

¹⁷ [Billet d'État XVI of 2014](#)

population policy, the Steering Group agreed to a number of policy principles which were used as a basis and guide for the Open Market work of the Review:

1. Part A of the Open Market should support and develop the Island's economy by attracting wealthy and/or entrepreneurial people to Guernsey who will make a positive contribution to both the Island's economy and its community;
2. Open Market Part A properties should be high quality, aspirational dwellings in a variety of types, sizes, and Island locations, with many being exceptional 'landmark' properties by virtue of their location, structure, design, or high-quality fit out and appearance;
3. The Open Market should be perceived positively as an attractive element of residence in Guernsey that permits easy relocation to the Island for those wealthy enough to afford the properties; and
4. Open Market residents should have clarity over their long-term residency, and the status of their dependents.

Open Market Inscriptions

- 9.4 The Open Market has now existed in some form for over 50 years. When first formalised into the Register as a part of the Housing Control (Guernsey) Law, 1969, there were an estimated 2,200 properties that were eligible for inscription. However, over the following decade, the number of properties inscribed on the Register fell below what was envisaged. By the 1980s, the Housing Authority "was finding it increasingly difficult to determine the status of the property" at the point it first become a dwelling exempt from housing controls.¹⁸
- 9.5 The States' Assembly consequently agreed that the Register should be closed to new inscriptions, with effect from the date of the Commencement of the Housing Control (Guernsey) Law, 1982.¹⁹
- 9.6 The Register has largely remained closed to new inscriptions following this decision of the States' Assembly, with only a limited policy, implemented in 2001, that enabled new inscriptions in clearly defined areas subject to the deletion of existing units.²⁰
- 9.7 Over the years since the Register was closed, the number of housing units inscribed upon the Register has generally remained stable at roughly 1,700. Although not a specifically defined 'cap', it has gradually become common knowledge that the total number of Open Market properties generally does not exceed this number. As of August 2022, the total number of Open Market

¹⁸ [The Development of the Open Market](#), p.13

¹⁹ [The Development of the Open Market](#), p.13

²⁰ The 'Mixed-Use Redevelopment Area' ('MURA') Policy, [Billet d'État III of 2001](#), p.191

inscriptions stood at:

- Open Market Part A (private family homes) – 1,484
- Open Market Part B (hotels) – 52
- Open Market Part C (residential and nursing homes) – 10
- Open Market Part D (houses in multiple occupation) – 134

9.8 In 2015, the States' Assembly agreed to the development and introduction of the Open Market Housing Register (Guernsey) Law, 2016²¹ ('the Open Market Law') to exist interlinked with, and alongside, the Law. Under the Open Market Law, the Committee *for the* Environment & Infrastructure has the authority to inscribe new properties onto the Register – a marked change in approach from the effective closure of the Register under the HCL regime.

9.9 This authority is set out under section 3 of the Open Market Law, which states that "the Committee [*for the* Environment & Infrastructure] may, on application being made to it ... inscribe in the Register a property that is currently not so inscribed."²² The only statutory requirement in respect of these inscriptions is for the Committee *for the* Environment & Infrastructure to be satisfied that the new inscription would be in accordance with States population policies or, in the case of a Part D inscription, that it is a House in Multiple Occupancy ('HMO') and the statutory Part D cap will not be exceeded.²³

9.10 There is thus considerable scope for the Committee *for the* Environment & Infrastructure to approve inscriptions onto the Register under the Open Market Law. However, in the years following Commencement, the application process has remained relatively opaque.

9.11 Therefore, one workstream in the Review considered proposals for a new Inscriptions policy to be implemented, clarifying the conditions and criteria in which a new development or Local Market housing unit may be inscribed upon the Register. In line with the policy principles agreed by the Steering Group at the outset of the Review, there were a number of clear policy drivers for a new approach, including:

- enhancing the Open Market as an economic enabler through the inscription of aspirational housing units for relocators;
- enabling lower-end Open Market housing units to be removed from the Register and transferred to the Local Market as they are replaced with higher quality properties, adding more suitable stock to the Local Market for local

²¹ [The Open Market Housing Register \(Guernsey\) Law, 2016](#)

²² [The Open Market Housing Register \(Guernsey\) Law, 2016](#), section 3

²³ Under Section 2 of the Law, the Part D cap is prescribed by Ordinance. The current cap, as set out in [The Open Market Housing Register \(Part D Cap\) Ordinance, 2017](#), is 205.

- families at a time of significant pressure on that market; and
 - incentivising new developments for aspirational properties, increasing their financial viability.
- 9.12 This policy work remains ongoing, and is being progressed by the Committee *for the Environment & Infrastructure* given its mandate in that area, where it is likely to be implemented as a Committee policy given its authority under section 3 of the Open Market Law. In general, however, the policy will seek to provide clear, objective criteria which, if met, will enable a new development or Local Market housing unit to be inscribed upon the Register.
- 9.13 In the majority of cases, an inscription application is likely to be subject to the condition that an existing Open Market housing unit is de-registered from the Register elsewhere, so as to ensure there is no impact on total Local Market or Open Market housing stock. However, there may be some cases in which altogether new inscriptions are released by the Committee *for the Environment & Infrastructure*, should it be pragmatic to do so in order to maintain the Open Market as a proportion of total housing stock in the Island. It bears repeating that this policy work remains very much in the development phase by the Committee *for the Environment & Infrastructure*.
- 9.14 In the course of the Inscriptions policy development, the potential for a new vehicle through which inscriptions can be transferred was identified. Policy work thus far has proposed an ‘Open Market Transfer Register’ (‘the Transfer Register’). The Transfer Register would seek to exist as a central location for the inscriptions of some Open Market housing units to be listed and sold by property owners separately from the property itself. In this sense, the Transfer Register would enable Open Market property owners to release the equity contained within the Open Market inscription while retaining the property, which would become a Local Market dwelling. Any occupiers of that property would need to be qualified to live in the Local Market.
- 9.15 Initial proposals suggested that the Transfer Register would principally serve as a location for the inscriptions attached to lower end Open Market properties, or properties that are unsuitable for the Open Market, to be listed and sold, thus enabling the inscription to be purchased by applicants who are seeking an inscription for a new development or Local Market housing unit, in line with the new Inscriptions policy. This would allow for the removal of lower end housing stock from the Open Market, to be replaced with aspirational dwellings more suited to that marketplace.
- 9.16 Further uses of the Transfer Register are likely to be, and have already been, identified, expanding its future potential as it is established (see section 9.20 and Appendix 5).

- 9.17 The Transfer Register remains in development by the Committee *for the Environment & Infrastructure* given its responsibility for the Open Market Law, and legislative changes would be required to establish it in a statutory framework. Its development is interlinked with the proposals for a new Inscriptions policy, ensuring a joined-up approach where potential risks and unintended consequences can be effectively mitigated prior to implementation. Whether and when these issues are considered by the States' Assembly is a matter that will be progressed separately from the Review by the Committee *for the Environment & Infrastructure*.

Open Market Residency and Further Matters

- 9.18 Throughout the Review, the Steering Group considered further matters related to the Open Market, many of which were centred on policy changes to the Population Management regime across areas including Open Market residency and lodging. These matters, and the conclusions of the Steering Group, have been set out in full in Appendix 5, however the decisions of the Steering Group in respect of Open Market residency rights have been briefly summarised in this section.
- 9.19 Various matters in relation to Open Market residency were considered by the Steering Group throughout the Review, in which policy options for different cohorts of Open Market residents to move to the Local Market were discussed. Many of these policy options were centred on new 'Discretionary Resident Permit' ('DRP') policies for residents whose circumstances meet certain conditions. DRPs enable an Open Market resident to move to the Local Market where they would otherwise have been unable to do so.
- 9.20 In summary, the decisions of the Steering Group were:
- Open Market property owners: A new policy was agreed in principle, however further work is required as the Open Market Inscriptions policy and Transfer Register is developed. This policy would enable older Open Market residents who have lived in the Island for a significant period to move to the Local Market, provided they deleted a property inscription from the Open Market and passed its inscription to the States of Guernsey for listing on the Transfer Register. This policy would be similar in nature to that which was in place under the previous HCL regime.²⁴
 - Open Market residents with grandfather rights from the HCL regime: There are some residents of the Open Market (e.g. long-term Part A lodgers, and long-term Parts B, C and D residents) who possess the right to remain indefinitely in the Island, provided they continue to live in Open Market

²⁴ [Billet d'État XI of 2013](#), section 13.15-13.18

accommodation. However, as their circumstances change, it may become an unjustifiable infringement on their Convention rights, or become otherwise inequitable, for them to continue to be required to live in such Open Market accommodation. A bespoke policy for this cohort of residents was therefore considered. However, the Steering Group agreed that, for the reasons set out in Appendix 5, a new policy should not be implemented. Instead, it agreed to encourage these residents to engage with the Population Management Office and existing DRP processes. It is recognised that the process of applying for a DRP can seem complex, however the Population Management Office stands ready to assist individuals in a DRP application, and provide the necessary advice regarding the evidence that is required.

- Open Market residents with additional health needs: The Committee agreed to the introduction of a new policy in November 2021 which is now in force. This policy enables Open Market residents with additional health needs to move in with an immediate family member, who is a Local Market householder, if doing so is conducive to the provision of informal care.
- Open Market minors: Whilst the Law treats Open Market and Local Market minors broadly equally in terms of their pathways to Permanent Residency, there was a policy in place that treated such minors differently. A DRP policy provides that Local Market residents first resident in Guernsey before their 18th birthday, and who have been ordinarily resident for 8 consecutive years, could generally expect to be granted a DRP to enable them to remain living in the Local Market until they have achieved Established Residency, if they cannot continue to live with the householder named on their Permit.²⁵ In October 2021, the Committee agreed to the implementation of a new DRP policy which brings the rights of Open Market minors in such a situation into alignment with the policy described above. A similar policy for Open Market minors was therefore introduced by the Committee at the time it considered the matter.²⁶
- The Steering Group further considered the matter of section 72 of the Law, which prohibits an Open Market resident from moving to the Local Market solely by virtue of being an immediate family member of a Local Market householder. Given the potential impact removing this provision from the Law may have on the Local Market, the Steering Group agreed that no change should be implemented.

9.21 As mentioned above, the full considerations of the Steering Group in these areas are set out in Appendix 5.

²⁵ [Discretionary Resident Permit Policies – For people living as Family Members](#), Ref DR6

²⁶ [Discretionary Resident Permit Policies – For Open Market Residents](#), Ref DR41

Seasonal Employment Permit Holders

- 9.22 Though much of the work on the Open Market did not conclude with proposing any amendments to the Law, the need for one technical amendment was identified.
- 9.23 In 2019, the States' Assembly approved an amendment to the Law that introduced 'Seasonal Employment Permits' ('SEPs'), which enable someone to live and work in Guernsey for a period of up to nine months, after which they may re-apply for a further SEP after a break of three months where the individual was not physically present in Guernsey.
- 9.24 This amendment granted SEP holders the same rights as STEP holders, as set out in section 24 of the Law, which states that STEP holders may be accommodated in an Open Market dwelling.
- 9.25 However, the rights of Open Market householders, as set out under section 8 of the Law, were not consequently amended so as to make it clear that they may lawfully accommodate SEP holders. The Review therefore utilises the opportunity, through this Policy Letter, to propose this small and technical amendment to section 8(3) of the Law, expressly providing that Open Market householders may accommodate SEP holders.

10 The Population Employment Advisory Panel

- 10.1 PEAP was established in 2016 prior to the Commencement of the Law to support the introduction and implementation of the new Population Management regime, which it did successfully through notable contributions to the development of the EPP and through periodic reports to the Committee.
- 10.2 The Steering Group noted the contributions of PEAP, and assessed its objectives and purpose as a part of the Review, particularly in light of some of the wider changes to the EPP proposed in the Review as set out in section 7 of this Policy Letter. For example, there will ultimately be less need for PEAP to proactively identify, add to, or move roles within the EPP as it becomes more closely aligned with the UK 'Skilled Worker' visa list.
- 10.3 As these changes are implemented, the Review concluded that PEAP will continue to be a helpful panel to ensure the changes are embedded effectively, and businesses will continue to have representatives on PEAP with whom they can engage and talk to regarding any concerns.
- 10.4 In this sense, the role of PEAP has evolved in tandem with the evolution of the Population Management regime. As these changes are embedded, and the Population Management approach continues to evolve, the role of PEAP will

further naturally evolve as needed, ensuring it continues to benefit the regime and the Island's businesses.

11 Population Management – Herm

- 11.1 The Committee considers that there is merit in extending the Law to Herm. This workstream was not prioritised as a part of the Review, which focused its efforts on providing relief to businesses through substantive changes to the regime. However, the Committee wishes to note its intention to develop this work in future, through the necessary consultation and engagement with Herm, as it believes it is essential that the Population Management regime applies as a level playing field for all business entities operating across Guernsey and Herm.

12 Compliance with Rule 4

- 12.1 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.

- 12.2 The following information is provided in conformity with Rule 4(1):

- a) The Propositions accord with the States' objectives and policy plan to assess the fitness for purpose of the population and immigration framework, which was agreed as a top 10 priority action of the GWP 2021/2022. The Review's progression was resourced through the GWP in 2021/2022, and the strategic context is further explained in section 2.
- b) The Review was informed by significant cross-Committee joint-working through the convening of the Steering Group, which saw the majority of Principal Committees represented. Further political consultation on the draft Policy Letter and Propositions was undertaken with all Principal Committees in July and August 2022. The main responses that were received have been appended to this Policy Letter as Appendix 6.
- c) The Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- d) No direct financial implications for the States of Guernsey have been identified as a consequence of the Propositions.

- 12.3 For the purposes of Rule 4(2):

- a) It is confirmed that the Propositions relate to the responsibility of the Committee *for* Home Affairs for advising the States on, and developing and implementing policies for, the Population Management and Immigration regimes.

- b) It is confirmed that each of the Propositions have the unanimous support of the Committee, with the exception of Propositions 1 and 8, which were supported by majority.

Yours faithfully

R G Prow
President

S P J Vermeulen
Vice-President

A W Taylor
S Aldwell
L McKenna

P A Harwood OBE
Non-States Member

APPENDIX 1: TERMS OF REFERENCE FOR THE REVIEW

Project Ambition

“To have a population management regime that can respond quickly to the Island’s changing economic, social and environmental demands and support recovery.”

Background

The Housing Control regime was originally introduced in 1948 because of the need to “protect” the Island’s very limited housing stock. The Housing Control Law’s primary purpose continued to be to preserve a stock of Local Market housing for occupation by Qualified Residents and existing Licence holders. However, over 60 years the regime evolved and was used to attempt to regulate length of residence and type of employment for some living in the Island.

In January 2012 Billet d’État I the States approved the principles of a new approach primarily based on population management. The 2012 Report explained that “the proposals ... are aimed at influencing the size of the Island’s population over the medium to long term and are designed to be effective whether the States’ strategic population policy as any point in the future is for the population to rise, fall or to remain static.”

On 3rd April 2017 the Population Management (Guernsey) Law, 2016 (the Law) came into force to replace the Housing (Control of Occupation) (Guernsey) Law, 1994 (the Housing Control Law). The new Law was designed to be more flexible and responsive than the Housing Control Law with a focus on population management rather than controlling housing occupancy.

Most developed societies have two levels of consideration for managing the population: a first-tier immigration regime to control entry, to provide safety and ensure security; and a second tier of work permits managing the population.

As a result of the United Kingdom’s (UK) exit from the European Union (EU) the free movement that was enjoyed between the EU and UK has now ended. An EU national looking to take up residence in the Bailiwick is not able to without applying for entry clearance under the Immigration Act 1971 as extended. This requires they meet the criteria of the Immigration (Bailiwick of Guernsey) Rules, 2008 for eligibility to reside in the Bailiwick under one of the available Immigration residency routes, or by seeking employment through the application of a work permit.

The Bailiwick does have some discretionary powers, which has meant that we did not have to adopt the UK points-based immigration system, which is predominantly limited to skilled or highly qualified job types. The Population Management regime was established to recognise skills and manpower shortages locally, this particular statutory regime established prior to Brexit, has enabled local policy to combine with the

immigration work permit and the population management employment permit allowing the issuance of a joint permit for the EU cohort seeking employment in Guernsey.

Scope of the Review

Any review of population policy should consider the changing economic climate as a result of the COVID pandemic and the impact of the Law, since its implementation, on immigration, emigration, employment and the economy and its interaction with GDP and housing costs. The Review must acknowledge that:

- There is a need to limit immigration to restrict population growth and manage pressure on public services, housing stock and the environment; and
- There is a need to access an off-island workforce to address local skills and manpower shortages to maintain services in light of the demographic shift in the Island and to foster economic growth.

Objectives of the Review

- Analysis of what the size of Guernsey's economically active working population will need to be in order to maintain sustainable economic growth over the medium to long term, taking into account the projected demographic changes that could impact on the availability of local labour;
- Interdependencies between population and immigration and the impact of Brexit on immigration rights and migration flows in respect of the Common Travel Areas;
- To promote economic wellbeing, consider how we attract individuals who will make a lifetime contribution to the public purse, whilst balancing the need for lower paid workers to continue to see Guernsey as an attractive place to live and work;
- Analyse the skills needed to support economic recovery and growth, ensuring future policy can be flexible in order to meet the changing needs of business and the economy;
- Working with the Population Employment Advisory Panel and Skills Guernsey to support the development of the skills of the resident workforce and those who are not working;
- Encourage new business and support entrepreneurship, recognising the need for flexibility to allow companies to expand their workforce and recruit off Island;
- Consideration of pathways to Permanent Resident status, including birth and ancestry rights and the rights of minors in Alderney and Sark;
- Consideration of the Open Market as an economic enabler;
- Ensure that individuals' rights in relation to their property or dwelling are not subject to unnecessary or disproportionate interference from the Law;
- The availability of Local and Open Market housing stock and how future population management policy might impact on future housing needs;

- Opportunity for service delivery which is sustainable and makes the best use of resources;
- Ensure that the Bailiwick is kept safe and secure, by excluding those who have serious criminal convictions and those whose presence is not deemed conducive to the public good.

The Population Policy Review aligns with the following Government Work Plan – Recovery Outcomes and Outcome Statements

A resilient essential workforce

Employees in essential services (health care, supply of food and other necessary goods, utilities, education and childcare, public safety, vital transport) are protected and the Island is better positioned to train, attract and retain the employees needed in key areas.

Inclusive and sustainable economic growth and greater productivity

Inclusive and sustainable economic growth, exceeding the previous growth path for the economy by 2024.

Sustained employment and enhanced matching of skills

Full and productive employment, with greater match between islanders' skills and available roles, enabling all islanders to reach their potential.

Greater innovation and creativity in existing and new sectors

The Island's business environment encourages and enables innovation and creativity in existing and new economic sectors, enhancing economic resilience and community wellbeing.

The full membership of the Steering Group was as follows:

Deputy R. Prow, President, Committee *for* Home Affairs (Chair)
 Deputy P. Ferbrache, President, Policy & Resources Committee
 Deputy N. Inder, President, Committee *for* Economic Development
 Deputy P. Roffey, President, Committee *for* Employment & Social Security
 Deputy A. Dudley-Owen, President, Committee *for* Education, Sport & Culture
 Deputy L. de Sausmarez, President, Committee *for the* Environment & Infrastructure
 Deputy S. Vermeulen, Member, Committee *for* Home Affairs
 Deputy N. Moakes, Member, Committee *for* Economic Development
 Mr. A. Niles, Non-Voting Member, Committee *for* Economic Development
 Mr. T. Mancini, Non-Voting Member, Committee *for* Economic Development

APPENDIX 2: POLICIES IMPLEMENTED IN RESPONSE TO THE COVID-19 PANDEMIC

Timeline	Policy/Event	Policy details
February 2020	- (Existing Temporary Policies) Brexit Policy* 2 Year Extension Policy v.1	<i>*The Brexit Policy was originally introduced in February 2019, with an expiry date of February 2020. This was extended by CfHA to February 2021.</i>
March 2020 <i>Introduced -</i> <i>Introduced -</i> <i>Introduced -</i>	- Guernsey enters first Lockdown CCA Regulations v.1 OMEF (B)/(C) discretion DRP – Travel Restrictions	Brexit Policy Any STEP, MTEP or OMHMORP(D) holders reaching their 5-year limit could be granted an additional year holding an Employment Permit (DRP), if they are working within a role in the EPP.
June 2020 <i>EXPIRED -</i> <i>Introduced -</i>	- Guernsey enters Phase 5 of exit strategy CCA Regulations v.1 DRP – Travel Restrictions (9/3)	2 Year Extension Policy v.1 Anyone working in a **role in the EPP could hold a further Employment Permit (DRP) until they reached a total aggregate residence of 7 years in Guernsey.
December 2020 <i>Introduced -</i>	STEP 9/3 Extension Policy	2 Year Extension Policy v.2 Anyone working in a role in the EPP, and is holding a STEP, MTEP or OMHMORP(D) could hold a further Employment Permit (DRP) after they have reached their 5-year limit. This cannot exceed 7 years of residence in Guernsey.
January 2021 <i>Introduced -</i>	- Guernsey enters second Lockdown CCA Regulations v.2	CCA Regulations V.1 STEP, MTEP & LTEP holders could undertake part-time employment, cease employment or work for another employer (other than the employer named on their Permit) without invalidating their Employment Permit (would have usually under PML). STEP 9/3 holders were exempt from needing to take their 3 month break away from Guernsey (would hold a DRP Temp for this duration). Would be able to resume this pattern of working
February 2021 <i>EXPIRED -</i> <i>Introduced -</i>	Brexit Policy 2 Year Extension Policy v.2	OMEF(B)/(C) discretion The Administrator extended the principles of the CCA regulations to OMEF (B) & (C) holders.
March 2021	- Guernsey exit's second Lockdown	DRP – Travel Restrictions Individuals who were due to leave Guernsey but could demonstrate due to travel restrictions were granted a temporary Permit until travel could be undertaken.
June 2021 <i>EXPIRES -</i>	STEP 9/3 Extension Policy	DRP – Travel Restrictions (9/3) Similar principles to the CCA regulations. Anyone who could demonstrate an inability to travel due to travel restrictions were issued with a temporary Permit in place of their 3-month break from Guernsey.
July 2021	- New travel regime starts	STEP (9/3) Extension Policy Similar principles to the CCA regulations but agreed by the CfHA.
October 2021 <i>EXPIRED -</i>	CCA Regulations v.2	CCA Regulations v.2 Same regulations as CCA regulations v.1 but now includes OMEF, following previous experience from 1 st Lockdown.
Key		
CfHA	- Committee for Home Affairs	
PML	- Population Management Law	
STEP	- Short Term Employment Permit	
MTEP	- Medium Term Employment Permit	
LTEP	- Long Term Employment Permit	
OMHMORP(D)	- Open Market HMO Resident Permit	

APPENDIX 3: CURRENT POPULATION AND MIGRATION TRENDS

Guernsey's population in June 2022 was 63,825 (not including the 2,144 people resident in Alderney) (see Figure 1). This is about 500 people (0.8%) higher than the last peak in the summer of 2011. The population is typically seasonal, and on average there is a difference averaging about 500 people between June and December because of the influx of seasonal workers over the summer months to supply the Hostelry sector (note the seasonal shift has been disrupted during the Covid-19 pandemic and there is no summer peak visible in 2020).

Changes in the population are driven by two types of activity: natural changes like births, deaths and the normal ageing of the people in a population; and migration both inwards (immigration) and outwards (emigration) (see Figure 2).

Within Guernsey, natural changes in the current population tend to have a larger impact on the age profile of the population, while migration patterns make a larger contribution to its overall size.

Figure 1: Total population resident in Guernsey

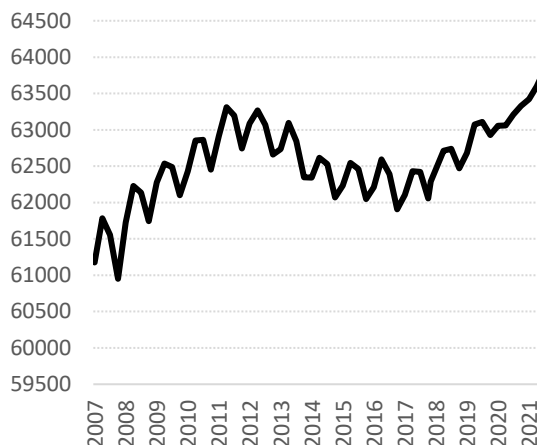
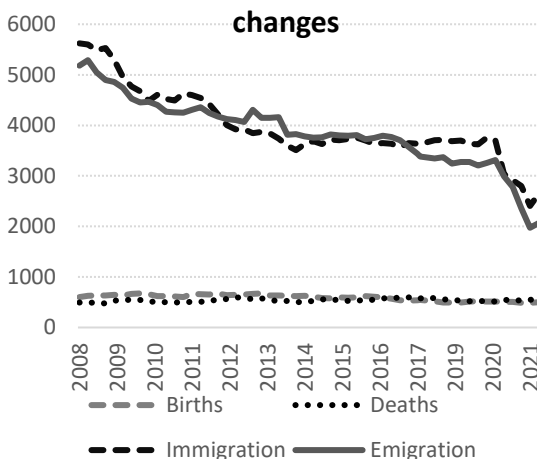


Figure 2: Annual population changes



Natural changes

The generation currently reaching retirement, known as the “baby boom” generation because they were born in a period of exceptionally high fertility rates in the decades following the end of World War II, is larger than either the generation that preceded it or the generation that follows it. Decades of improvements in living standards and medical care also means that people are living longer once they reach retirement.

Combined, this means that there are more people in Guernsey retiring each year than there are entering the workforce. As a result, the natural pressure on the population age 16 to 64 has been downwards since about 2011 (see Figure 5). Only in the last three years, when net migration has been higher than the average level of +100 people a year, has migration been sufficient to stabilise the population age 16-64 against this downward pressure.

As this large generation move into retirement, the number of people above pension age has steadily increased. This trend is enhanced by longer life expectancies. In the 1940s, when the first of the baby boom generation were born, someone aged 65 might, on average, live another 12 (male) or 14 (female) years. By contrast, those turning 65 in Guernsey today can expect to live an average of 20 to 23 or more years.²⁷

The improvements in life expectancy have been reflected in the policy

Figure 3: People aged 16 and 65

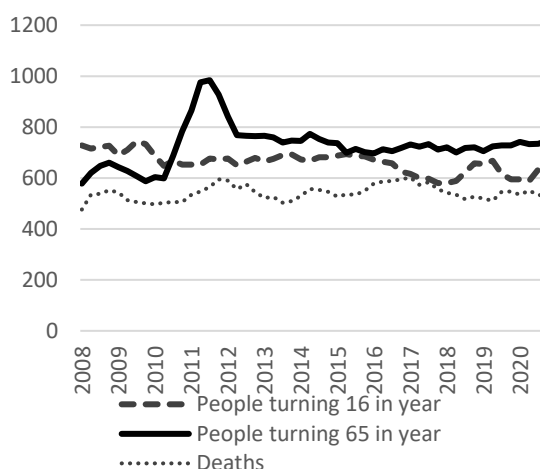


Figure 4: Population 65 and over

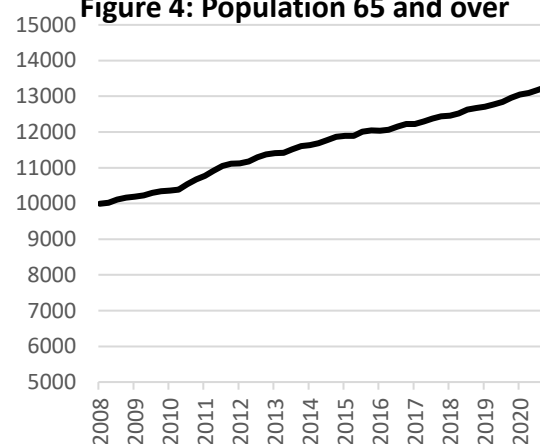
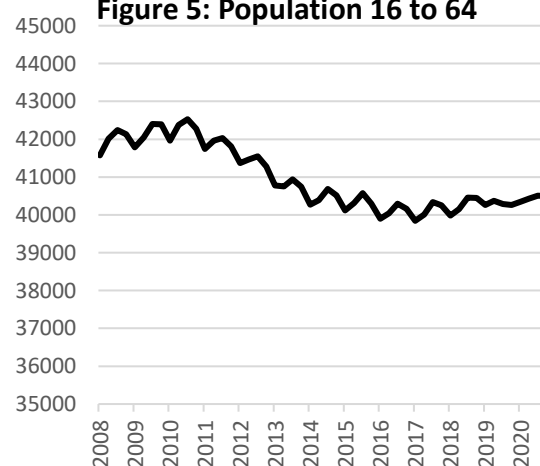


Figure 5: Population 16 to 64



²⁷ For more information on life expectancy trends and their causes see: [How has life expectancy changed over time? - Office for National Statistics](#)

decision to increase the age at which you are entitled to a States' Pension to 70 by 2040 (a process which began in 2020). Over time, this will provide some mitigation for the increase in the population above pension age, and the downward pressure on the population below State pension age, but it is not sufficient to reverse the trends.

Migration

In a typical year, the annual “churn” in the population is between 3,500 and 4,000 people. Net migration, the difference between immigration and emigration, is just a fraction of this. Net migration varies significantly year by year and within the last decade has ranged from a net gain of more than 600 people in a year to a net loss of more than 400. Over the available time series, it has averaged net gain of just over 100 people per year.

The drivers of this volatility are generally economic factors such as the availability of jobs. The period during, and to some extent immediately following, the Covid-19 pandemic is an exception to this, where policy responses (lockdown and travel restrictions) and the positive Guernsey position relative to the UK are likely to be contributing factors.

Both immigration and emigration are heavily focused in the working age population and typically in younger working adults. It is assumed that 85% of any net migration will fall between the ages of 18 and 64 (see Figure 7).

Figure 6: Annual population changes

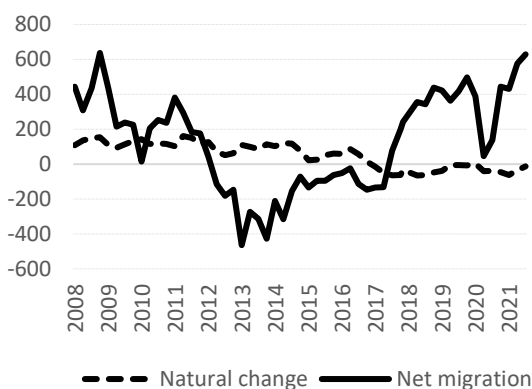
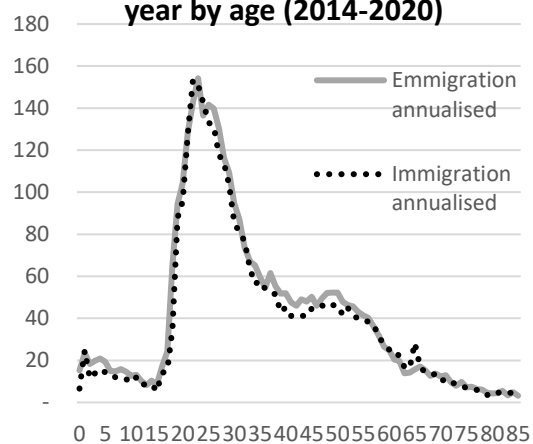


Figure 7: Average migration per year by age (2014-2020)



Typically, the net movement of people of school age is fairly limited (averaging 2-3 children in each year group). The net movement of pensioners is also relatively small. The available data suggests a small net inward movement of people at pension age (a net gain of around 10-15 people a year); beyond that, the net movement of pensioners is generally balanced. Combined, under 18s and over 64 year olds are assumed to contribute about 15% of net migration.

In a typical year between 10% and 12% of immigrants and 15% and 18% of emigrants were born in Guernsey. Typically, these individuals and their households would face few requirements from the Population Management regime on their relocation to Guernsey

if they already hold a 'Status Declaration' or 'Permanent Resident Certificate'. If they do not hold one of these documents they would need to apply to the Population Management Office for a Permanent Resident Certificate to verify that they are a Permanent Resident.

Figure 8: Distributions of immigration and emigration by country of birth (% of total)

	Immigration					Emigration				
	Guernsey	UK Common Travel Area	Other Europe	Rest of World	Place of birth unknown	Guernsey	UK Common Travel Area	Europe	Other	Place of birth unknown
2016	10.2	27.0	27.6	10.8	24.4	15.2	27.2	36.2	8.5	12.9
2017	11.3	24.0	34.1	9.0	21.6	16.9	25.9	36.8	7.7	12.7
2018	12.4	23.8	35.7	10.0	18.1	18.0	24.7	36.8	7.3	13.2
2019	9.9	26.1	32.8	12.5	18.7	16.2	26.4	36.8	8.6	12.0
2020	12.1	26.7	30.8	14.4	16.0	16.3	26.6	35.8	9.5	11.8
2021	15.2	31.4	19.2	14.7	19.5	17.0	27.4	32.0	11.2	12.4

APPENDIX 4: PERMANENT RESIDENCY UNDER THE LAW

Under the Law, a 'Permanent Resident' is an individual who is qualified to occupy, and be the householder of, a Local Market or an Open Market dwelling. Once a person obtains Permanent Resident status, they do not lose it, irrespective of whether, and for how long, they cease to be ordinarily resident in the Island.²⁸

The Law includes 26 pathways leading to Permanent Residency.²⁹ In general, these residency pathways cover three categories:

- 1) Section 3 of the Law – 'Population Management' routes:** Pathways to residency with qualifying periods that start and finish after Commencement of the Law;
- 2) section 6 of the Law – 'Transitional' routes:** Pathways to residency for individuals with qualifying periods that hold a degree of crossover from pre- and post-Commencement of the Law; and
- 3) section 6(1)(K) and 6(1)(L) of the Law – 'Housing Control Law' routes:** For individuals who would have, or already were, qualified under the previous Housing Control Law.

In the first instance, the Steering Group considered the 26 pathways that fall under these categories regarding whether, in light of their administrative and operational complexity, any changes were needed in order to simplify or reduce the number of these routes.

The Steering Group agreed that there were no benefits that derived from the removal of any of the routes to Permanent Residency, and that the routes included in the Law offer proportionate and justified pathways to residency. It is an area of the Law in which the Administrator has no discretionary powers; he may only grant a Permanent Resident Certificate to an individual who meets the criteria set out in one of the statutory pathways. The removal, therefore, of those pathways on the basis of simplicity could impact an individual's right to qualification, who has clear and identified links to the Island.

Furthermore, despite the routes to Permanent Residency appearing complex at first sight, they are not complex to administer or implement operationally, and the existence of the various routes recognises the range of circumstances that residents possess. In addition, from a customer perspective, there is no requirement for all 26 routes to be read and understood in order to apply for a Permanent Resident Certificate. Through online tools that are available, a short questionnaire directs customers to the application form for the residency route most relevant to their circumstances. The Population Management Office further has the ability to amend the application route quickly and easily on an online PRC application, which it does regularly when required.

²⁸ [The Population Management \(Guernsey\) Law, 2016](#), section 4(1) and (2)

²⁹ [The Population Management \(Guernsey\) Law, 2016](#), section 3 and 6

On the basis of these points, and in respect of administrative simplicity and operational effectiveness, the Steering Group agreed that there was no justification to rescind, reduce, or simplify the existing routes to Permanent Residency. However, further discussion in respect of these routes to Permanent Residency was centred on the issue of ‘birth right privilege’ for children born in the Island to local heritage.

‘Birth Right Privilege’

The concept of ‘birth right privilege’ is centred on more favourable qualification routes for residents who are born in the Island with local heritage as compared with residents who are born in the Island with different heritage. This is an issue with considerable background in the initial proposals for the Population Management regime.

In 2013, the States’ Assembly agreed proposals for the routes to Permanent Residency to be simplified under the Population Management regime, with all residents equally being required to complete a period of 8 years (Established Residency) and 14 years (Permanent Residency) in order to qualify, irrespective of local heritage or ties to the Island.³⁰ However, following extensive public feedback on the matter, the Policy Council returned to the Assembly with revised proposals in 2014.³¹

The decisions of the States’ Assembly in 2014 led to the routes to Permanent Residency that currently exist in the Law. In general, ‘birth right privilege’ can be seen as existing in these routes to Permanent Residency to some degree; those who are born with connections to the Island are required to complete fewer, or in some cases no, periods of ordinary residence in order to qualify for Permanent Residency.

When considering this issue, the Steering Group noted the emotionally sensitive and subjective nature of the matter at hand, as was evidenced through the public and political passion shown in 2013 and 2014. These debates further highlighted the inherently subjective nature of the issue, in which an evidence basis to guide policy decisions is difficult to establish.

Broadly, the routes to Permanent Residency in the Law can be grouped into five categories:

1. **Born in the Island with a locally qualified parent and grandparent:** Qualify for Permanent Residency at birth;
2. **Born in the Island with a parent who is a Permanent Resident:** Qualify for Permanent Residency after 8 years aggregate residence in an 18-year period;
3. **Come to the Island as a child or an adult with a parent who is/was a Permanent Resident and was born here:** Qualify for Permanent Residency after 8 years aggregate residence in an 18-year period for a child; Qualify for Permanent Residency after 8 years consecutive residence for an adult.³²

³⁰ [Billet d’État XI of 2013](#), section 9

³¹ [Billet d’État XVI of 2014](#) and its [Resolutions](#)

³² If an individual was not born in Guernsey, and who has a parent who is a Permanent Resident and was not born in Guernsey, they will fall into category 4.

4. **Born in the Island, or come to the Island as a child, with a parent who is ordinarily resident:** Qualify for Permanent Residency after 14 years aggregate residence in a 24-year period; and
5. **Come to the Island as an adult:** Qualify for Permanent Residency after 14 years consecutive residence.

The concept of 'birth right privilege' applies to Categories 1 to 3 above to a greater or lesser degree, with those groups being treated more favourably under the Law given they have some degree of familial ties to the Island. The key distinction between these groups is whether or not a person's parent was a Permanent Resident when they were born. Meanwhile, the children of non-Permanent Residents are treated the same under the Law, irrespective of whether they were born in Guernsey or not.

Several options scoping how the routes to Permanent Residency could be changed in respect of 'birth right privilege', if at all, were presented at a high level to the Steering Group. Whilst the Steering Group did not wish to progress these options as a part of the Review, it did, by a majority, note its general disagreement with the Permanent Residency routes as set out in the current Law, with members stating that they were arguably discriminatory by disadvantaging those with no or few familial ties to the Island.

The Steering Group consequently agreed that the issue warranted closer and more focused investigation, in addition to considered and extensive public consultation, and has proposed this as a separate workstream in the Propositions of this Policy Letter, for the endorsement of the States' Assembly.

APPENDIX 5: THE OPEN MARKET

In addition to the Open Market Inscriptions policy and Transfer Register, the detail of which is set out in sections 9.4-9.17 of this Policy Letter, the Review considered various further matters related to the Open Market, including the rights of Open Market residents and Open Market lodging. The detail of these matters, and the conclusions of the Steering Group in respect of them, are set out in full in this Appendix.

Open Market Residency

One of the core Open Market workstreams of the Review sought to ensure policy principle 4 – “Open Market residents should have clarity over their long-term residency” – was met. This led to considerable work that both set out the current residency status of Open Market residents under the Law, and considered whether any additional policies or amendments to the Law were required.

As a consequence of the decisions of the States’ Assembly in the founding proposals for the regime, it remains an underlying principle of the Open Market that, although the Human Rights of every member of the community must be protected, this does not mean that an Open Market resident should expect to move to the Local Market simply because they wish to do so.³³ In the 2013 Report, the Policy Council maintained that this held true irrespective of the length of time that an Open Market resident had been living in the Island.

Whether this principle should be upheld, reviewed, or amended was discussed by the Steering Group at one of its earliest meetings, in which it considered an option to allow Open Market residents to move to the Local Market after they had been ordinarily resident in the Island for a specified period of time, such as 20 years.

On the basis of various data that provided an insight into the potential impact on the Local Market that such a policy would have, at a time of considerable pressure on that market, the Steering Group agreed by a majority to rule out this option. Although one of its benefits would lead to Open Market properties being freed up for further economically active relocations, it was considered to be an unjustifiable risk to Local Market housing stock, which is already struggling to meet the needs of the Island’s residents who are permitted to reside in that market.

Consideration instead turned to more focused, targeted policies for Open Market residents, which could be introduced as ‘Discretionary Resident Permit’ (‘DRP’) policies. DRPs may be issued for different lengths of time and subject to such conditions as the Administrator thinks appropriate based on an individual’s circumstances, and taking into account the States’ population policies.³⁴ The purpose of a DRP, as stated in the Law, is to:

“enable a person to be resident, or to occupy a class or classes of dwelling, in

³³ [Billet d’État XI of 2013](#), section 13.09; 13.16; Recommendation 22

³⁴ [The Population Management \(Guernsey\) Law, 2016](#), Schedule 2, paragraph 7(3)

circumstances where –

- a. it would otherwise be unlawful for him to do so, and*
- b. it is necessary to ensure compatibility with one or more Convention rights, or otherwise equitable.”³⁵*

Currently, there are a range of DRP policies that have been implemented by the Committee which enable an Open Market resident to move to the Local Market if their circumstances meet certain criteria.³⁶ In general, these policies enable an Open Market resident to live in the Local Market if they:

- are the spouse/partner of a Local Market resident;
- are a resident with additional health needs; or
- first moved to the Island in the Open Market as a minor with their parents.

Furthermore, it is important to note that a DRP can be issued by the Administrator should the individual circumstances of an applicant warrant it, but do not fall under any of the agreed policies; these are referred to as ‘Out of Policy’ DRPs. In the case of the Open Market, if a person can evidence that continuing to be restricted to living in the Open Market amounts to an infringement of their Article 8 right to respect for the private and family life, and such infringement is not in accordance with the Law or justifiable or proportionate, or is otherwise inequitable, they can make a strong case to be issued with a DRP to live in the Local Market. The Administrator’s discretion to grant DRPs to ensure compatibility with Convention rights, or where it would otherwise be equitable to do so, is clearly set out in the Law.³⁷

The Steering Group considered the scope for new, broader DRP policies, or indeed amendments to the Law, across a range of different areas which would be applicable to various groups of Open Market residents based on their unique circumstances. These policy areas, and the decisions of the Steering Group, are set out in turn below:

(a) Open Market property owners – the Transfer Register: As proposals for the Transfer Register were developed (see sections 9.14-9.17), the potential for an interlinked DRP policy was scoped. This policy would be similar in nature to that which was in place under the previous HCL regime.³⁸ In summary, it would enable an Open Market resident who is above States’ pension age, and who has been ordinarily resident in the Island for a considerable period of time, such as 14 years, to be issued with a DRP to live in the Local Market provided that they de-register a property from the Open Market, and pass its inscription to the States of Guernsey for it to list on the Transfer Register. Using the Transfer Register in this way will ensure that the policy will not lead to the loss of either Open Market or Local Market properties, with the Open Market inscription being transferred to a new suitable Open Market property.

³⁵ [The Population Management \(Guernsey\) Law, 2016](#), Schedule 2, paragraph 7(1)

³⁶ [Discretionary Resident Permit Policies – For Open Market Residents](#)

³⁷ [The Population Management \(Guernsey\) Law, 2016](#), Schedule 2, paragraph 7

³⁸ [Billet d’État XI of 2013](#), section 13.15-13.18

The Steering Group approved this draft policy in principle, and asked the Committee to consider implementing it at a future time as and when the Transfer Register is established. This policy is necessarily interlinked with the Committee *for the Environment & Infrastructure's* work on the Transfer Register, and will not be implemented until that work has been concluded, and the Transfer Register established. Further policy work will therefore be required to ensure the benefits of the policy are realised, and that there are no potential risks or unintended consequences to either the Open Market or the Local Market through its implementation.

(b) Open Market residents with grandfather rights from the HCL regime: Under the Law, there is a cohort of Open Market residents who possess the right to remain in the Island indefinitely, provided they continue to reside in Open Market accommodation (herein collectively referred to as 'the HCL cohort'). These residents possess this 'grandfather right' to remain indefinitely due to their residency in certain parts of the Open Market under the HCL regime, prior to the Commencement of the Law. The HCL cohort typically comprises residents of Open Market Part D, however there are also some residents in Parts B and C, and some lodgers in Part A, who possess these grandfather rights.³⁹

The Steering Group considered whether a bespoke policy for the HCL cohort should be implemented, particularly in recognition that, as these residents remain in the Island, they will often be required to live in shared accommodation that may become unsuitable for their needs. This often leads to these residents making a strong case to be issued with a DRP to live in the Local Market, as it becomes an unjustifiable infringement on their Convention rights, or is otherwise inequitable, for them to continue to be required to live in shared accommodation, particularly in the case of an individual who has resided in the Island for a significant period of time.

The Steering Group ultimately agreed that a bespoke policy for the HCL cohort should not be created, and the existing DRP processes are sufficient. This decision was made on the basis that any new policy would likely use long periods of residence as a criterion, and it was considered that, as the residents of the HCL cohort approach such long periods of residence, they are already highly likely to make a strong case for a DRP under the existing processes. A new, complex policy was therefore likely to do little more than formalise the existing DRP processes, while not being any simpler or easier to administer for the Population Management Office.

The Steering Group consequently concluded that the existing DRP policies, and the use of Out of Policy DRPs, provided sufficient means through which residents of the HCL cohort can move to the Local Market if their circumstances were to require it.

It is recognised that the process of applying for a DRP can seem complex. The

³⁹ The residents with grandfather rights from the HCL regime are set out in sections 60, 61 and 65 of [The Population Management \(Guernsey\) Law, 2016](#).

Population Management Office is able and willing to provide any necessary advice and assistance to applicants in relation to the evidence required, and the DRP application process as a whole.

- (c) Open Market minors:** At the beginning of the Review, the Committee considered a new residency policy for Open Market minors. Whilst the residency requirements for Open Market minors to obtain Permanent Residency under the Law were the same as for other minors with no familial ties to the Island (such as the children of Employment Permit holders) their circumstances were different under the policies of the Committee.

One DRP policy enables someone who has lived in Local Market housing for at least 8 consecutive years to be granted a Permit to live in other Local Market housing if they cannot continue to live with the householder named on their Permit.⁴⁰ Whilst this applied to young adults of Local Market parents who needed to move out of the family home, a similar policy for Open Market young adults was not in place.

The Committee therefore took the opportunity in October 2021 to implement a new Open Market DRP policy for these Open Market minors and young adults. An Open Market minor who first lived in Guernsey before their 18th birthday, in the household of their parents, and who has been ordinarily resident for 8 consecutive years, is now able to move to the Local Market under a DRP until they become a Permanent Resident if they cannot continue to live with the householder named on their Permit.⁴¹

This policy was implemented by the Committee at the time it was considered, under its mandate to create policies under the Law.

- (d) OM residents with additional health needs:** The Committee also considered a new DRP policy for Open Market residents with additional health needs. Existing policies enabled Open Market residents with additional health needs to move to the Local Market if they were to live in a residential or nursing home, however no policy existed for Open Market residents who would benefit from more informal care from family members in the Local Market.

The Committee consequently agreed to the introduction of a new policy in November 2021.⁴² Under this policy, an Open Market resident who has been resident for the preceding 10 years, and who needs care and support, can move in with an immediate family member who is willing to care for them and is a Local Market resident.

⁴⁰ [Discretionary Resident Permit Policies – For people living as Family Members](#), Ref DR6

⁴¹ [Discretionary Resident Permit Policies – For Open Market Residents](#), Ref DR41

⁴² [Discretionary Resident Permit Policies – For Open Market Residents](#), Ref DR42

(e) Section 72 – Immediate family members: In addition to the above policies, the Steering Group considered the more strategic question of whether section 72 should be amended, or removed entirely, from the Law. Section 72 of the Law prevents certain Open Market residents⁴³ from occupying a Local Market dwelling solely by virtue of being an immediate family member of a Local Market householder.⁴⁴

Although in general section 72 applies, it is important to note that Discretionary Resident Permits – Family Member Resident ('DRP-FMR') provide a potential route for an Open Market resident to whom section 72 applies to move to the Local Market with an immediate family member in certain circumstances. For example, were it to be contrary to their Convention rights, or be otherwise inequitable, to prevent an Open Market resident from moving to the Local Market with their immediate family member who is a Local Market householder, the Administrator would be able to issue a DRP-FMR to facilitate this.

The Steering Group acknowledged that section 72 of the Law can be seen as unfavourable for Open Market residents, however agreed that the potential impact of removing section 72 on the Local Market was a significant risk. In essence, were section 72 to be removed from the Law, indirect routes to Local Market residence for Open Market households would become available. Over the years, this may lead to considerably more demand for Local Market properties, placing further pressure on an already strained housing market in the Island. Furthermore, the Steering Group agreed that an indirect route to Local Market residence, enabled by the removal of section 72, would run contrary to the underlying philosophy of the Open Market, namely that an Open Market resident should not expect to move to the Local Market simply because they wish to do so.⁴⁵

The Steering Group consequently agreed that section 72 should not be removed from the Law. Rather, as in the case of Open Market residents with grandfather rights, the Steering Group wished to reiterate the current routes to Local Market residency available through the existing DRP policies and processes (including the availability of applying for an Out of Policy DRP). The Steering Group agreed that these DRP policies and processes, as implemented by the Committee, are sufficient in both enabling Open Market residents to move to the Local Market with an immediate family member where they have an identified and genuine need to do so, while also ensuring the Local Market is protected.

Although new policies were not implemented in every area set out above, the Steering Group believes that these policies, in addition to the existing DRP policies as

⁴³ Section 72 applies to all Open Market residents except Part A lodgers; Part A full-time staff members (and their family members); Part B residents (and their family members); and Part C staff (and their family members).

⁴⁴ Immediate family members are defined in Section 80 of the Law as a 'spouse, partner, child, parent, grandchild, father-in-law or mother-in-law'. However, a DRP policy is currently in place which allows the spouse or civil partner of a Local Market householder to be granted a Permit to live in the Local Market.

⁴⁵ [Billet d'État XI of 2013](#), section 13.09; 13.16; Recommendation 22.

implemented by the Committee, are sufficient in covering a range of circumstances to enable Open Market residents to move to the Local Market. Moreover, where an Open Market resident's circumstances do not match one of the agreed policies, they can apply for Out of Policy DRPs to move to the Local Market which the Administrator has the discretion to grant if remaining as an Open Market resident would represent an infringement of their Convention rights, or would be otherwise inequitable.

Ultimately, the Steering Group remained cognisant throughout the Review of the potential impact on the Local Market, particularly in light of the pressure on that market in recent years. It is with this key consideration in mind that the routes to Local Market residency, as set out above and in the existing DRP policies, were considered to be sufficient, proportionate, and fair, enabling some movement from the Open Market to the Local Market in specific circumstances where it is justified and proportionate, but ensuring that such movement is carefully controlled.

Open Market Householders

Since the Commencement of the Law, Open Market Resident Certificates ('OMRCs') have been assigned on the basis of there being one 'householder' per household, with any other relatives occupying that dwelling doing so as family members of that OMRC householder.

The Committee is aware of previous suggestions that this arrangement is unfair. Specifically, it has been proposed that the holder of the OMRC is granted more residency rights under the Law than the holder of an Open Market Family Member Resident Permit ('OMFMRP') in relation to the family members that may be accommodated by each resident.

It has been noted that this has led to a perception of inequality between the individuals that occupy the same house, with the suggestion that the OMFMRP holder possesses fewer rights than the OMRC 'householder'.

Under the Law, it is true that only the OMRC is considered to be the householder, and it is only the householder who is permitted to accommodate immediate and extended family members.⁴⁶

However, in practice, where Open Market properties are owned or rented jointly by spouses or partners, the right to accommodate immediate and, in the case of Part A properties, extended family members benefits both the householder and their spouse or partner equally. This is most clearly set out under the definition of 'extended family member' in the Law:

"an 'extended family member' of a person (J) means a person who is related within the fourth degree of consanguinity to J, or to J's spouse or partner

⁴⁶ [The Population Management \(Guernsey\) Law, 2016](#), sections 8(3) and (4); section 79(2)

[emphasis added]".⁴⁷

Under this definition of extended family member, both the rights of the OMRC householder and the OMFMRP holder are equal in respect of the extended family members that may be accommodated under section 8 of the Law.⁴⁸

Whilst this clarifies the rights of a householder and their partner or spouse when living together, it was understood that the householder could be perceived to possess more rights should the couple separate. In this case, by holding the OMRC, they could be seen as more likely to continue to be the householder of that property. However, in practice, the holder of the OMRC has no bearing on who remains in the house, which is ultimately decided by the couple or as a part of separation proceedings. If the OMFMRP holder remained in the house, a new OMRC would be issued to them. Similarly, the OMFMRP holder leaving the house would be issued an OMRC if they secured an alternative Open Market property as a householder in their own right.

Although the residency rights of the OMRC and OMFMRP holder are the same, the Steering Group acknowledged that there could be a feeling of inequality between the two permits, and considered whether the Law could be amended to change this arrangement. However, it ultimately decided that the Law should not be amended, due to there being no material change or benefit to the rights of Open Market residents in doing so.

Open Market Lodging

Open Market lodging was one of the areas that saw the most substantial changes from the HCL to the Population Management regime, and the Review used the opportunity to consider whether these changes were still justified, or needed to be revisited.

Although it was not an active policy decision to allow lodgers in Part A properties under HCL, by virtue of a "joint and several leases" loophole, it was possible for a group of unrelated adults to occupy a Part A property. The primary purpose of the HCL regime was to "preserve a stock of Local Market housing for occupation by Qualified Residents and existing Housing License holders". Consequently, under the HCL objective "it can be argued that a high level of occupancy of Open Market properties is a very efficient use of the Island's housing stock".⁴⁹

However, if the occupation of Part A properties by unrelated adults was allowed to continue in an uncontrolled manner, the Policy Council contended in 2013 that it would run contrary to the primary objective of the Population Management regime – namely to effectively manage the size and make-up of the Island's population – as there would be no way to control or influence the number of people living in such properties.

⁴⁷ [The Population Management \(Guernsey\) Law, 2016](#), section 78

⁴⁸ [The Population Management \(Guernsey\) Law, 2016](#), Section 8(4). See also a visual map of [Immediate and Extended Family Members of a Householder \(Showing up to four degrees of consanguinity or partnership\)](#)

⁴⁹ [Billet d'État XI of 2013](#), section 13.42

Furthermore, the continued use of Part A properties as lodging houses effectively removed those properties from being available for families, who were the very people that Part A was originally intended to attract. Finally, there was a concern that such Part A lodgers residing in Guernsey for long periods of time would eventually make a strong case for moving to the Local Market on Human Rights grounds.⁵⁰

The Commencement of the Law therefore more clearly set out who may be accommodated in each part of the Open Market. Most fundamentally, the States' Assembly agreed that all Part A houses in use as HMOs should be transferred to Part D upon Commencement. At the time, there were 148 Part A properties that were used as HMOs.⁵¹

Whilst this led to a considerable shift in residents and properties from Part A to Part D upon Commencement, a Part A householder's ability to accommodate lodgers or unrelated adults was not completely removed under the Population Management regime.

Under the provisions of the Law, a Part A householder can accommodate one lodger who is living in Guernsey on the basis of an Open Market Lodger Resident Permit (Part A) ('OMLRP'). These OMLRPs are capped at 5 years' maximum residence, and are not tied to any specific job, or have any further conditions imposed upon them.

In addition to an OMLRP holder, a Part A householder can accommodate other residents who are eligible to live in Local Market accommodation, such as an Employment Permit holder or a Permanent Resident. This was a very clear policy proposal set out in a States' Report in 2015, in which the Policy Council stated that:

*"2.24 Consequently, it is proposed that, after the commencement of the new regime, only one lodger will be permitted in a Part A Open Market dwelling. Any additional lodgers will mean that the Part A inscription will be jeopardised. **The only exception to this would be where a second or subsequent lodger could demonstrate a right to occupy Local Market accommodation**, in which case he would be permitted to occupy the Open Market property in question for so long as his Permit remained valid.*

*2.25 Thus, for example, **an individual in possession of a 1-year Short-Term Permit, which would entitle him to live in a Local Market property, could live in a Part A Open Market dwelling as a lodger** but, if that person were not the only lodger in the property, he would have to move out when the Short-Term Permit expired [emphasis added]."*⁵²

⁵⁰ [Billet d'État XI of 2013](#), 13.43-13.47

⁵¹ [Billet d'État XI of 2013](#), 13.41

⁵² [Billet d'État XIV of 2015](#), 2.24-2.25

The full list of residents that a Part A householder may accommodate are set out in the provisions of the Law.⁵³ However, in general, a Part A householder may accommodate:

- their immediate/extended family members;
- residents who are permitted to live in the Local Market (for example, Employment Permit holders or Permanent Residents);
- any full-time household staff and their immediate family; and
- one Part A lodger living in Guernsey on the basis of an Open Market Lodger Resident Permit (Part A).

Whilst a Part A householder may accommodate these residents, the Open Market Law states that, where a Part A house is being used as an HMO, its inscription shall be transferred to Part D of the Register.⁵⁴ A Part A householder may accommodate the various persons set out in section 8(3) and (4) of the Law provided that the Part A household continues to be principally used as a private family dwelling.

Therefore, the only barriers in respect of accommodating unrelated individuals in a Part A household is, first, in relation to the holders of an OMLRP where only one such lodger may be accommodated and, second, in relation to the point at which accommodating multiple unrelated adults makes the Part A property an HMO, in which case it is more suitably inscribed upon Part D.

The Steering Group considered whether there was any merit in increasing the number of OMLRP lodgers that a Part A household can accommodate. However, it agreed that there was ultimately no rationale for doing so. Lodgers under these permits are not tied to any employment conditions in the Island, and in the context of post-Brexit immigration and the objective of targeted migration for specific employment sectors and positions, increasing the ability of multiple OMLRP lodgers to be accommodated in a Part A property without qualifying for an Employment Permit seemingly flies in the face of this objective.

Furthermore, the Steering Group also noted that a Part A householder may be able to use an annexe of their property to accommodate lodgers, provided that the annexe is ancillary to the main property, and not a household in its own right. In each case, however, the individual circumstances and facts of the property would be taken into account in this judgement.

Following consideration of the provisions of the Law in respect of Part A lodging, the Steering Group agreed that no substantive changes should be proposed as a part of the Review, and the range of individuals that a Part A householder can currently accommodate is sufficiently broad. However, the need for one technical amendment was identified, in order to enable Open Market householders to accommodate Seasonal

⁵³ [The Population Management \(Guernsey\) Law, 2016](#), section 8(3) and (4)

⁵⁴ [The Open Market Housing Register \(Guernsey\) Law, 2016](#), section 16(4)

Employment Permit holders. This amendment has been set out and proposed in sections 9.22-9.25 of the Policy Letter, and is included as a Proposition for the approval of the States' Assembly.

APPENDIX 6: POLITICAL CONSULTATION FEEDBACK



The President
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23rd August 2022

Dear Deputy Prow

POPULATION & IMMIGRATION POLICY REVIEW

Thank you for your further letter of 8th August, and for sharing the full draft of the Population & Immigration Policy Review Policy Letter with the Policy & Resources Committee ('the Committee').

In general, the Committee believes that the comments provided in its letter of 27th July remain applicable, and it will therefore not further repeat them in this letter. However, having sight of the full draft Policy Letter has provided the Committee with the opportunity to comment on the more detailed strategic work of the Review that engages its mandate.

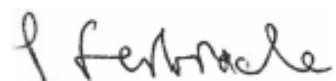
In particular, the Committee welcomes the evidence-based approach adopted in the proposal of a new strategic population objective, using available forecasting data to understand the Island's future workforce requirements in the short- and long-term. It is clear from the work undertaken that an increase in the working population is necessary to sustain the Island's economic competitiveness in the long-term.

However, as has been clear through the Committee's membership of the Steering Group and the discussions that have taken place, there are myriad additional factors caused by a growing population – not least the impact on infrastructure and public services – that must be managed, cutting across multiple workstreams of government.

Notwithstanding the evidence-based work that fed into the revised strategic population objective, the Committee has not considered nor agreed a position on the proposed objective. Rather, it maintains that its Members should vote as they individually believe appropriate when the matter is debated by the States in October, having listened to the arguments presented in both the Policy Letter and during debate.

The Committee is grateful to the Committee *for* Home Affairs, and to you as President and Chair of the Steering Group, for guiding the Review through what is a politically charged and emotive subject matter, and it looks forward to the debate in October.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'P Ferbrache', written in a cursive style.

Deputy Peter Ferbrache
President



Committee *for*
Health & Social Care

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23 August 2022

Dear Deputy Prow,

Population and Immigration Policy Review Consultation

Thank you for your letter and for providing the Committee *for* Health & Social Care (“the Committee”) with the opportunity to provide comment on your Policy Letter entitled ‘Population and Immigration Policy Review’ and the associated Propositions. The Committee has had limited time to consider this matter in full but is pleased to provide some initial feedback.

The Committee is broadly supportive of the strategic population objective and the need to address some of the longer-term, related challenges as a means to enable key workers to come to the Island. The States of Guernsey employ a significant number of health and care workers, both locally based and recruited from off-island, across a variety of roles, to ensure that our services can be delivered safely and effectively. To that end the Committee wishes to provide comment both on the proposals relating to changes to Employment Permit Policy (EPP) and the various interlinked areas that need to be addressed to support, and indeed will be impacted by, the strategic population objective.

Changes to Employment Permit Policy

With regards to the proposed changes to EPP, the Committee wishes to make the following points:

The Immigration Work Permit Policy will be tied to the EPP for both EU/EEA and third country nationals (paragraph 7.6a)

The Committee welcomes this step as a means to be able to recruit from a wider pool of health and care workers, however the benefit will likely only be realised if there is sufficient key worker accommodation for them to live in (as discussed below). Further, there are existing concerns at the length of time currently being taken for UK Visas to be granted, and it is anticipated that opening up the recruitment process to a wider pool of workers would add further strain to this process and cause additional delay. The Committee acknowledges that the system was impacted by the conflict in Ukraine which saw the fast-tracking process removed, however it wishes to flag these concerns and trusts that the Committee *for* Home Affairs is in a position to address them.

Short-Term Employment Permits (STEPs) will continue to be granted for periods of one year at a time, but only renewable up to a maximum of three consecutive years, rather than five aggregate years (paragraph 7.6b)

The Committee understands that this is a necessary step as part of Guernsey being a responsible member of the Common Travel Area (CTA). There are not currently any Health & Social Care (HSC) staff employed on STEP's that have been on the Island for more than three years.

The job roles within the EPP will be reviewed based on their alignment with the “UK list” (paragraph 7.6c) and the removal of Medium-Term Employment Permits (MTEPs) from the Law (paragraph 7.6d)

It would appear that all relevant HSC roles would qualify for an Long-Term Employment Permit (LTEP) once the Guernsey list is aligned with the UK which is a positive step and will add some certainty to our recruitment processes. Nonetheless the Committee would appreciate being given sight of any final lists of employment permit eligibility to confirm that alignment with the “UK list” would not cause any disadvantage, noting that there are some HSC roles that are on the list that would not usually qualify for an employment permit (for example chefs and laboratory technicians).

It is also worth noting that this step would have some financial implications as anyone appointed from outside of the Island on an Employment Permit would qualify for relocation assistance under current policy. By adding more roles to the list of LTEP eligibility, whether through alignment with the UK or the removal of the MTEP, there would be additional costs, especially as Rent Allowance has recently been increased by a further two years. It is not clear from the Policy Letter whether the existing process of applying for permits only when there is no one suitable for the role with local residential qualifications will continue, if not then this will add to the financial impact further.

Supplementary Employment Permit Policy matters

In addition to those changes to the EPP proposed within the Policy Letter, there are some further changes which would be not currently covered but the Committee wishes to bring to your attention.

Changes to the Immigration Law

The Committee is currently in discussion with Immigration over proposed changes to the Immigration (Bailiwick of Guernsey) Rules, 2008 which would enable skilled workers who have spent time elsewhere in the CTA to have this time count towards their required period for settlement. It is understood that such a provision is in place in Jersey which has given it a competitive advantage. Discussions at officer level have progressed well and the Committee would wish to see this change implemented as soon as is practicable.

Employment Permit fees

The Committee currently covers the fees for the employment permits of some agency staff as they are not Health & Social Care employees. This adds to the cost of employing agency staff who play a valuable role in supporting service provision. Currently fees are waived if an agency worker is new to the island, however if they are returning or their STEP needs to be reviewed then this cost is borne by the Committee. Furthermore, there are rare occasions where an agency worker wishes to bring over dependants and is granted an MTEP. This is charged at a higher fee, and under the new proposals the individual would now be granted an LTEP which is costlier still. The Committee wishes to work with you to review how this policy is applied.

Impacts on the Island's infrastructure

The Policy Letter refers to a number of interlinked factors that will need to be addressed both to support the strategic population objective and to respond to the impacts that an average net migration of +300 per year will bring.

The Committee notes that there will be a requirement to increase the number of houses on the Island in order to meet the demand that will come with an increase in the population. Key worker housing is of critical importance to the Committee. The need to be able to provide housing of sufficient quantity and quality for health and care staff to enable our services to be delivered effectively is well-known, and housing provision is a constant obstacle to attracting workers. The need for key worker housing is only going to increase as the population ages and putting additional demand on health and care services. The Policy Letter notes that provision of key worker housing is being reviewed separately to that of general housing, though there is likely to be some overlap, and that this work is to be taken forward by the Committee *for the* Environment & Infrastructure under Proposition 2.

At the same time, the Committee is also committed to training and developing staff on-island through the 'Grow Your Own' Programme. It is recognised that this is essential in supporting our workforce as staff who are already resident on-island tend to have longer periods of retention and do not require key worker accommodation. The Policy Letter refers to the need to increase the productivity of the existing workforce, and that this work is to be

taken forward by the Committee *for* Economic Development through a skills-led economic development strategy under Proposition 3.

Although key worker housing and skills are not within the mandate of the Committee *for* Home Affairs, the Committee would wish to flag that it would welcome involvement and further consultation as part of this work, given the criticality of both workstreams to recruitment and the maintenance of HSC services.

The Committee trusts that this feedback will assist the Committee *for* Home Affairs in finalising its proposals, however if you require further clarification please do not hesitate to contact us.

While writing, the Committee would also like to take the opportunity to thank the Committee *for* Home Affairs for the support that its staff continue to provide, particularly from Population Management and Immigration, in addressing some of the recruitment challenges being faced by HSC.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Al Brouard', with a long, sweeping horizontal line extending to the right.

Deputy Al Brouard

President

Committee *for* Health & Social Care



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25 August 2022

Dear Deputy Prow

Population & Immigration Policy Review

Thank you for your most recent letter dated 8 August 2022 concerning the above. The Committee appreciated the clarification provided in your letter and the opportunity to read the full policy letter.

In order to help your Committee in its planning, the Committee wanted to advise you formally that it has decided not to finalise its planned policy letter on the States Strategic Housing Indicator (SSHI) until the States had decided on the PIPR policy letter.

There were several factors that influenced that decision. Primarily it was because if the Committee published its SSHI policy letter ahead of the PIPR policy letter being debated, it would have to produce a more complex policy letter, trying to anticipate various potential States' resolutions, including any changes that might be brought about by amendments. Knowing the resolutions on the PIPR policy letter would allow the production of a much more targeted policy letter.

Therefore, the delay in the PIPR policy letter will also cause a small delay in the publication of the SSHI policy letter.

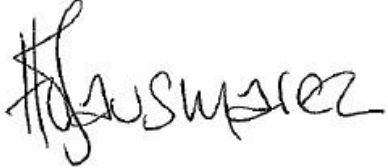
Separately, it would be advantageous to include in the policy letter more of a spatially-based description of the pressures on land for housing rather than only set out figures. Figures are often harder to visualise. This would illustrate what the figures could mean in terms of land supply for extra housing. A description based on an indicative area such as "X number of football pitches" would allow the impact to be more readily visualised by the Assembly.

It might be useful to highlight that in paragraph 6.6 of the draft policy letter it says

"If it is assumed that the level of net migration can be sustained at +300 people per annum over the next five years, this increases to 1,705 units a year by 2026."

It is presumed this is the total required and not intended to be the amount required "a year".

Yours sincerely

A handwritten signature in black ink, appearing to read "Lindsay de Sausmarez", written in a cursive style.

Deputy Lindsay de Sausmarez

President

Committee *for the* Environment & Infrastructure



Committee *for*
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By email

30 August 2022

Dear Deputy Prow

Population & Immigration Policy Review

I refer to your letter, dated 8 August 2022, inviting the Committee *for* Employment & Social Security ('the Committee') to provide its views on the draft Policy Letter and Propositions arising from the Population & Immigration Policy Review.

The Committee is grateful for the extended consultation and the opportunity to comment on the full draft of the Policy Letter. The Committee is also pleased to see that the Committee *for* Home Affairs has responded positively to the feedback provided by the Committee as part of the initial consultation.

The Committee's concerns raised during the initial consultation with regard to the broader environmental, social and economic impact of assumed net migration of +300 people per annum are alleviated by the detail included in Section 6 of the draft Policy Letter. The Committee is also reassured to see further consideration surrounding the potential to improve economic productivity and participation in the existing workforce in Section 5.

The Committee does however wish to challenge the assertion in paragraph 5.9 of the draft Policy Letter, itself based on data contained in the Guernsey Annual Electronic Census Report, that "...95 of every 100 people who move to Guernsey would be economically active".... The Committee expects that there would likely be a number of workers who would move to the island with a partner (who may or may not be economically active) and a child or children and/or other dependent relative(s). Even if this was true for only a small number of workers, it seems implausible that there would only be 5 non-economically active dependents out of every 100 people.

In the Committee's response to the initial consultation, concerns were raised regarding Proposition 4 and the rationale for carrying out a review of "the options for any bespoke arrangements that ensure those who are new to a community, and who may only be staying and working in that community for a fixed period rather than on a permanent basis, access public services in a fair and transparent way". Without further information being available at that time, the Committee raised concern about the potential of this creating a "sub-class" of resident which would be both unfair to guest workers and potentially counter to the strategic population objective. Members are, however, reassured that this is not the intention of the review and by the detail included in paragraphs 6.20-6.23 of the draft Policy Letter which sets out the need for government to consider how public resources can be more effectively targeted. The Committee notes the Committee for Home Affairs' intention to seek to ensure that some public services are accessed in a balanced and fair way based upon, for example, residency period or contribution record. And members note that access to universal entitlements, such as access to school and education, will be maintained and will not form part of the proposed review.

The Committee notes that the wording of Proposition 8 has been amended and now more accurately reflects how the safety and security of the Island and its residents relates to Population Management and Immigration regimes.

Following further review of the draft Policy Letter and Propositions as part of the extended consultation, the Committee would like to raise the following additional points.

Proposition 1.b. seeks approval of the strategic population objective that *"The States of Guernsey will assume, for the purpose of planning future infrastructure and service provision, that net migration will average up to +300 per year over the next thirty years..."*. For the planning of housing and other essential infrastructure, the Committee is of the view that the figure for average net migration needs to be expressed as a fixed number rather than a range (i.e. "up to"). The use of a range leaves the objective open to differential interpretation and the Committee believes that it would be prudent for the Committee for Home Affairs to provide more specificity in this respect.

The Committee notes that more up to date data (up to Q2 2022) is available¹ in respect of real average Local Market monthly rents (Figure 6b) and real Local Market residential property prices (Figure 6c). This shows that both Local Market rental prices and property prices have increased substantially since Q1 2021 and Q4 2020 (i.e. the end of the period illustrated in the two figures in the draft Policy Letter).

The Committee wishes to raise a point for correction in paragraph 6.6 of the draft Policy Letter. This paragraph states that "The data shows that, in order to maintain the current average level of net migration experienced over the last 12 years (+100 people per annum), the creation of a further 1,327 residential housing units by 2026 would be required. If it is assumed that the level of net migration can be sustained at +300 people per annum over the next five years, this increases to 1,705 units a year by 2026". The Committee believes that the requirement should be for 1,705 residential housing units in total by 2026 rather than "a year".

¹ www.gov.gg/property

The Committee is of the view that the information provided in the draft Policy Letter on spatial (land) requirements for the additional housing is inadequate. Originally, the intention was to publish the Policy Letter on the States' Strategic Housing Indicator (SHHI) at the same time as the Policy Letter on the Population & Immigration Review to enable the States to consider their interdependencies. Now that it has been decided that the SHHI Policy Letter will be debated at a later date, it is even more important to ensure that housing *and* spatial requirements arising from net migration of +300 people per annum are set out in the Population & Immigration Review Policy Letter.

Members also consider it important that the Policy Letter should acknowledge that the target average net migration might result in the displacement of people into social rental housing which could negatively impact the already long social housing waiting lists and result in the requirement for more social housing.

The Committee is of the view that it would be helpful if the Policy Letter drew a distinction between expected natural population change, caused by births and deaths, and migration. It could be made clearer within the Policy Letter that a net migration level of +300 per year does not mean that the population will necessarily increase by 300 people each year owing to natural fluctuations.

Members also believe that it would be helpful if a third graph/table could be included on page 14 of the Policy Letter showing the ratios of economically active/inactive people under each of the net migration scenarios illustrated in Figures 5a and 5b.

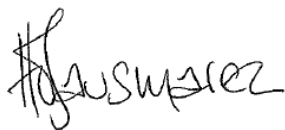
The Committee is of the view that the draft Policy Letter raises an unanswered question around who decides who can move to the island and who cannot. The Committee suggests that this should be recognised in the Policy Letter and that actions which seek resolution in this respect should be proposed.

The Committee notes that population and immigration are challenging policy topics, and notwithstanding the points raised above, members wish to recognise that, overall, the draft Policy Letter successfully pulls together many different strands of work and complex information.

I should be grateful if you would arrange for this letter to be appended to the Policy Letter in place of the President's previous letter dated 29 July 2022.

Thank you for the opportunity to provide feedback in respect of the draft Policy Letter and revised Propositions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'H L de Sausmarez', written in a cursive style.

Deputy H L de Sausmarez
Vice-President



Committee *for*
Education, Sport & Culture

Deputy R Prow
President
Committee for Home Affairs
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31 August 2022

Dear Deputy Prow

Population and Immigration Policy Review

Thank you for your letter of 8th August, enclosed with which was the draft Policy Letter in respect of the above subject.

The Committee is grateful to note that some of its earlier feedback, provided following circulation of an earlier iteration of the draft Propositions but without the benefit of sight of the draft Policy Letter itself, has been taken into account and has resulted in some changes to the draft Propositions.

Looking at the Policy Letter holistically in the context of other high priority workstreams within the Government Work Plan in respect of which the Committee has a special interest:

1. Housing:

Following on from the work of the Housing Action Group, the Committee for the Environment & Infrastructure is progressing a workstream which will evaluate and implement interventions to address key worker housing capacity and affordability; and the Policy & Resources Committee is developing a Housing Action Plan which will identify States-owned land is available for housing to meet the needs of: private ownership; joint ventures; self-build; and social housing (social rental, key worker, part ownership and specialised housing).

There is a reliance within the teaching profession on both: i) islanders returning to live and work locally following a period of post-qualification experience elsewhere; and ii) employment permit holders to supplement the local workforce. Given the States' recognition of the significant impact of housing affordability on relocation decisions, in terms of both immigration and emigration, the Committee is keenly interested in these workstreams, recognising the connections between these workstreams and population and immigration policies and would want to ensure that policy development in all of these areas is undertaken in a coordinated way.

The Committee notes references within the draft Policy Letter to 'critical workers' and 'key workers'. It would like to ensure there is a commonly understood

definition of both of these terms across all relevant workstreams within the Government Work Plan; and further to ensure that teachers and other essential roles within the education sector are included in the relevant definition.

2. Human Capital Development Plan:

The Committee *for* Economic Development and the Committee *for* Education, Sport & Culture are jointly developing a coordinated programme of work for developing human capital (i.e. the skills, knowledge, and other attributes such as health, which facilitate economic, social, and personal wellbeing) in Guernsey. The actions to be taken under this programme of work – the Human Capital Development Plan – are being formulated to, among other things, facilitate productivity in the economy, align with employer needs, and support the delivery of population policies. There are clear connections between the Population and Immigration Policy Review and the Human Capital Development Plan, with both seeking to ensure that businesses, public services, and other employers have access to a skilled workforce to meet the Island's economic and social needs. It is important that work to implement, and to develop human capital, is carried out in a coordinated manner, to ensure complementarity across both policy areas.

More generally:

- Paragraph 7.11 of the draft Policy Letter clarifies the process via which the holder of a Medium-Term Employment Permit (MTEP) can apply to convert it to a Long-Term Employment Permit (LTEP) should the former be discontinued. Presently, it is our understanding that it falls to the employer to make the initial application for an Employment Permit of a specific length, prior to it attaching to a named person, and given that the employer can currently elect to apply for a shorter Permit than the Employment Permit Policy might allow for a given post, the Committee would like to ensure that there has been appropriate consultation with the Policy & Resources Committee, in its capacity as the employer of States' employees, to confirm its views with regard to whether it should be for the employer or the employee to make an application to convert an existing MTEP into an LTEP should the former be discontinued.
- Paragraphs 7.12 and 7.13 of the draft Policy Letter confirm that the 'vast majority' of MTEP roles will be eligible for LTEPs. It would appear, from a brief review of the UK's Skilled Worker Visa: Eligible Occupations list that this is indeed the case for roles within the education sector; however some of the roles within the third sector organisations that the Committee partners with might well not be eligible for LTEPs in the future. Whilst the draft Policy Letter is clear about the transitional arrangements for current MTEP holders, it is not clear what provisions will be in place for new/vacant roles that would, in the past, have attracted an MTEP cannot benefit from an LTEP, and where a Short-Term Employment Permit might not be suitable.
- The removal of the MTEP and consequential increase in LTEPs is likely to result in more family groups relocating to Guernsey as it removes uncertainty surrounding the potential need to relocate at key stages of a child's education. Given this, the proportion of pre- and school-aged children arriving in the Island for whom English is an additional language (EAL) might well increase. Whilst, in the longer term, EAL is seen as an educational advantage, in the short-term any significant increase in EAL students would have resource implications for schools which would be unlikely

to be met from within the Committee's existing budget. This should be reflected in the Policy Letter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'A. Dudley-Owen', written in a cursive style.

Deputy Andrea Dudley-Owen

President

Committee *for* Education, Sport & Culture

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www.gov.gg

By E-mail: homeaffairs@gov.gg

7th September, 2022

Dear Rob

Population and Immigration Policy Review

Thank you for your letter dated 14th July, 2022 requesting the formal view of the Committee for Economic Development (the Committee) on the draft propositions for the Population and Immigration Policy Review (PIPR) Policy Letter. The Committee considered these propositions at its meeting on 9th August. It has also subsequently had the opportunity to consider the draft Policy Letter, which is appreciated.

Several members of the Committee (three States Members and both non-States Members) were members of the PIPR steering group, and the opportunity to provide input throughout the process has been invaluable.

The Committee is supportive of the work being undertaken in order to set out clearly that +300 net migration is needed over the next 30 years. There are clear benefits to the economy and tax take in terms of the numbers of active workers. Further work will be needed on the composition of the 300, and the Committee would welcome the opportunity to have direct input into that work should the States of Deliberation agree that Proposition. This will include modelling to determine whether/how the 300 could be targeted to the active working roles required, especially given the ability for family and partners of local residents to move to the island. It is clear that the numbers from different economic sectors as well as the public sector will vary over time, and the Committee will be pleased to work with businesses and their representative bodies to provide further analysis and insights.

It also clear that more work will need to be done on attracting the identified capabilities and competences to the Island. A combination of short-term and long-term solutions will be needed, and the Committee will be pleased to support the work referred to in Proposition 6, and supports the Policy Letter in clarifying that this will mean issues such as housing and

skills will also need to be addressed. The Committee will play its role in attracting people to the Island, and will consider how to support Locate Guernsey in that respect.

With that latter point in mind, the Committee is pleased to advise that the developing Human Capital Development Action Plan is aligned with the PIPR Policy Letter in that respect. Proposition 12 seeks to ensure that the two pieces of work are aligned and complementary, and that is fully supported by the Committee.

When the review began you made clear that where possible changes to support recruitment and retention in the economy would be made along the way. That has been done with some success, and the Committee welcomes the work of the review and of the Committee *for* Home Affairs in doing that, and it thanks you for the consultation that has taken place with the Committee.

The Committee agrees with the point made in the Policy Letter that it will take a States-wide approach to resolve the demographic challenge that is posed to our economic future. This Policy Letter is an important, constructive, and significant step, but there is much work for this Assembly to do in order to meet that challenge.

In conclusion, the Committee believes the review and Policy Letter is an important step forward, and one which will – along with the developing Human Capital Development Plan – assist in developing a States-wider approach to planning for the future of our economy.

Yours sincerely



Deputy Neil Inder
President

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE FOR HOME AFFAIRS

POPULATION & IMMIGRATION POLICY REVIEW

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

5th September 2022

Dear Sir,

Preferred date for consideration by the States of Deliberation

In accordance with Rule 4(3) of the Rules of Procedure of the States of Deliberation and their Committees, the Committee *for* Home Affairs requests that the Policy Letter titled 'Population & Immigration Policy Review' be considered at the States' meeting to be held on 19th October, 2022.

The strategic population policy of the States is interlinked with several other strategic government workstreams, including the States' Strategic Housing Indicator, the Human Capital Development Plan, and the Review of Taxation. The Committee believes it is important for the States to determine its population policy at the next available meeting, so as to inform these other workstreams and ensure their continued progression.

Yours faithfully,

R G Prow
President

S P J Vermeulen
Vice President

A Taylor
S Aldwell
L J McKenna

P Harwood
Non-States Member

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH POLAND AND
QATAR

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled “Revision of the Double Taxation Arrangements made with Poland and Qatar”, dated 23 August 2022, they are of the opinion:-

1. To declare that:

- (a) The “Protocol Amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to certain Income of Individuals signed in London on 8th October, 2013” and the “Protocol Amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, signed by Guernsey on 19 May 2022 and 21 June 2022 respectively, have been made with the government of another territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of those territories; and
- (b) it is expedient that the double taxation agreements that Guernsey has with Poland and Qatar, signed on 8 October 2013 and 22 February 2013 respectively, as so amended, should have effect, with the consequence that those Agreements shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

REVISION OF THE DOUBLE TAXATION ARRANGEMENTS MADE WITH POLAND AND
QATAR

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

23rd August, 2022

Dear Sir

1. Executive Summary

- 1.1 On 19 May 2022, Guernsey entered into a “Protocol amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013”.
- 1.2 On 21 June 2022, Guernsey entered into a “Protocol amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”.
- 1.3 The principal purpose of a double taxation agreement (“DTA”) is for two governments to agree procedures for the prevention of double taxation – that is, taxation under the laws of both territories in respect of the same income – and tax avoidance and evasion, with respect to their domestic taxes.
- 1.4 In recent years, the Organisation for Economic Development & Co-operation (“OECD”) has been developing the Base Erosion & Profit Shifting (“BEPS”) initiative which is aimed at combatting tax avoidance. One outcome of the BEPS initiative was the creation of a multilateral instrument which committed jurisdictions could sign. Once the provisions of the multilateral instrument are adopted into domestic legislation by a signatory, all DTAs affected by the multilateral instrument are revised accordingly, and are then compliant with BEPS minimum standards.

- 1.5 Whilst Guernsey signed the multilateral instrument, in 2017, not all of Guernsey's pre-existing DTAs (including the DTAs with Poland and Qatar) are covered by it. If those DTAs not covered by the multilateral instrument are to meet BEPS minimum standards, to which Guernsey is committed, they have to be amended by bilateral agreement.
- 1.6 The new Protocols represent the outcome of such bilateral agreements held with Poland and Qatar. The original DTAs (that the new Protocol will amend) were signed with Poland on 8 October 2013, and with Qatar on 22 February 2013.
- 1.7 The purpose of this policy letter is to seek States' approval, in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended ("the Income Tax Law") for the provisions of the new Protocols to be given domestic effect.

2. Background

- 2.1 Section 172(1) of the Income Tax Law provides:

"If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment."

Section (1AA) provides that:

"The arrangements that may be specified in a Resolution under this section include (without prejudice to subsection (1A) –

- (a) arrangements amending, modifying or extending –
 - (i) double taxation arrangements entered into by or otherwise binding upon Guernsey, or
 - (ii) any arrangements of a description set out in paragraph (b) for the time being specified in a Resolution under this section,

including, without limitation, the arrangements effected by the Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting done at Paris on the 24th November, 2016, and

- (b) other arrangements containing provisions that relate to, or are consequential, incidental, supplementary or ancillary to, such double taxation arrangements or double taxation matters."

Section (1A) further provides that:

“For the avoidance of doubt, arrangements made with the government of another territory and specified in a Resolution under this section may, without limitation, and provided that the main purpose or one of the main purposes of the arrangements is that they are made with a view to affording relief from double taxation, make provision in respect of the following matters –

- (a) the apportionment of taxing rights,
- (b) variations in the rates of tax, and methods of computing a person's liability to tax, in relation to particular sources of income,
- (c) the exemption from tax of particular sources of income,
- (d) other methods of affording relief from double taxation, in addition to those provided for by section 173 (tax credits), and
- (e) consequential, incidental, supplementary and transitional matters.”.

The original DTAs, signed with Poland in October 2013, and with Qatar in February 2013, were subject to Resolutions of the States, under Section 172(1) on 30 January 2014 and 28 June 2013, respectively. Section 172(1) of the Income Tax Law would also be the mechanism for subsequent amendments to existing DTAs.

- 2.2 Guernsey currently has fully comprehensive DTAs with 14 jurisdictions. Guernsey also has “partial” DTAs (dealing with such issues as personal tax matters; shipping and aircraft and mutual agreement procedures) with 12 jurisdictions. The DTA with Poland is a partial DTA, covering certain income of individuals. The DTA with Qatar is a fully comprehensive DTA.
- 2.3 In recent years, in response to a request from the G20, the OECD has been working on the Base Erosion and Profit Shifting (“BEPS”) initiative.
- 2.4 BEPS is based on the premise that, in an increasingly interconnected world, national tax laws, many of which have their origins over 100 years ago, have not always kept pace with global corporations, fluid movement of capital and, most recently, the rise of the digital economy, leaving gaps and mismatches that can be exploited, in some cases to generate double non-taxation, which can undermine the fairness and integrity of tax systems.
- 2.5 Part of the BEPS outcomes involved designing a multilateral instrument to permit the current existing global framework of DTAs (numbering over 3,000) to be

revised to meet BEPS objectives, as the alternative would be extensive bilateral negotiations, which could take decades to achieve.

- 2.6 Guernsey was amongst the first signatories of the multilateral instrument, in June 2017.
- 2.7 None of the “partial” DTAs entered into by Guernsey (see 2.2. above), including the DTA with Poland, were listed under the multilateral instrument, either by Guernsey or the partner jurisdiction. This was because they dealt with only limited aspects of what is normally covered by a DTA, and application of the full suite of provisions of the multilateral instrument to the partial DTAs was not considered appropriate.
- 2.8 Contact was made with the relevant jurisdictions, offering to negotiate amendments to the partial DTAs, on a bilateral basis, to make them compliant with BEPS principles. Poland (amongst others) accepted the proposal.
- 2.9 As a consequence, the new Protocol contain revisions to the original agreement with Poland as follows:
 - (a) for the title to be modified to refer to the parties’ intention to eliminate double taxation with respect to income of certain individuals and prevent tax evasion and avoidance.
 - (b) for the preamble text to be modified to refer to the parties’ intention to eliminate double taxation with respect to the taxes covered by the agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreements for the indirect benefit of residents of third jurisdictions).
 - (c) amending the existing Article containing the “Mutual agreement procedure” to make it explicit that, where a person considers that the actions of one or both of the parties to the agreement result, or will result, for that person in taxation not in accordance with the provisions of the agreement, he may, irrespective of the remedies provided by the domestic law of the parties, present the case to the competent authority of the party of which he is resident or, where the case relates to the “Non-discrimination” Article of the DTA, to the party of which he is a national.
 - (d) a revision to reflect the change in title of Guernsey’s competent authority, for the purposes of the DTA, from Director of Income Tax to Director of the Revenue Service.

- (e) a provision is added to specify that a benefit under the agreements shall not be granted in respect of an item of income, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.
- 2.10 With regard to the Protocol with Qatar, it was agreed that, as it was desirable for amendments to be made to the DTA that went beyond BEPS issues, it was preferable to amend the DTA by bilateral negotiation, rather than by listing the DTA under the MLI.
- 2.11 As a consequence, the new Protocol contain revisions to the original agreement with Qatar as follows:
- (a) for the preamble text to be modified to refer to the parties' intention to eliminate double taxation with respect to the taxes covered by the agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in the agreements for the indirect benefit of residents of third jurisdictions).
 - (b) to update the definition of "Guernsey", as our preferred version that is used in international tax agreements had changed, since the original DTA was signed in 2013.
 - (c) a revision to reflect the change in title of Guernsey's competent authority, for the purposes of the DTA, from Director of Income Tax to Director of the Revenue Service.
 - (d) replacing the existing Article containing the "Mutual agreement procedure" with new text to:
 - I. make it explicit that, where a person considers that the actions of one or both of the parties to the agreement result, or will result, for that person in taxation not in accordance with the provisions of the agreement, he may, irrespective of the remedies provided by the domestic law of the parties, within 3 years from first notification of the action, present the case to the competent authority of either party;

- II. clarify that the competent authorities will endeavour to agree on how interest, late payment surcharges and administrative penalties would be dealt with in a mutual agreement procedure case;
 - III. agreeing that in a mutual agreement procedure case, assessment and collection procedures are suspended while the process is pending; and
 - IV. providing a mechanism for communication between the competent authorities to be through a joint commission for the purposes of reaching a conclusion in a mutual agreement procedure case.
- (e) a provision is added to specify that a benefit under the agreements shall not be granted in respect of an item of income, if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of the agreement.

2.12 Copies of both Protocols are attached.

3. Recommendations

3.1 The Policy & Resources Committee is pleased to recommend that the States should declare that:

- (a) the “Protocol amending the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013”, signed on 19 May 2022, and the “Protocol amending the Agreement between the Government of Guernsey and the Government of the State of Qatar for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income”, signed on 21 June 2022, have each been made with the government of another territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of those territories; and
- (b) it is expedient that the double taxation agreements that Guernsey has with Poland, signed on 8 October 2013, and with Qatar, signed on 22 February 2013, as amended by the said Protocols, should have effect, with the consequence that those Agreements, as so amended, shall have effect in relation to income tax in accordance with section 172(1) of the Income Tax

Law, notwithstanding anything contained in the Income Tax Law, or any other enactment.

4. Compliance with Rule 4

4.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.

4.2 The following information is provided in conformity with Rule 4(1):

- (a) the Propositions contribute to the States' objectives and policy plans by continuing to conform to the international taxation standards that it has agreed to;
- (b) no joint working or consultation has taken place with other Committees or relevant stakeholders in the preparation of the propositions;
- (c) the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications;
- (d) the Propositions do not request the States to approve funding.

4.3 For the purposes of Rule 4(2):

- (a) the Propositions relate to the duties and powers of the Policy & Resources Committee in raising and collecting taxes and revenues and executing and requesting the extension of international agreements to which the Island is invited to acquiesce;
- (b) the Propositions have the unanimous support of the Policy & Resources Committee.

Yours faithfully

P T R Ferbrache
President

H J R Soulsby
Vice-President

M A J Helyar
J P Le Tocq
D J Mahoney

PROTOCOL
AMENDING THE AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE REPUBLIC OF POLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH RESPECT
TO CERTAIN INCOME OF INDIVIDUALS
SIGNED IN LONDON ON 8TH OCTOBER, 2013

The States of Guernsey and the Republic of Poland ("the Parties"), desiring to amend the Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with respect to Certain Income of Individuals signed in London on 8th October, 2013 ("the Agreement"),

Have agreed as follows:

Article I

The title of the Agreement shall be deleted and replaced by the following:

“Agreement between the States of Guernsey and the Republic of Poland for the elimination of double taxation with respect to certain income of individuals and the prevention of tax evasion and avoidance”.

Article II

The Preamble to the Agreement shall be deleted and replaced by the following:

“The States of Guernsey and the Republic of Poland,

Desiring to conclude an Agreement for the avoidance of double taxation with respect to certain income of individuals and the prevention of tax evasion and avoidance with respect to the taxes covered by this Agreement, without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),

Have agreed as follows: “.

Article III

In Article 3 (Definitions) of the Agreement, clause i) of subparagraph d) of paragraph 1 shall be deleted and replaced by the following:

“(i) in the case of Guernsey, the Director of the Revenue Service, or their delegate, and”.

Article IV

In Article 13 (Mutual agreement procedure) of the Agreement, the first sentence of paragraph 1 shall be deleted and replaced by the following:

“Where an individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 12, to that of the Contracting Party of which he is a national.”.

Article V

The following new Article 13A (Entitlement to Benefits) shall be added to the Agreement:

"ARTICLE 13A
Entitlement to Benefits

Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.”.

Article VI

1. This Protocol, shall enter into force on the last day of the month following the month in which the later of the notifications has been received in which the respective Parties have notified each other in writing that the necessary internal procedures for entry into force in their respective Parties have been complied with, and its provisions shall have effect for taxable years and periods beginning, and taxable events occurring, on or after the first day of January in the calendar year following that in which the Protocol has entered into force.

2. This Protocol, shall remain in force as long as the Agreement shall be in force, unless the Protocol is terminated by one of the Parties. In such case, the Protocol shall cease to have effect on the first day of January in the calendar year following that in which the other Party receives the notice of termination. Such note should be delivered at least 6 months before the end of the calendar year.

IN WITNESS WHEREOF the undersigned, duly authorised thereto by their respective Parties, have signed this Protocol.

DONE at London, on the 19th day of May, 2022, in duplicate, each in the English and Polish languages, both texts being equally authentic.

For the States of Guernsey

For the Republic of Poland

PROTOCOL

AMENDING THE

AGREEMENT BETWEEN

THE GOVERNMENT OF GUERNSEY

AND

THE GOVERNMENT OF THE STATE OF QATAR

FOR THE AVOIDANCE OF DOUBLE TAXATION

AND THE PREVENTION OF FISCAL EVASION

WITH RESPECT TO TAXES ON INCOME

The Government of Guernsey and the Government of the State of Qatar ("the Parties"), desiring to amend the Agreement between the Parties for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with respect to Taxes on Income, signed on 22nd February 2013 ("the Agreement"), have agreed as follows:

ARTICLE 1

The Preamble to the Agreement shall be modified to include the following text immediately before the second paragraph of the existing Preamble text:

“Desiring to further develop their economic relationship and to enhance their cooperation in tax matters,

Intending to eliminate double taxation with respect to the taxes covered by this Agreement without creating opportunities for non-taxation or reduced taxation through tax evasion or avoidance (including through treaty-shopping arrangements aimed at obtaining reliefs provided in this Agreement for the indirect benefit of residents of third jurisdictions),”.

ARTICLE 2

In paragraph 1 of Article 3 (General Definitions):

- (i) The definition of the term "Guernsey" shall be deleted and replaced with the following:

"the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and the territorial sea adjacent thereto, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;"

- (ii) The definition of the term "competent authority" in the case of Guernsey shall be deleted and replaced with the following:

"in the case of Guernsey, the Director of the Revenue Service or her/his delegate;"

ARTICLE 3

1. Paragraph 1 of Article 25 (Mutual Agreement Procedure) shall be deleted and replaced with the following:

“Where a person considers that the actions of one or both of the Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Parties, present his case to the competent authority of either Party. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.”.

2. The following text is added after the first sentence of Paragraph 2 of Article 25 (Mutual Agreement Procedure) of the Agreement:

“The competent authorities shall also endeavour to agree on the application of domestic law provisions regarding interest, late payment surcharges and administrative penalties related to the case.”

3. The following text is added to the end of Paragraph 2 of Article 25 (Mutual Agreement Procedure) of the Agreement:

“Assessment and collection procedures shall be suspended during the period that any mutual agreement proceeding is pending.”

4. Paragraph 4 of Article 25 of the Agreement is deleted and replaced by the following:

"4. The competent authorities of the Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs. The competent authorities, through consultations, may develop appropriate bilateral procedures, conditions, methods and techniques for the implementation of the mutual agreement procedure provided for in this Article."

ARTICLE 4

Immediately after Article 27 (Members of Diplomatic Missions and Consular Posts) the following Article shall be added:

"ARTICLE 27A

ENTITLEMENT TO BENEFITS

1. Notwithstanding any provisions of this Agreement, a benefit under this Agreement shall not be granted in respect of an item of income if it is reasonable to conclude, having regard to all relevant facts and circumstances, that obtaining that benefit was one of the principal purposes of any arrangement or transaction that resulted directly or indirectly in that benefit, unless it is established that granting that benefit in these circumstances would be in accordance with the object and purpose of the relevant provisions of this Agreement.
2. Where a benefit under this Agreement is denied to a person under paragraph 1, the competent authority of the Party that would otherwise have granted this benefit shall nevertheless treat that person as being entitled to this benefit, or to different benefits with respect to a specific item of income, if such competent authority, upon request from that person and after consideration of the relevant facts and circumstances, determines that such benefits would have been granted to that person in the absence of the transaction or arrangement referred to in paragraph 1. The competent authority of the Party to which the request has been made will consult with the competent authority of the other Party before rejecting a request made under this paragraph by a resident of that other Party."

ARTICLE 5

Each Party shall notify the other Party in writing of the completion of the procedures required by its laws for the bringing into force of this Protocol. This Protocol shall enter into force on the date of the later of these notifications and shall have effect from that date.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto by their respective Governments, have signed this Protocol.

DONE in duplicate at _____, on the
day
of _____, 2022 in the English and Arabic languages, all texts being equally
authentic.

**For the Government of
Guernsey**

**For the Government of
the State of Qatar**

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2023

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled 'Contributory Benefit and Contribution Rates for 2023', dated 12th September 2022, they are of the opinion:

1. To set the contributions limits and rates as set out in Tables 5-7 of the Policy Letter, from 1st January 2023.
2. To set the standard rates of contributory social insurance benefits as set out in Table 8 of the Policy Letter, from 2nd January 2023.
3. To agree that the Social Insurance (Guernsey) Law, 1978 and any necessary legislation under it ("the Law") is amended to make any necessary provision to give the Director of the Revenue Service powers to issue civil sanctions, including civil enforcement, information notices and civil penalty notices, in relation to breaches of requirements under the Law relating to social insurance contributions; and provide for appropriate rights of appeal to the Guernsey Revenue Service Tribunal against decisions of the Director of the Revenue Service in relation to such civil sanctions, as further detailed in paragraphs 3.29 to 3.38 of the Policy Letter.
4. To set the contribution (co-payment) required to be made by the claimant of care benefit, under the Long-term care Insurance Scheme, at £306.46 per week, from 2nd January 2023.
5. To set the weekly long-term care benefit at the rates set out in Table 13 of the Policy Letter, from 2nd January 2023.
6. To set the weekly respite care benefit at the rates set out in Table 14 of the Policy Letter, from 2nd January 2023.
7. To note that the Committee *for* Employment & Social Security intends to investigate the long-term financial implications of a 'double lock' uprating policy, whereby increases to the States Pension and all other contributory benefits, except Long-Term Care benefit, would either be equal to RPIX plus one third of the real increase in median earnings, or to RPIX, whichever is highest, and to

report back to the States in the Committee's Policy Letter on contributory benefits and contribution rates for 2024.

8. To direct the Committee *for* Employment & Social Security to investigate further the option of reducing the maximum age of a child in respect of whom a family allowance credit is awarded from 16 to five, and to report back to the States in the Committee's Policy Letter on contributory benefits and contribution rates for 2024.
9. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* EMPLOYMENT & SOCIAL SECURITY

CONTRIBUTORY BENEFIT AND CONTRIBUTION RATES FOR 2023

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

12th September 2022

Dear Sir

1. Executive Summary

- 1.1. This annual Policy Letter contains proposals concerning contributions to, and benefits funded from, the Guernsey Insurance Fund and the Long-term Care Insurance Fund.
- 1.2. The guideline policy for uprating the States Pension and all other contributory benefits, except long-term care benefit, has, since 2016¹, been RPIX plus one third of the real increase in median earnings. However, this year, RPIX is higher than the increase in median earnings. The same situation occurred in 2018 and 2019 when the decision was taken to instead increase the rate of the States Pension (and other contributory benefits) by RPIX to ensure that the spending power of pensioners and other beneficiaries was maintained.
- 1.3. This sort of approach can be described as a ‘double lock’ - the rate of the States Pension being increased annually by RPIX plus one third of the real increase in median earnings, or RPIX, whichever is highest.
- 1.4. The Committee is minded to propose that the ‘double lock’ be formally adopted as the guideline policy for uprating the States Pension and all other contributory benefits, except long-term care benefit. However, before doing so, the Committee intends to investigate the long-term financial implications to the Guernsey Insurance Fund of this policy.

¹ Benefit and Contribution Rates for 2016 ([Billet d’État XVIII of 2015, Article VIII](#)).

- 1.5. In line with the above, the Committee recommends that contributory benefits funded from the Guernsey Insurance Fund and the Long-term Care Insurance Fund be increased in 2023 by 7.0%, this being the annual rate of ‘core’ inflation (RPIX) for the year to June 2022, which is higher than the nominal increase in median earnings. The Policy & Resources Committee has confirmed its support for this proposal.
- 1.6. In its Policy Letter entitled ‘Contributory Benefits and Contribution Rates for 2022’², the Committee made it clear to the States that contribution rates were insufficient to support the long-term financial sustainability of the Guernsey Insurance Fund and Long-term Care Insurance Fund. The Guernsey Insurance Fund has been running in operational deficit since 2009. Actuarial reviews of the two Funds carried out by the Government Actuary’s Department in 2020, covering the period 1st January 2015 to 31st December 2019, showed that the Guernsey Insurance Fund and the Long-term Care Insurance Fund would be exhausted by 2039 and 2053³ respectively unless measures were taken to address the situation. As a result, the Committee proposed to the States, and the States resolved, that the percentage contribution rates of relevant Classes of contributors to the Guernsey Insurance Fund be gradually increased over a ten-year period and to the Long-term Care Insurance Fund over a four-year period, with the first increase taking effect from 1st January 2022.
- 1.7. The Committee has reviewed this plan, in consultation with the Policy & Resources Committee, and proposes that the second increase be taken in 2023. The Committee notes that the Tax Review, which is expected to include proposals to significantly change the contributions system, is due to be considered by the States before the end of 2022. However, structural changes of this nature will take at least two years to implement. The Committee is of the view that it is prudent to continue to take steps to improve the financial sustainability of the Funds pending implementation (if approved by the States) of these more substantive changes.

² Contributory Benefits and Contribution Rates for 2022 ([Billet d’État XX of 2021, Article XI](#)).

³ This projection did not take into account the States’ August 2020 decision, in principle, to extend the coverage of the Long-term Care Scheme to cover care delivered in peoples’ home. The effect of this policy change was that balance of the Long-term Care Insurance Fund was projected to fall to zero by 2038.

PART I: INTRODUCTION

2. Uprating Policy

- 2.1. The guideline policy for uprating the States Pension and all other contributory benefits, except Long-Term Care benefit, has, since 2016⁴, been RPIX plus one third of the real increase in median earnings - this is referred to below as ‘the one third uprating policy’. This guideline policy was reaffirmed by the States in February 2020⁵ following consideration of a Policy Letter entitled ‘Uprating Policy for States Pension’ (‘the February 2020 Policy Letter’).
- 2.2. The Quarter 2 RPIX figure is factored into the calculation as this is the latest available figure when the relevant Policy Letters are being prepared. The annual nominal change in median earnings as at Quarter 4 of the previous year is also used.
- 2.3. The June 2022 RPIX figure (7.0%) is higher than the nominal increase in median earnings as at December 2021 (4.9%). In this instance, the application of the one third uprating policy would result in a below-inflation increase to the rate of the States Pension.

$$(4.9\% - 7.0\%) \div 3 + 7.0\% = 6.3\%$$

- 2.4. The same situation occurred in 2018 and 2019 when the decision was taken to instead increase the rate of the States Pension (and other contributory benefits) by RPIX to ensure that the spending power of pensioners was maintained.
- 2.5. This sort of approach can be described as a ‘double lock’ - the rate of the States Pension being increased annually by RPIX plus one third of the real increase in median earnings, or RPIX, whichever is highest.
- 2.6. The February 2020 Policy Letter stated:

“After reviewing a variety of options and their potential impact on the longevity of the Guernsey Insurance Fund (“the Fund”), the Committee for Employment & Social Security (“the Committee”) is proposing that the guideline uprating policy will be annual increases of RPIX + $\frac{1}{3}$ of the difference between RPIX and the annual change in median earnings (hereafter referred to as “the $\frac{1}{3}$ uprating policy”). In the event that the median

⁴ Benefit and Contribution Rates for 2016 ([Billet d'État XVIII of 2015, Article VIII](#)).

⁵ Uprating Policy for States Pension ([Billet d'État V of 2020, Article IX](#)).

earnings increase is less than the RPIX increase, then RPIX alone would be used.”

- 2.7. Despite being referenced in the Executive Summary of the February 2020 Policy Letter, this double lock policy was not included as a Proposition for approval by the States.
- 2.8. Given that it has already been employed in 2018 and 2019, the Committee is minded to propose that the ‘double lock’ be formally endorsed through a Resolution of the States. However, before doing so, the Committee intends to examine the potential long-term financial implications to the Guernsey Insurance Fund of the ‘double lock’ policy.
- 2.9. In the meantime, the Committee recommends that contributory benefits funded from the Guernsey Insurance Fund be increased in 2023 by 7.0%, this being the annual rate of ‘core’ inflation (RPIX) for the year to June 2022. The Policy & Resources Committee has confirmed its support for this proposal.

PART II: INCOME

3. Contributions

Proposed contribution rates for 2023

- 3.1. In October 2021, following consideration of a Policy Letter entitled ‘Contributory Benefits and Contribution Rates for 2022’⁶, the States approved a ten-year plan to increase the percentage contribution rates to the Guernsey Insurance Fund and the Long-term Care Insurance Fund. The first year’s increase was applied in 2022, the first such increase since 2017.
- 3.2. The plan was proposed by the Committee to address the findings of the actuarial reviews of the Guernsey Insurance Fund and the Long-term Care Insurance Fund, undertaken by the Government Actuary’s Department (GAD), covering the period 1st January 2015 to 31st December 2019.
- 3.3. GAD projected that the Guernsey Insurance Fund would be exhausted by 2039 if no measures were taken to address the matter. GAD calculated that the Class 1 contribution rate (which represents the combined contribution of employers and employees to the Guernsey Insurance Fund) would need to increase to 11.3% from January 2022 to target a balance of twice annual expenditure in 2080. This represented an increase of 1.75%.

⁶ Contributory Benefits and Contribution Rates for 2022 ([Billet d’État XX of 2021, Article XI](#)).

3.4. GAD projected that the Long-term Care Insurance Fund would be exhausted by 2053, or by 2038 when taking into account the States' August 2020 decision, in principle, to extend the coverage of the Long-Term Care Insurance Scheme to cover care delivered in people's home. GAD calculated that, if the Long-term Care Insurance Scheme was extended to cover the provision of care delivered at home, the percentage contribution rates would need to increase by 1% to make the Long-term Care Insurance Fund sustainable in the long-term. Based on the current model of long-term care funding (i.e. excluding the provision of care at home), the actuarial review projected that a contribution rate increase of approximately 0.4% would be adequate to target a fund balance of at least twice annual expenditure in 2080.

3.5. As a result, the States resolved on 14th October, 2021:

"To increase the percentage contribution rate for employers and employees into the Guernsey Insurance Fund in increments of 0.1% each per year over ten years, and for self-employed persons, and non-employed persons under pension age in increments of 0.2% per year over ten years, with effect from 1st January 2022, as set out in paragraph 3.11 of that Policy Letter"

and:

"To increase the percentage contribution rate for employees, self-employed persons, and non-employed persons under and over pension age, into the Long-term Care Insurance Fund in increments of 0.1% per year over four years, with effect from 1st January 2022, as set out in paragraph 3.18 of that Policy Letter".

3.6. Table 1 overleaf outlines current and future contribution rates for all Classes of contributors under the approved ten-year plan.

Table 1 – Current and future contribution rates for 2022 to 2031

	2022	2023	2024	2025	2026	2027	2028	2029	2030	2031
Class 1	13.5%	13.8%	14.1%	14.4%	14.6%	14.8%	15.0%	15.2%	15.4%	15.6%
Employer	6.7%	6.8%	6.9%	7.0%	7.1%	7.2%	7.3%	7.4%	7.5%	7.6%
Employee	6.8%	7.0%	7.2%	7.4%	7.5%	7.6%	7.7%	7.8%	7.9%	8.0%
Class 2										
Self-employed	11.3%	11.6%	11.9%	12.2%	12.4%	12.6%	12.8%	13.0%	13.2%	13.4%
Class 3: Non-employed										
under pension age	10.7%	11.0%	11.3%	11.6%	11.8%	12.0%	12.2%	12.4%	12.6%	12.8%
over pension age	3.5%	3.6%	3.7%	3.8%	3.8%	3.8%	3.8%	3.8%	3.8%	3.8%

3.7. When setting out its proposals to gradually increase contribution rates to address the sustainability of the funds, the Committee noted that its plans would need to align with the outcome of the debate on the Tax Review. However, it was noted that the Committee was of the view that implementing a small increase in contribution rates in the meantime would represent a positive step in the right direction, regardless of the outcome of that debate. As such, the Committee proposed, and the States resolved, to:

“direct the Committee for Employment & Social Security to:

- a) review, in consultation with the Policy & Resources Committee, its ten year plan for increasing contributions each year, and
- b) report to the States each year, in its annual Policy Letter on contributory benefits and contribution rates, on whether to pursue or to adjust the plan, particularly in light of the resolutions following the debate on the Tax Review, the economic circumstances of the Island and other relevant factors at the time.”

3.8. The Committee notes that the Tax Review, which is expected to include proposals to significantly change the contributions system, is due to be considered by the States before the end of 2022. However, structural changes of this nature will take a least two years to implement. The Policy & Resources Committee has advised the Committee that provisional transition planning for the Tax Review assumes that the plan to raise contributions will continue and will then be ‘wrapped up’ in any structural change of contributions, meaning that the headline rate of contribution increase at that time will not be as large. Therefore, the Committee is proposing that the second step in the ten-year plan be implemented in 2023.

3.9. The effect, from 1st January 2023, will be to take the current contribution rates from 6.7% to 6.8% for employers, 6.8% to 7.0% for employees (i.e. a combined class 1 contribution rate of 13.8%), 11.3% to 11.6% for self-employed people, 10.7% to 11.0% for non-employed people under pension age, and 3.5% to 3.6% for non-employed people over pension age.

3.10. The percentage contribution rates proposed for 2023 are set out in Tables 2, 3, and 4 overleaf, compared to the rates for 2022. These tables also show how the contribution income from each class will be split between the Guernsey Insurance Fund, the Guernsey Health Service Allocation and the Long-term Care Insurance Fund.

3.11. The estimated cost to General Revenue of increasing the employers’ contribution rate by 0.1% in 2023 is £225,000-£250,000. However, it is noted

that the proposed increases in contribution rates will raise additional revenues of approximately £4.6m per annum.

Table 2 – Current contribution rates, proposed contribution rates for 2023, and the proportions of income split between the funds for employed persons (Class 1)

Employed persons (Class 1)	2022	2023
Employer	6.70%	6.80%
Guernsey Insurance Fund	6.70%	6.80%
Guernsey Health Service Allocation	-	-
Long-term Care Insurance Fund	-	-
Employee	6.80%	7.00%
Guernsey Insurance Fund	3.05%	3.15%
Guernsey Health Service Allocation	1.85%	1.85%
Long-term Care Insurance Fund	1.90%	2.00%
Combined	13.50%	13.80%
Guernsey Insurance Fund	9.75%	9.95%
Guernsey Health Service Allocation	1.85%	1.85%
Long-term Care Insurance Fund	1.90%	2.00%

Table 3 – Current contribution rates, proposed contribution rates for 2023, and the proportions of income split between the funds for self-employed persons (Class 2)

Self-employed persons (Class 2)	2022	2023
Totals	11.30%	11.60%
Guernsey Insurance Fund	7.55%	7.75%
Guernsey Health Service Allocation	1.85%	1.85%
Long-term Care Insurance Fund	1.90%	2.00%

Table 4 – Current contribution rates, proposed contribution rates for 2023, and the proportions of income split between the funds for non-employed persons (Class 3)

Non-employed persons (Class 3)	2022	2023
Under pension age	10.70%	11.00%
Guernsey Insurance Fund	6.80%	7.00%
Guernsey Health Service Allocation	1.90%	1.90%
Long-term Care Insurance Fund	2.00%	2.10%
Over pension age	3.50%	3.60%
Guernsey Insurance Fund	-	-
Guernsey Health Service Allocation	1.30%	1.30%
Long-term Care Insurance Fund	2.20%	2.30%

Proposed contribution earnings and income limits, non-employed income allowance and voluntary contribution rates for 2023

- 3.12. The Committee is recommending that all contribution earnings and income limits, the non-employed income allowance, and the overseas voluntary contribution rates for self-employed and employed persons are increased by approximately 7.0%, this being RPIX for June 2022. Tables 5, 6, and 7 below and overleaf show the effects of this increase for all contributor classes, compared with current (2022) limits and rates.

Table 5 – Class 1 contribution limits and rates for 2023 compared to 2022

Class 1 – Employed persons	2022	2023
Employer/employee	6.7% / 6.8%	6.8% / 7.0%
Upper Earnings Limit:		
Weekly	£3,027.00	£3,240.00
Monthly	£13,117.00	£14,040.00
Lower Earnings Limit:		
Weekly	£152.00	£163.00
Monthly	£658.67	£706.33
Weekly full rate (employee):		
Maximum	£205.84	£226.80
Minimum	£10.34	£11.41
Weekly full rate (employer):		
Maximum	£202.81	£220.32
Minimum	£10.18	£11.08

Table 6 – Class 2 contribution limits and rates for 2023 compared to 2022

Class 2 – Self-employed persons	2022	2023
	11.3%	11.6%
Annual Earnings Limit:		
Upper	£157,404.00	£168,480.00
Lower	£7,904.00	£8,476.00
Weekly rate:		
Maximum	£342.05	£375.84
Minimum	£17.18	£18.91
Overseas contribution (weekly)	£114.37	£122.38

Table 7 – Class 3 contribution limits and rates for 2023 compared to 2022

Class 3 – Non-employed persons	2022	2023
Under pension age	10.7%	11%
Over pension age	3.5%	3.6%
Annual Income Limit:		
Upper	£157,404.00	£168,480.00
Lower	£19,760.00	£21,190.00
Allowance (under and over pension age)	£8,904.00	£9,527.00
Weekly rate (under pension age):		
Maximum	£305.57	£336.25
Minimum	£22.34	£24.67
Weekly full rate (over pension age):		
Maximum	£99.95	£110.04
Minimum	£7.31	£8.07
Overseas contribution (weekly)	£103.45	£110.69
Voluntary contribution (weekly)	£22.34	£24.67
Special rate non-employed (weekly)	£22.34	£24.67

- 3.13. Employers, employees, and self-employed persons whose earnings are at or above the lower earnings limit, will be liable to pay contributions on all of their earnings (unless the allowance referred to in Table 7 above applies) up to the relevant upper earnings limit, at the percentage rates set out in Tables 5 to 7.
- 3.14. Self-employed and non-employed contributors are liable to pay contributions at the maximum rate, unless an application is made to pay earnings-related contributions (if self-employed) or income-related contributions (if non-employed). People with income at some point between the upper and lower earnings/income limits (as appropriate) pay pro-rata.
- 3.15. There are two categories of non-employed contributions:
- Non-employed adults under pension age are liable to pay full percentage rate contributions to cover social insurance, health service and long-term care liabilities, based on their personal income.
 - Non-employed people over pension age are liable to pay a lower rate of contributions which go towards funding various health services, through the Health Service Allocation, and the long-term care insurance scheme.
- 3.16. Where a non-employed person's annual income is below the lower income limit, that person will be exempt from the payment of contributions. However, this could affect States Pension entitlement. A voluntary contribution, which counts towards the States Pension, can be paid by, or on

behalf of, non-employed people resident in Guernsey and under pension age with personal income below the lower income limit. For self-employed and non-employed people living outside of Guernsey and Alderney, a voluntary contribution may be paid in order to maintain their entitlement to the States Pension. This is charged at an overseas rate.

- 3.17. A special rate non-employed contribution is payable by insured people who would normally rely upon their employee contribution record for their contribution credit. The rate of this contribution is aligned with the voluntary contribution rate.

Class 3 contribution credits for persons in receipt of family allowance

- 3.18. Family allowance is a weekly benefit, funded from General Revenue, payable to people living in Guernsey, Alderney, Herm and Jethou who are bringing up a child/children and who meet eligibility criteria. Until 2 January 2022, this was a universal benefit. From 3 January 2022, an annual household income cap of £120,000 has applied, thereby creating savings to General Revenue which have been reallocated to fund various health and educational subsidies/services. Family allowance is available until such time as a child leaves school, or until they turn 18, whichever is the sooner.
- 3.19. Non-employed persons who are excepted from liability to pay Class 3 (non-employed) contributions are awarded a Class 3 contribution credit (for the purposes of death grant, survivor's benefits and States pension only) in respect of any week in which a family allowance is payable for a child under the age of 16. For the avoidance of doubt, these 'family allowance credits' are not awarded to people who are liable to pay a social insurance contribution through employment, self-employment or having sufficient un-earned income.
- 3.20. This type of credit was introduced with effect from 1 January 2004 as part of a wide-ranging package of reforms to the Social Insurance Scheme ('the Scheme') to address gender inequalities that existed in the Scheme at that time. These reforms sought to individualise social insurance benefit entitlements so that all contributors would have clearly defined entitlements under the Law, without reference to gender, marital status or family circumstances. One of the significant changes approved and subsequently implemented was the abolition of the derived right of a 'married woman's

pension⁷. The former Guernsey Social Security Authority noted in its Policy Letter entitled 'Revision of Social Insurance Scheme for Gender Equality'⁸:

"The Authority considers that substituting a system of family allowance credits for the derived right of a married woman's pension could work very well. It would provide mothers with substantial levels of social protection in respect of child care. It would also mean that any contributions paid on re-entry to the labour market would continue the improvement of their individualised insurance record rather than being diluted by the effects of a gap in their insurance record."

- 3.21. The intention of the family allowance credit was to safeguard the contribution record of non-working parents (regardless of gender) with childcare responsibilities. The policy also sought to support lower income households for whom a voluntary contribution "...would probably be both unaffordable, and the lowest item in the family's priorities...". The current cost of a voluntary contribution is £22.34 per week (2022 rate).
- 3.22. Separately, since 1 December 2014 it has been a requirement of eligibility for income support (named 'supplementary benefit' at that time) that the person claiming the benefit (if under pensionable age) and any relevant dependants⁹ of any claimant are in full-time remunerative work¹⁰, or are acting in compliance with 'work requirements'. Work requirements are measures determined by the Administrator for the purpose of facilitating or enabling an individual to become, or continue to be, engaged in full-time remunerative work (e.g. attending regular work-focussed meetings with an Employment Advisor or attending a work or training placement). In practice, single parents or, in respect of a couple, the person who is primarily responsible for the care of a child, are not expected to work and have very light work requirements applied, aimed at preparing a person for work, until such time as their youngest child reaches the age of five and is able to attend school. At this point in time, they are expected to work part-time (at least 20 hours per

⁷ The 'married woman's pension' allowed a married woman to receive a reduced rate pension based on her husband's contribution record, regardless of whether she had paid any contributions in her own right or not. Since 1 January 2004, all pensions have been calculated based on a person's own individual contribution record, with the exception of women who were married as at 31st December 2003 who, under transitional rules, can still use 62% of their husband's contribution record, for a period up to 31 December 2003, if that provides a more favourable pension entitlement.

⁸ [Revision of Social Insurance Scheme for Gender Equality, Guernsey Social Security Authority](#) (Billet d'État V of 2003, pages 773-815).

⁹ "Relevant dependant" means a dependant who has not attained pensionable age, but who is over school leaving age and no longer in full-time education.

¹⁰ A person is engaged in full-time remunerative work if the person works for a minimum of 35 hours a week and is remunerated at a rate that is at least equal to the minimum wage.

week), with the number of hours of work expected gradually to increase as their youngest child gets older. Many work more hours than the minimum expected.

- 3.23. As such, differential expectations in relation to work appear to be applied to different groups - lower income parents are required to work and pay social insurance contributions when their youngest child reaches the age of five, while middle- and higher-income parents, who can presumably afford not to work while raising their family, are awarded family allowance credits, potentially until their youngest child turns 16, which saves them £1,162 per annum if they were to remain non-employed (i.e. the cost of a Class 3 voluntary contribution x 52) or a minimum of £538 per annum if they were to enter employment (i.e. the cost of a Class 1 contribution for a person with earnings at the lower earnings limit x 52).
- 3.24. While the rationale for the introduction of the family allowance credit was sound at the time it was introduced when fewer mothers worked, and in the context of the gender equality reforms referred to in paragraphs 3.20 to 3.21 which abolished or phased out various preferential options for married women and widows, the Committee is of the view that the award of these credits beyond the point at which a family's youngest child turns five (and is, therefore, in full-time education) is excessively generous and can no longer be justified in the context of societal changes.
- 3.25. Very many, perhaps the vast majority of, parents (both male and female) now work. They, along with other employed, self-employed and non-employed persons with earnings/income at or above the lower earnings/income limit, are liable to pay social insurance contributions. A ten-year plan to increase the rates of those contributions, in order to put the Guernsey Insurance Fund on a sustainable financial footing, was approved by the States in October 2021 and the first annual increase was applied in January 2022. Therefore, the fairness of the awarding of family allowance credits must be viewed in the context of the wider population of contributors who are bearing higher contribution rates. Fairness must also be assessed against income support's work-focussed approach. The Committee's view is that it is unfair and inequitable to award family allowance credits to non-employed persons until their youngest child turns 16 while requiring parents of school-aged children in receipt of income support to work (and, therefore, pay social insurance contributions).
- 3.26. The Committee intends to further investigate the option of reducing the maximum age of a child in respect of whom a family allowance credit is awarded from 16 to five, in line with the income support policy set out in paragraph 3.22 above. Contribution credits would continue to be available in respect of child-care responsibilities up to the point at which children reach compulsory school age. This change may also have some effect in increasing

the number of economically active people. In mooted this policy change, the Committee would like to stress that it considers it a very valid personal choice for parents, who can support themselves financially, not to work.

- 3.27. Subject to States approval of this policy direction, the Committee intends to carry out financial modelling in respect of this potential change and give consideration to special measures that may be required to protect any groups of people who may be unfairly adversely affected; although it is expected that the majority of those that would be impacted would be middle to higher-income households with the means of supporting a non-working parent.
- 3.28. Although this change can be introduced under powers already available to the Committee under existing provisions of the Social Insurance (Guernsey) Law, 1978¹¹, changes will only be implemented after receiving the agreement of the States. It is proposed that the Committee be directed to bring back firm proposals in respect of this matter in the Committee's Policy Letter on contributory benefits and contribution rates for 2024.

Penalties for late submission of contribution returns

- 3.29. Since its inception in 2018, the Revenue Service has undertaken to align the collection of social insurance contributions and income tax, working within the provisions of the Social Insurance (Guernsey) Law, 1978 ('the Social Insurance Law') and the Income Tax (Guernsey) Law, 1975. At present, the powers of compliance and enforcement, as set out in these Laws, differ, and as such the Revenue Service must employ different methods when seeking to collect outstanding social insurance contributions and income tax.
- 3.30. Currently the Social Insurance Law, for example, mainly allows for enforcement by way of criminal offences. It is an offence where persons fail to pay social insurance contributions for which the penalty is a fine, on summary conviction. There is also a standard offence where someone makes or produces a false statement, representation or document. The Social Insurance Law also provides for Regulations under it to provide for the recovery of penalties for offences of contravening Regulations made under the Social Insurance Law such as those relating to social insurance contributions.
- 3.31. In addition, if an employer fails to pay a contribution which he is liable to pay by the prescribed date, the Law provides for a penalty of 2.5% of the contribution, and interest of 2.5% per month on the outstanding sum from the due date until the debt is paid.

¹¹ [The Social Insurance \(Guernsey\) Law, 1978.](#)

- 3.32. At present, around 2,600 employers file social insurance contribution schedules in respect of their employees, usually on a quarterly basis. Of these, approximately 9% do not meet the deadline to file these schedules, creating an undue administrative burden on the Revenue Service to collect outstanding submissions. If these efforts are unsuccessful, further costly, lengthy, and intensive administrative processes must be taken to obtain conviction for a criminal offence and payment of the resulting fine. Steps to take criminal proceedings may not always provide a proportionate approach for the breach in question and may also be undesirable for routine breaches due to the resource requirements they place not only upon the Revenue Service, but also other services such as Law Enforcement and the Law Officers.
- 3.33. A similar process must also be undertaken when individuals do not furnish the Revenue Service with the information required to determine their liability or classification for social insurance purposes.
- 3.34. The Committee therefore proposes that the Social Insurance Law and any necessary legislation under it be further amended to allow for provisions, by regulations of the Committee or otherwise, to be made that would better align the Revenue Service's civil enforcement powers for social security contributions and income tax.
- 3.35. This would instead allow civil penalties to be imposed by the Director of the Revenue Service ('the Director') for failure to comply with requirements relating to contributions, including adding a power enabling the Director to issue civil notices - information notices, compliance notices, third party compliance notices, unpaid contributions notices and civil penalty notices. Use of civil penalties and notices would provide a more proportionate means of enforcement for certain breaches and be more efficient in terms of officer time. Such civil penalty notices would include a fixed element and an escalating element which would apply until compliance is achieved. It is proposed that civil penalties would be recoverable by the Director as a civil debt.
- 3.36. Where an employer has failed to submit quarterly schedules, for example, it is proposed that an initial penalty of up to £300, with ongoing penalties of up to £50 a day, could be imposed, to encourage more timely filing of schedules. Similar civil compliance and enforcement measures may also be introduced where the prompt provision of information is required to determine an individual's classification or liability. It is proposed that the Committee have the power to increase the level of civil penalties imposed by regulations.
- 3.37. Secondly, an amendment to the Law would be made to provide for appropriate rights of appeal against the new civil sanctions including against

compliance notices and civil penalties. These appeals would be considered by the Guernsey Revenue Service Tribunal.

- 3.38. These changes would create a compliance and enforcement framework for social insurance contributions which is much closer to that set out in the Income Tax (Guernsey) 1975 Law, allowing for a much more unified and consistent enforcement process.

PART III: EXPENDITURE – CONTRIBUTORY BENEFITS

4. Expenditure financed by the Guernsey Insurance Fund

- 4.1. As set out in paragraph 2.9, the Committee is recommending that the rates of the States Pension and other social insurance benefits are increased by 7.0%, in line with RPIX as at the end of June 2022.
- 4.2. The proposed new weekly rates of benefits and grants, to be effective from 2nd January 2023, are set out in Table 8 overleaf. These rates of benefits and grants apply to persons who have fully satisfied the relevant contribution conditions. Reduced rates of benefit are payable on incomplete contribution records, down to threshold levels, after which, no benefit is payable.

Table 8 – Proposed rates of contributory social insurance benefits for 2023

Weekly paid benefits	2022 (actual)	2023 (proposed)
<u>States Pension</u>		
Insured person	£233.85	£250.22
Increase for dependant wife ¹²	£117.14	£125.34
Total	£350.99	£375.56
<u>Survivor's Benefits</u>		
Widowed Parent's Allowance	£245.92	£263.13
Bereavement Allowance ¹³	£211.46	£226.26
Maternal Health Allowance, Newborn Care Allowance, and Parental Allowance	£234.29	£250.67
Unemployment Benefit, Sickness Benefit, and Industrial Injury Benefit	£172.13	£184.17
Incapacity Benefit	£206.78	£221.27
Industrial Disablement Benefit (100%) ¹⁴	£188.45	£201.64
One off grants:		
Maternity Grant and Adoption Grant	£431.00	£461.00
Death Grant	£673.00	£720.00
Bereavement Payment	£2,124.00	£2,273.00

- 4.3. If the proposals for benefit rates are approved, the 2023 estimated expenditure from the Guernsey Insurance Fund will be £183.1m (2022 Forecast: £169.8m), as shown in Table 9 overleaf.
- 4.4. This estimate includes:
- the proposed 7.0% increase in the general rate of benefit (2022: +2.4%),
 - an anticipated increase in the number of pension claims as a result of the aging demographic,
 - other policy decisions previously approved by the States, such as increasing pension age,
 - estimated administration costs for 2023 of £5.0m (2022 forecast: £4.9m).
- 4.5. Benefits paid from the Guernsey Insurance Fund are statutory entitlements based, almost wholly, on the number of contributions paid. States pension expenditure accounts for over 85% of the total benefit expenditure of the

¹² For people whose marriages took place before 1st January 2004, and who reached pension age before 1st January 2014.

¹³ Widow's pension is also payable at this rate, new applications cannot be made but there are still historic cases continuing.

¹⁴ Lower rates are payable based on degree of disability.

Fund. As of 1st July 2022, there were 18,727 people in receipt of a pension from Guernsey (1st July 2021: also 18,727).

- 4.6. Pension expenditure is increasing due to larger numbers of people reaching pension age, but it is also affected by lower mortality rates, meaning that people are enjoying longer retirements, with many more people living into and beyond their 80s. Increasing the States pension age, which started from 1st January 2020, will have the effect of slowing this increase in expenditure. Pension age is increasing by two months every ten months, until it reaches age 70 by 2049.
- 4.7. Table 9 below shows annual benefit and administration expenditure for the Guernsey Insurance Fund for the years 2019 to 2021, the budget forecast for 2022 and projected expenditure for 2023.

Table 9 – Summary of expenditure from the Guernsey Insurance Fund

	2019 Actual £m	2020 Actual £m	2021 Actual £m	2022 Forecast £m	2023 Budget £m
Pension	128.7	133.9	138.4	143.2	154.8
Incapacity	8.8	9.5	10.3	10.4	11.1
Sickness	4.5	4.7	4.7	5.4	5.8
Parental	2.5	2.6	2.5	2.5	2.7
Travelling Allowance Grant ¹⁵	2.5	2.5	3.3	-	-
Bereavement	1.8	1.7	1.9	1.9	2.0
Unemployment	0.9	2.1	1.0	0.6	0.7
Industrial	1.0	0.9	0.9	0.9	1.0
Total benefit expenditure	150.7	157.9	163.0	164.9	178.1
Administration	4.4	4.3	4.1	4.9	5.0
Total expenditure	155.1	162.2	167.1	169.8	183.1

5. Expenditure financed by the Long-term Care Insurance Fund

- 5.1. The Long-term Care Insurance Scheme pays benefits to assist with fees in private residential and nursing homes.

Co-payment (personal contribution) from person in care

- 5.2. Under the Long-term Care Insurance Scheme, it is a condition of entitlement to benefit that the person in care should make a co-payment.

¹⁵ The Travelling Allowance Grant has transferred to the Committee for Health & Social Care (see section 7 for further information).

- 5.3. On 19th August 2020, the States debated a Policy Letter from the Committee entitled ‘Supported Living and Ageing Well Strategy: Extending the Life of the Long-term Care Insurance Scheme’¹⁶. This set out a package of proposals intended to address some very significant challenges facing the Long-term Care Insurance Scheme in Guernsey.
- 5.4. 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 rates of long-term care benefit and the co-payment paid by individuals towards the costs of their accommodation, daily living costs, and care, needed to increase.
- 5.5. The States agreed that the total of the co-payment aggregated with the long-term care benefit rate for the provision of residential care beds, residential dementia care beds and nursing beds should be increased to the mid-point indicated by the LaingBuisson benchmarking¹⁷ by 2023 with allowance made for inflation (RPIX) in the intervening period. The States also agreed that the co-payment should be increased by £20.00 to £229.37 with effect from October 2020 and that the co-payment should increase further to £280.00 (in 2020 terms) by January 2023, that being the lower end of the estimated cost of living expenses and accommodation.
- 5.6. A further Policy Letter entitled ‘Implementation of Approved Rate of Long-term Care Co-payment’¹⁸ (‘the March 2021 Policy Letter’), considered by the States in March 2021, outlined proposals for the increments and timeframe within which the co-payment would be increased to £280.00 (in 2020 terms). An increment was approved with effect from 5th July 2021, taking the co-payment to £242.06 per week; proposals for further increments, due every six months in January and July, taking into account annual inflationary changes, were outlined in the March 2021 Policy Letter, with the target being reached in January 2023. Approval was not sought at the time for the later increments as they would each be adjusted at a later date to allow for inflation.

¹⁶ Supported Living and Ageing Well Strategy: Extending the Life of the Long-term Care Insurance Scheme ([Billet d’État XVI of 2020, Article V](#))

¹⁷ The LaingBuisson toolkit is a market standard toolkit used for calculating a fair market price for care.

¹⁸ Implementation of approved rate of Long-term Care co-payment ([Billet d’État VIII of 2021, Article X](#)).

- 5.7. Based on the June 2022 RPIX figure of 7.0%, the target amount of the co-payment, to be reached in January 2023, has been adjusted to £306.49 per week. The previous, current and proposed co-payment rate with effect from 2nd January 2023 are set out in Table 10 below, along with an explanation of how the target of £280.00 has been uplifted to account for inflation.

Table 10 – Previous, current and proposed co-payment rates

Co-payment increment dates	Target	Rate of co-payment	Increment
6 th January 2020	-	£209.29	Q2 2019 RPIX
5 th October 2020	£280.00	£229.37	£20.08
5 th July 2021	£280.00	£242.06	£12.69
3 rd January 2022	£286.44 ¹⁹	£256.83	£14.77
4 th July 2022 (current rate)	£286.44	£271.67	£14.84
2 nd January 2023 (proposed)	£306.49 ²⁰	£306.46 ²¹	£34.79

- 5.8. In addition to the long-term care benefit payment and the personal contribution by the individual, many people in private care homes will be required to pay additional fees set by the homes. These ‘top-up fees’ are paid by approximately two thirds of those in care. Any beds available without the need to pay a top-up are known as ‘States-rates beds’. Table 11 below explains the breakdown of funding for long-term care in private residential and nursing homes, for information.

Table 11 – Overview of weekly long-term care benefit and fees (from 4th July 2022)

Element of funding		Cost	Paid by
Type of care	Residential	£532.98	Long-term Care Insurance Fund
	Residential (dementia/EMI)	£696.64	
	Private nursing home	£961.59	
Personal contribution (co-payment)		£271.67	Resident (or Income Support)
Top-up fees (homes may charge top-up fees above the States approved rate)		Discretionary	Resident

Long-term care benefit rates

- 5.9. As explained in paragraph 5.5, the States agreed that the co-payment aggregated with the long-term care benefit rate should be increased to the

¹⁹ Target uplifted by 2.3% (i.e. Q2 2021 RPIX) to 2022 terms.

²⁰ Target uplifted by 7.0% (i.e. Q2 2022 RPIX) to 2023 terms.

²¹ The co-payment needs to be divisible by 7, hence it is slightly different to the target.

mid-point indicated by the LaingBuisson benchmarking by 2023, taking into account inflation (RPIX) in the intervening period. The mid-points in 2020 and 2023 are set out in Table 12 below:

Table 12 – Target weekly rates of long-term care benefit aggregated with the co-payment

	2020 target	2023 target ²²
Residential care benefit	£801.00	£876.75
Residential – dementia (Elderly mentally infirm)	£961.00	£1,051.89
Nursing care benefit	£1,220.00	£1,335.39

- 5.10. The Committee recommends that the rates of long-term care benefit be increased by 7.0%, this being the rate of RPIX to June 2022, with effect from 2nd January 2023. This will meet the above stated target. The proposed rates are set out in Table 13 below.

Table 13 – Weekly rates of long-term care benefit

	2022	Proposed rates (w.e.f. 2 nd January 2023)
Residential care benefit	£532.98	£570.29
Residential – dementia (Elderly mentally infirm)	£696.64	£745.43
Nursing care benefit	£961.59	£1,028.93

- 5.11. Subject to States approval of the recommended rates of the co-payment and long-term care benefit for 2023, the resolution of the States referred to in paragraph 5.5 above, will have been discharged.

Respite care benefit

- 5.12. People needing respite care in private sector residential or nursing homes are not required to pay a co-payment. The Long-term Care Insurance Fund pays instead. This is to acknowledge the value of occasional investment in respite care in order to allow the person concerned to remain in their own home for as long as practicable. It also acknowledges that people having respite care continue to bear the majority of their own household expenditure at the same time. The respite care benefits therefore, are the sum of the co-payment and the residential care benefit with or without residential-dementia care, or nursing care benefit, as appropriate.

²² Long-term care benefit must be divisible by 7.

- 5.13. The Committee recommends that the rates of respite care benefit are set as shown in Table 14 below, with effect from 2nd January 2023. These amounts reflect the aggregated total of the proposed co-payment and proposed rates of long-term care benefit.

Table 14 – Weekly rates of respite care benefit

	Current rate (w.e.f. 4 th July 2022)	Proposed rates (w.e.f. 2 nd January 2023)
Residential care respite benefit	£804.65	£876.75
Residential- dementia respite benefit	£968.31	£1,051.89
Nursing care respite benefit	£1,233.26	£1,335.39

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

- 5.14. Table 15 below summarises the impact of the proposed benefit rates on projected expenditure from the Long-term Care Insurance Fund for 2023, along with the 2022 revised forecast at the time of writing, compared with the actual expenditure figures for 2019 to 2021.

Table 15 – Summary of expenditure from the Long-term Care Insurance Fund

	2019 Actual £m	2020 Actual £m	2021 Actual £m	2022 Forecast £m	2023 Budget £m
Residential care	10.7	10.4	11.9	11.1	12.7
Nursing care	9.7	10.0	10.8	11.0	11.8
	20.4	20.4	22.7	22.1	24.5
Administration	0.4	0.4	0.4	0.3	0.4
	20.8	20.8	23.1	22.4	24.9

6. Review of the residency conditions for long-term care benefit

- 6.1. The Committee has started to look further into the idea of a sliding scale of long-term care benefit based on length of residency in Guernsey, Alderney, Herm and/or Jethou, raised in last year's uprating report. However, it will involve a significant amount of further work to determine if the change will achieve its objectives without unintended undesirable consequences. It has also become clear that this issue cannot be looked at in isolation from wider issues surrounding the Supported Living and Ageing Well Strategy (SLAWS), especially the issue of whether or not the asset of the family home may be taken into consideration in the income support means test if someone does

not meet the eligibility criteria for the full amount of long-term care benefit and is otherwise unable to meet their care costs (which the Assembly also directed the Committee to explore) and how this may be achieved and administered in a fair and efficient way. The Committee has, therefore, decided not to progress this in isolation but will continue to consider the merits of this proposal alongside the wider piece of work on SLAWS, which was identified as a top ten priority action in the Government Work Plan 2022.

7. Expenditure financed by the Guernsey Health Service Allocation

- 7.1. Most matters concerning benefits under the Guernsey Health Service Fund have, since 1st June 2020, been the responsibility of the Committee *for* Health & Social Care. This followed the entry into force of The Machinery of Government (Transfer of Functions Ordinance), 2020²³. The legislative changes that enabled the final processes of the transfer were implemented from 1st January 2022, following the entry into force of The Health Service Benefit (Amendment and Miscellaneous Provisions) (Guernsey) Law, 2021²⁴. This enabled the closure of the Guernsey Health Service Fund, the repeal of provisions in the Health Service (Benefit) (Guernsey) Law, 1990 relating to Medical Benefit and other benefits, and the transfer of the balance of the Guernsey Health Service Fund to be ring-fenced within General Revenue where it is held as the Guernsey Health Reserve.

PART IV: FINANCIAL POSITION

8. Financial position of the Guernsey Insurance Fund

- 8.1. The recent financial performance of the Guernsey Insurance Fund is shown in Table 16 overleaf. It is estimated that the operating deficit will be £25.8m in 2023 (2022 forecast: £25.8m deficit). The Fund has now been in deficit, before investment returns are taken into account, since 2009.
- 8.2. The operating deficit arises when expenditure on benefits and administration exceeds contribution income. This shortfall is met by drawing down the Fund's reserves and, although the drawdown has been planned, it results in the number of years' expenditure cover remaining in the Fund reducing. It also reduces the extent to which investment income can contribute to the financing of the scheme.
- 8.3. During 2021, unemployment figures fell compared to the previous year. As a result, Unemployment Benefit payments reduced to levels close to those seen before the COVID-19 pandemic. However, Incapacity Benefit payments

²³ [The Machinery of Government \(Transfer of Functions\) Ordinance, 2020.](#)

²⁴ [The Health Service Benefit \(Amendment and Miscellaneous Provisions\) \(Guernsey\) Law, 2021.](#)

remained higher than pre-pandemic levels. Overall, contributory income levels recovered. This recovery is expected to continue in 2022, although it is not anticipated that incapacity benefit expenditure will fall to pre-2020 levels as yet.

Table 16 – Financial performance of the Guernsey Insurance Fund

	2019 Actual £m	2020 Actual £m	2021 Actual £m	2022 Forecast £m	2023 Budget £m
Income	130.6	127.6	135.5	144.0	157.3
Expenditure	(155.1)	(162.2)	(167.1)	(169.8)	(183.1)
Operating deficit	(24.5)	(34.6)	(31.6)	(25.8)	(25.8)
Investment returns	52.8	(3.6)	75.8	19.5	31.0
Net surplus/(deficit) for the year	28.3	(38.2)	44.2	(6.3)	5.2
Net assets at 1st January	715.2	743.5	705.3	749.4	743.1
Net assets at 31st December	743.5	705.3	749.4	743.1	748.3
Expenditure cover in years	4.8	4.3	4.5	4.4	4.1

9. Financial position of the Long-Term Care Insurance Fund

- 9.1. The financial performance of the Long-term Care Insurance Fund is shown in Table 17 below. The 2023 budget estimates that the operating surplus will be £7.0m (2022 forecast: £9.4m surplus).

Table 17 – Financial performance of the Long-term Care Insurance Fund

	2019 Actual £m	2020 Actual £m	2021 Actual £m	2022 Forecast £m	2023 Budget £m
Income	28.2	28.1	29.2	32.5	36.4
Expenditure	(20.8)	(20.8)	(23.1)	(22.4)	(24.9)
Operating surplus	7.4	7.3	6.1	10.1	11.5
Investing activities	6.1	-	11.3	2.6	5.6
Net surplus/(deficit) for the year	13.5	7.3	17.4	12.7	17.1
Net assets at 1st January	80.2	93.7	101.0	118.4	130.4
Net assets at 31st December	93.7	101.0	118.4	131.1	147.5
Expenditure cover in years	4.5	4.9	5.1	5.8	5.9

10. Investment returns

- 10.1. On 15th July 2021, the Machinery of Government (Transfer of Functions) Ordinance, 2021²⁵, came into force, transferring the responsibility for the management of the Common Investment Fund from the Committee to the Policy & Resources Committee. The management is carried out by the States' Investment Board sub-Committee of the Policy & Resources Committee. The Common Investment Fund now comprises the Guernsey Insurance Fund and the Long-Term Care Insurance Fund.
- 10.2. The expected return of the investments on a 10 year forward view is LIBOR plus 3.7%. Actual performance in the calendar year 2021 was 11.5%. For the period January to June 2022, there has been a negative return of 9.9%.

PART V: RULES OF PROCEDURE

11. Compliance with Rule 4 of the Rules of Procedure

- 11.1. 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, propositions laid before the States.
- 11.2. In accordance with Rule 4(1)(a), it is confirmed that proposition 1, in respect of increasing contribution rates to the Guernsey Insurance Fund and the Long-term Care Insurance Fund, align with the priority set out in the Government Work Plan²⁶ to 'sustain government finances' under the 'reshaping government' workstream.
- 11.3. In accordance with Rule 4(1)(b), it is confirmed that the Committee has engaged with the Policy & Resources Committee throughout the preparation of this Policy Letter. The Policy & Resources Committee has advised that it is supportive of the Committee's proposal to increase contribution rates, as set out in Part II this Policy Letter, and to increase the rates of contributory benefits by 7.0%, as set out in Part III of the Policy Letter.
- 11.4. In accordance with Rule 4(1)(c), the Propositions have been submitted to Her Majesty's Procureur for advice on any legal or constitutional implications.
- 11.5. In accordance with Rule 4(1)(d), estimates of the financial implications to the States of carrying the proposals into effect are set out in paragraph 3.11 and sections 8 and 9 of this Policy Letter.

²⁵ [The Machinery of Government \(Transfer of Functions\) Ordinance, 2021.](#)

²⁶ The Government Work Plan 2021 – 2025 ([Billet d'État XV of 2021, Article I](#)).

11.6. In this Policy Letter, the Committee has set out its proposals for benefit rates and contribution rates and limits for 2023. In accordance with Rule 4(2)(a), it is confirmed that the propositions accord with the Committee's purpose:

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

11.7. In accordance with Rule 4(2)(b) of the Rules of Procedure of the States of Deliberation and their Committees, it is confirmed that the propositions have the unanimous support of the Committee.

Yours faithfully

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

APPENDIX 1

Historic pension uprating policies approved by the States

Year of increase	Percentage increase	Policy
2020	2.3%	RPIX + $\frac{1}{3}$ of real median earnings Increase
2019	2.4%	RPIX only (median earnings increase was less than RPIX)
2018	2.8%	RPIX only (median earnings increase was less than RPIX)
2017	0.8%*	RPIX + $\frac{1}{3}$ of real median earnings increase
2016	1.7%	RPIX + $\frac{1}{3}$ of real median earnings increase
2015	2.1%	RPIX only
2014	2.1%	RPIX only
2013	3.6%	RPIX + 0.5%
2012	3.6%	RPIX + $\frac{1}{2}$ the projected long term real median earnings increase
2011	2.9%	RPIX + 0.5% - this was lower than the policy of RPIX + $\frac{1}{2}$ of projected long term real median earnings increase, which was the approved policy at the time.
2010	2.0%	0.7% under RPIX** but 3.3% above RPI, the measure used until that point. The less generous uprating was based on the economic conditions of the time.
2009	6.5%	RPI +1.0%
2008	6.0%	RPI +1.3%
2007	3.4%	RPI only – in light of economic concerns
2006	5.4%	RPI+ 0.8% - reduced from previous years in light of economic circumstances and draw down of the fund
2005	7.0%	RPI +2.5% - due to concerns about pensioner poverty
2004	7.4%	RPI +3.1% - due to concerns about pensioner poverty
2003	7.5%	RPI +4.2% - due to concerns about pensioner poverty

* 2017 benefit rates were later restated to a 1% increase, this was to reflect a change in the methodology for calculating median earnings. This was implemented through an uplift from 2018 onwards and was not backdated.

** From 2010, the States-approved measure of inflation used for uprating changed from RPI to RPIX.

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINIMUM STANDARDS FOR ACCOUNTANCY FIRMS, ETC

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled "*Minimum Standards for Accountancy Firms, Etc*", dated 12th September 2022, they are of the opinion:-

1. To agree that a framework for a minimum standards test for firms of accountants, auditors, insolvency practitioners and tax advisers and its administration by the Guernsey Registry be established in accordance with the recommendations set out in this Policy Letter, including a requirement that staff providing professional advice and services are appropriately qualified.
2. To direct the preparation of such legislation as may be necessary to give effect to the above.

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

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

POLICY & RESOURCES COMMITTEE

MINIMUM STANDARDS FOR ACCOUNTANCY FIRMS, ETC

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

12th September 2022

Dear Sir

1 Introduction

- 1.1 This Policy Letter proposes the introduction of legislation imposing additional requirements on firms of accountants, auditors, insolvency practitioners and tax advisers operating by way of business in the Bailiwick of Guernsey (including those which are owner managed and operated, i.e. which might be described as sole practitioners) so as to address the gap which currently exists in preventing criminals from controlling such firms. This gap has arisen as the Financial Action Task Force (“FATF”) has revised the standards it requires jurisdictions to apply in relation to these businesses. It follows similar decisions made by the Assembly earlier this year directing the introduction of minimum standards for estate agencies.¹
- 1.2 It is recognised that the establishment and administration of a proportionate framework is crucial, and the proposals in this Policy Letter would apply only to those businesses in the Bailiwick subject to anti-money laundering and combatting of terrorist finance (“AML/CFT”) obligations. There are *de minimis* provisions in the AML/CFT framework which, in practical terms, mean that a very small firm would not be subject to the framework.
- 1.3 Firms of accountants, auditors, insolvency practitioners and tax advisers are required to register with the Guernsey Financial Services Commission (the “GFSC”), pursuant to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 (the “Proceeds of Crime Law”) and the GFSC is the supervisory authority with responsibility for monitoring and enforcing compliance by these firms with their AML/CFT obligations. For ease of reference from this

¹ [Billet d’État IX of 2022](#)

point this Policy Letter describes these firms as “the professional businesses”.

2 Background

- 2.1 The Prescribed Businesses (Bailiwick of Guernsey) Law, 2008 (the “Prescribed Businesses Law”) and the AML/CFT requirements in relation to customers² were put in place because of the expectations of the FATF. This body, which is based in Paris, sets global standards for AML/CFT. All jurisdictions are expected to comply with these standards and, with few exceptions, are subject to periodic evaluation of their level of compliance. Guernsey has been evaluated several times, the last evaluation taking place in 2014 against the 2003 FATF standards.
- 2.2 Since the Prescribed Businesses Law and the AML/CFT requirements mentioned above were first enacted, the FATF’s standards in relation to non-financial services businesses such as the professional businesses have been revised. The technical requirements for FATF Recommendation 28, embodied in the methodology used for evaluations, now state that an authority within each jurisdiction should take the necessary measures to prevent criminals from owning, controlling or managing designated non-financial businesses and professions and, linked with these measures, for that authority to have effective, proportionate and dissuasive sanctions in line with FATF Recommendation 35 available to deal with failure to comply with AML/CFT requirements. In response to this, the Assembly has already agreed that steps should be taken to introduce minimum standards for estate agencies. The Policy & Resources Committee (“the Committee”) considers it appropriate to further update our regime to introduce a minimum standards test for owners and controllers of the professional businesses, as set out in this policy letter, to ensure that the Bailiwick meets the revised international standards.
- 2.3 Most of the professional businesses in the Bailiwick which are subject to the Prescribed Businesses Law and the AML/CFT requirements are established as legal persons, particularly companies registered with either the Registrar of Companies in Guernsey or (in one case) Alderney. Details of the directors of those companies are required to have been provided to the relevant Registrar and any changes in the directors, or in any of the particulars in the company’s register of directors, must be notified to the relevant Registrar within specified time frames. The provisions of the Beneficial Ownership (Guernsey) Law, 2017 or the Beneficial Ownership (Alderney) Law, 2017 also apply, and details of the beneficial ownership of the companies is required to be provided to the relevant Registrar of Beneficial Ownership.
- 2.4 In addition, in both Guernsey and Alderney, there are companies law provisions

² Formerly contained in the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) Regulations, 2008 but are now included, in revised form, in Schedules 3 and 5 to the Proceeds of Crime Law (“the AML/CFT Requirements”).

regarding who can act as a director of a company, and for disqualification by the Court of persons considered to be unfit to be concerned in the management of a company.

- 2.5 Moreover, all of the larger and medium-sized accounting firms (i.e. those auditing market traded companies) fall within the scope of the recognised auditor regime administered by the Guernsey Registry. Some half of the audit firms registered with the Registry as recognised auditors are subject to the Bailiwick AML/CFT framework as a result of carrying on business in the Bailiwick. A substantial proportion of the professional businesses not incorporated within the Bailiwick as a legal person are included within these audit firms. These firms have registered more than 100 individuals at the Registry and those individuals are recognised (i.e. permitted) to undertake audit work in relation to market traded companies. The individuals include directors and equity partners resident in Guernsey. The existence of the recognised auditor regime and the checks undertaken by the Registry within Guernsey and with the UK Institute of Chartered Accountants of England and Wales (“ICAEW”) to check the fitness and properness of the recognised individuals (and the ability of the Registry to prevent persons from being recognised individuals and to remove them from audit functions) are relevant to the proposals in this Policy Letter. Therefore, a large number of individuals proposed to be covered by these proposals are already subject to probity checks performed by the Registry.
- 2.6 By way of further context with regard to regulation, individual professional businesses are regulated by regulatory bodies in other jurisdictions, most usually the ICAEW, which impose fit and proper requirements on all their members and, in addition, fit and proper requirements on licensed firms, and require annual declaration of fitness and propriety from firms for all beneficial owners, officers and managers in accordance with their regulations. It is also worth noting that large and medium sized firms in the Bailiwick, and at least some small firms, require fit and proper declarations to be provided to the firm by all staff (irrespective of grade) with the final declaration being provided to a UK regulatory body in relation to beneficial owners, officers and managers (“BOOMs”) that they have not been convicted of a relevant offence for the purposes of the UK framework. In this respect, “Fit and Proper” declarations typically comprise confirmation that the employee has not been convicted of a relevant criminal offence, declared bankrupt or subject to disqualification orders or have civil orders against them.

3 Standards

- 3.1 While the beneficial ownership, commercial and recognised auditor frameworks in the Bailiwick mentioned above, combined with regulation of professional businesses and their staff go some way in meeting the FATF’s standards, in order for the Bailiwick itself to meet those standards unambiguously it is proposed that

legislative provision should be made for a minimum standards test. It is important for Guernsey to take ownership of meeting these standards rather than rely on regulatory regimes in other jurisdictions. The new legislation would supplement existing regimes to ensure that the Bailiwick will take responsibility that only people who are fit to be involved in the management or control of a professional business are able to hold relevant positions. On the basis of risk and proportionality the information requirements of the framework and its administration will, where possible, leverage information already gathered for UK and other regulatory standards.

- 3.2 In broad terms, it is envisaged that in determining whether a person meets the minimum standards test, regard should be had to their probity, integrity, honesty and soundness of judgement for holding the position, and whether the interests of the public or the reputation of the Bailiwick are, or are likely to be, in any way jeopardised by their holding the position. In addition, the test should consider whether the interests, or potential interests, of clients are, or are likely to be, threatened by an individual holding their position. As part of the foregoing, regard may be had to the previous conduct and activities in business, or financial matters, of the person in question and, in particular, to any evidence that they have:
- (a) committed any offence, and in particular any offence involving fraud or other dishonesty;
 - (b) engaged in any business practices which are, or which might reasonably be regarded as appearing to be, deceitful or oppressive or otherwise improper or which otherwise reflect discredit on their method of conducting business or their suitability to carry on a professional business;
 - (c) engaged in or been associated with any other business practices or otherwise conducted themselves in such a way as to cast doubt on their soundness of judgement.
- 3.3 The minimum standards test should apply to any person with ownership or beneficial ownership of 15% or more of a professional business, or with control of 15% or more of voting power, whether this is held directly or through a chain of ownership. Fifteen percent would be a proportionate threshold, rather than automatically requiring information about individuals with very low levels of ownership and/or control.
- 3.4 This test should also apply to anybody who is a partner, chief executive or director (or equivalent to any of these roles) of a professional business, as well as any other person participating in, or being in any way concerned, directly or indirectly, in the management of the professional business. For the avoidance of doubt, it is envisaged that the test would apply to any de facto director (i.e. any person in accordance with whose directions or instructions anybody in the roles mentioned

in the previous sentence is accustomed to act). In order to recognise how professional businesses are structured in practice, relevant management below the level of partner, chief executive and director subject to the test will include a Responsible Individual (meaning those individuals who have been granted authority to sign engagement letters, reports or similar on behalf of the firm or to otherwise bind the firm); any other person of at least senior management level who the business considers has the ability to bind the firm; and the Guernsey Money Laundering Reporting Officer, the Guernsey Money Laundering Compliance Officer and, where one is appointed, the Nominated Officer.

- 3.5 The routine administration of the test by the Guernsey Registry in relation to persons falling within the scope of the paragraph above would follow one of two paths. First, the Registry would itself routinely administer the test in relation to persons operating within the context of the Bailiwick's AML/CFT framework. Second, the legal framework should allow for individuals who are part of a wider firm structure and based in another jurisdiction to be deemed as meeting the Guernsey requirements provided those individuals are subject to at least equivalent requirements in a jurisdiction specified as equivalent in regulations issued by the Committee. For example, a Guernsey based firm of accountants which is a UK limited liability partnership may have a significant number of partners resident in the UK of which one or two individuals may operate an office in Guernsey. On the basis of risk and proportionality, it is the local partners and other persons mentioned in the paragraph above for whom the Guernsey Registry would itself routinely administer the test while, with regard to the larger body of individuals who are caught under the UK requirements in respect of fit and proper standards, the UK would be designated as an equivalent jurisdiction and the Registry would use that equivalence and the application of fit and proper requirements by the UK regulator(s) to deem that the Bailiwick standards are met. It is possible that other jurisdictions might also be designated as equivalent jurisdictions. For the avoidance of doubt, persons resident in a foreign jurisdiction and with oversight of market traded company audits would remain subject to Guernsey's recognised auditor regime in the same way they are now – the proposals in this Policy Letter will not affect the recognised auditor regime.
- 3.6 The preceding paragraphs include most of what the FATF includes within its concept of beneficial owner. The test will also need to embrace "the natural person(s) who ultimately owns or controls the professional business", which might e.g. include a one off exercise of effective control not included in the 15% threshold (see paragraph 3.4) or the meaning of de facto director (see paragraph 3.5).
- 3.7 There is an additional FATF requirement in Recommendation 28 which has the aim of ensuring that criminals are not professionally accredited. It is envisaged that the legislation for the Bailiwick should specify that individuals providing professional advice in or from within the Bailiwick should be appropriately qualified. Whilst

further work and consultation will be required to determine how this requirement should be implemented, the Committee envisages that it would have ability to issue regulations in relation to this matter, in particular to enable the best way forward for administration of the framework for those individuals not covered by paragraphs 3.4 to 3.6 above.

4 Administration

- 4.1 In light of the Guernsey Registry's existing role in administering the various statutory regimes relating to legal persons in Guernsey and the recognised auditor regime, and in line with the equivalent statutory minimum standards framework agreed by the States of Deliberation in May 2022 in relation to estate agencies, the Registry should administer and enforce the new minimum standards test. It is envisaged that a new statutory role will be established (referred to in this Policy Letter as the "Administrator"). The Registry will align administration of the test with existing Registry processes and procedures, to the extent possible, in order to minimise the burden on professional businesses and cost to the Registry. It is anticipated that there will be no additional fees charged in respect of the administration of the new minimum standards test.
- 4.2 In order for it to administer the framework described in this Policy Letter, the Administrator should have the power to:
- (a) require relevant information and documents from: professional businesses; their beneficial owners, controllers, shareholders, directors, managers; (and other persons who seem to be occupying these roles or who the Administrator believes may have relevant information or documents); and
 - (b) share confidential information with relevant third parties³.
- 4.3 It is envisaged that there would be a requirement for new professional businesses to identify themselves and the individuals holding relevant positions mentioned above to the Administrator. This notification would be accompanied by the completion of a questionnaire, in a form specified by the Administrator. It is further envisaged that there would be a requirement for all professional businesses to provide information on an annual basis confirming the requirements are met. In addition to the annual confirmation by businesses, individuals should be required, on being appointed to a relevant position within a business, or acquiring a relevant interest, to notify the Administrator of their position and confirm that they meet the minimum standards test (and that they are appropriately qualified). In order to mitigate the burden on professional businesses, the Registry's intention is to allow professional businesses to utilise

³ For example the GFSC, the Economic and Financial Crime Bureau and the Registrars of legal entities and beneficial ownership.

information gathered to meet existing reporting to the UK regulators (and regulators in other jurisdictions designated as equivalent) as much as possible. Reporting on fit and proper requirements for UK regulatory purposes is well-established.

- 4.4 The role of the Registry proposed in this Policy Letter is similar to that agreed by the States earlier this year in relation to estate agencies. The Committee is mindful of the importance of monitoring compliance with the FATF standards and of marrying compliance and proportionality. Therefore, the Committee proposes that, in the medium term, it will work with the Committee *for* Economic Development in reviewing the effectiveness of the Registry's role in relation to meeting FATF Recommendation 28.

5 Sanctions

- 5.1 In order to ensure the proposals are effective, sanctions will need to be available where requirements are not met. It is proposed that the sanctions should reflect those available to the Registrar of Beneficial Ownership, pursuant to the Beneficial Ownership of Legal Persons (Bailiwick of Guernsey) Law, 2017.
- 5.2 Therefore, it is envisaged that there would be a range of penalties for failure, by professional businesses and individuals, to meet the minimum standards or otherwise comply with the requirements of the regime. This range would allow a proportionate approach to be taken by the Administrator. It should include provisions for civil financial penalties and private reprimands and, in order to cater for serious cases, powers to make public statements and to apply to the Royal Court for disqualification of individuals from being involved in the management or control of a professional business. Powers of sanction will also need to be available in situations where a firm considers it needs information from a third party but where provision of information is refused. All powers of sanction should be subject to appropriate rights of appeal.
- 5.3 The Administrator would need to be proactive in exercising its role and would need the power to issue guidance. By way of illustration, the Administrator should seek confirmation that the minimum standards test is met. As mentioned above, it is envisaged that businesses would be required to confirm this on an annual basis. As part of a proactive approach, the Administrator could, for example, check information provided by using the internet, a commercial third party data provider and/or liaison with third parties who might have information. Provision of false or misleading information should be an offence. Failure to provide information should be an offence and also give rise to liability to a civil penalty. Further, it is proposed that an individual who receives a criminal conviction, or a professional business which becomes aware of a relevant conviction, should be required to inform the Administrator within twenty one days. Again, failure to comply with such a requirement should be an offence.

6 Consultation

- 6.1 The Committee has consulted with firms who will be subject to the framework covered in this Policy Letter, the Guernsey Society of Chartered and Certified Accountants (“GSCCA”) and the GFSC. The GSCCA and the GFSC recognise the importance of the establishment of a statutory framework to meet FATF Recommendation 28.
- 6.2 The Committee has also consulted with the Committee *for* Economic Development and with the Policy & Finance Committee in Alderney and the Policy & Finance Committee in Sark. The Committees are supportive of the legislation proposed in this Policy Letter.

7 Proposals

- 7.1 The States are asked to decide whether they are of the opinion:
- (a) To agree that a framework for a minimum standards test for firms of accountants, auditors, insolvency practitioners and tax advisers and its administration by the Guernsey Registry be established in accordance with the above recommendations, including a requirement that those individuals within the firms providing professional advice and services are appropriately qualified; and
 - (b) To direct the preparation of such legislation as may be necessary to give effect to the above.

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 The following information is provided in conformity with Rule 4(1):
- a) The Propositions accord with the States’ objective and policy plan to maintain compliance with international standards on financial crime and regulation and prepare for international evaluations, which was agreed as an action under the Government Work Plan 2022.
 - b) The consultation undertaken with relevant stakeholders in the preparation of the Propositions is detailed in section 6 of this Policy Letter.
 - c) The Propositions have been submitted to Her Majesty’s Procureur for advice on any legal or constitutional implications.

- d) There should be no additional financial implications to the States of Guernsey of carrying the proposals into effect.

8.3 For the purposes of Rule 4(2):

- a) It is confirmed that the Propositions engage the mandate of the Committee with respect to fiscal policy and economic affairs.
- b) It is confirmed that each of the Propositions have the unanimous support of the Policy & Resources Committee.

Yours faithfully,

P T R Ferbrache, President

H J R Soulsby, Vice-President

J P Le Tocq

M A J Helyar

D J Mahoney

THE STATES OF DELIBERATION
of the
ISLAND OF GUERNSEY

COMMITTEE *FOR* ECONOMIC DEVELOPMENT

PUBLIC TRUSTEE ANNUAL REPORT AND AUDITED ACCOUNTS FOR THE YEAR
ENDED 31 DECEMBER 2021

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

20th September 2021

Dear Sir

The Public Trustee (Bailiwick of Guernsey) Law, 2002 sets out in Section 6(1) that the Committee *for* Economic Development is required to submit the report and accounts on the exercise of the Public Trustee's functions for the preceding year to the States of Deliberation. I am pleased to enclose a copy of the Public Trustee's report and audited accounts for the year ended 31 December 2021.

I should be grateful if you would arrange to publish this submission as an Appendix to the next available Billet d'Etat.

Yours sincerely,

A handwritten signature in blue ink, appearing to be 'Neil Inder', written in a cursive style.

Deputy Neil Inder
President



**REPORT OF THE PUBLIC TRUSTEE
TO THE COMMITTEE *for* ECONOMIC DEVELOPMENT
YEAR ENDED 31 DECEMBER 2021**

Introduction

1. Under Section 6(1)(a) of The Public Trustee (Bailiwick of Guernsey) Law, 2002 (the 'Law') (Appendix 1), the Public Trustee ('PT' or 'I' as context admits) is required in each calendar year to submit to the Committee *for* Economic Development (the 'Committee') a report on the exercise of her/his functions in the preceding year together with audited accounts of the Office of the Public Trustee ('OPT').

Functions and Activity

2. Matters relating to the IXG Schemes continued to constitute the vast majority of the case management activities of the OPT.
3. As referred to in my previous report, decisions of the Royal Court of Guernsey were both made and awaited in relation to hearings held before it in the Account Application during 2020. The Account Application (as summarised in my previous report) encompasses a number of distinct stages and seeks orders necessary for eventual resolution of the IXG Schemes and discharge of the Public Trustee from her/his obligations as previously ordered by the court.
4. Following judgments of the Royal Court issued against them (pursuant to hearings at the end of 2020), the former trustees of the IXG Schemes and/or individuals associated with them sought to make applications for appeal to the Court of Appeal of Guernsey. None of these were successful, culminating in a judgment of the Court of Appeal in October 2021.

5. Thereafter, the Royal Court issued orders in December 2021 against various parties including and associated with the former trustees requiring the provision and release of information to the PT.
6. It is anticipated that further activity, including court proceedings in the Account Application (and elsewhere), will continue during 2022 (and probably beyond) in relation to the IXG Schemes. The OPT will therefore continue to require the provision of funding from the Committee in order to meet its costs and expenses (in particular, legal expenses). It is intended that the same will be subject to application for recovery by the PT in future as may be authorised in the Account Application.
7. The OPT continued to provide trusteeships as reported in prior years.
8. Advice and assistance was provided to parties enquiring in relation to potential appointments of the OPT. No new appointments as trustee (or other cases) were undertaken during the period.

Office of the Public Trustee

9. The Deputy Public Trustee ('DPT') has continued in office, and the services of a part-time Administrator were secured.
10. The effects of the coronavirus pandemic and all associated governmental measures and requirements continued to affect the OPT. Due to constraints arising, primarily, as the result of information technology ('IT') requirements (whether or not connected with lockdown restrictions, etc.), some reduction in immediate operational efficiencies was experienced. However, the OPT was able to continue operating without substantive adverse effects on cases under its remit.
11. The physical location of the OPT is expected to change during 2022 as a result of reorganisation of the States of Guernsey's property operations. This will be confirmed in a future report.

Organisation, Reporting and Oversight

12. Development of the existing operational framework of the OPT continued during the year. This was substantially achieved, subject to continuing reporting and any ongoing revisions as may be required (see also paragraphs 14 to 16 below).
13. The existing operational framework includes:-
 - a. the OPT's statement of purpose;
 - b. identification of fiduciary and operational risks and their management and mitigation;

- c. quarterly management and financial reporting; and
- d. external audit.

- 14. Quarterly (and any requisite interim) meetings continue to be held with the Public Trustee Liaison Group ('PTLG') to which reports are presented in accordance with the operational framework.
- 15. To the best of the PT's understanding, no matters of concern were raised by or remain outstanding with the PTLG.
- 16. As mentioned above, it is anticipated that the OPT will continue to review and develop its practices and procedures in consultation with the PTLG, for example as to management, delegation, nature or financing of cases falling under its remit, or potential suggestions concerning its functions under the Law.

Accounts and Auditors' Report

- 17. The accounts of the OPT for the year ended 31 December 2021 together with the Auditor's report thereon accompany this report (Appendix 2).

Other Matters

- 18. The PT is aware that the Committee is required to submit this report and the audited accounts and auditors' report to the States pursuant to Section 6(2) of the Law (Appendix 1) and may at the same time submit their own report to the States, and I remain at the disposal of the Committee in respect of anything it may require for this purpose.

Luis Gonzalez

Public Trustee

July 2022

Appendix 1 – Section 6 of the Law

Annual reports.

6. (1) The Public Trustee shall, as soon as practicable in each calendar year, submit to the Committee –

- (a) a report on the exercise of his functions in the preceding year, and
- (b) the audited accounts of the Office of the Public Trustee together with the auditors' report thereon.

(2) The Committee –

- (a) shall submit –
 - (i) the Public Trustee's report made under subsection (1)(a), and
 - (ii) the audited accounts and auditors' report thereon referred to in subsection (1)(b),to the States, and
- (b) may at the same time submit their own report to the States –
 - (i) covering the period of the Public Trustee's report,
 - (ii) covering the matters described in subsection (1)(a), and
 - (iii) containing the Committee's comments (if any) on the audited accounts and auditors' report thereon referred to in subsection (1)(b).

OFFICE OF THE PUBLIC TRUSTEE

STATEMENT OF ACCOUNT

31ST DECEMBER 2021

LINCE SALISBURY

Chartered Accountants

Avenue House

St. Julian's Avenue

St. Peter Port

GUERNSEY

OFFICE OF THE PUBLIC TRUSTEE

Office holder

The position of Public Trustee ("PT") throughout the period, at the year end and subsequent to the year end was held by:

Mr L. Gonzalez

Statement of responsibilities for the preparation of financial statements

In accordance with The Public Trustee (Bailiwick of Guernsey) Law, 2002 the PT is responsible for the preparation of a statement of account for each financial year which gives a true and fair view of the state of affairs of The Office of the Public Trustee. To ensure a true and fair view is reported the PT has continued to:

- apply suitable accounting policies on a consistent basis;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed subject to any material departures disclosed and explained in the accounts; and
- prepare the statement of account on a going concern basis, unless it is inappropriate to do so.

The PT acknowledges responsibility for keeping proper accounting records which disclose with reasonable accuracy the financial position of The Office of the Public Trustee.

It is the responsibility of The Office of the Public Trustee to identify and install a system of internal controls, including financial controls, which is adequate for its own purposes. Thus The Office of the Public Trustee is responsible for safeguarding the assets in its care and hence for taking reasonable steps for the prevention and detection of fraud and other irregularities.

The PT reports that so far as the PT is aware there is no relevant audit information of which the auditors are unaware and that the PT has taken all steps to make himself aware of such audit information and to establish that the auditors are aware of that information.

INDEPENDENT AUDITOR'S REPORT TO THE OFFICE OF THE PUBLIC TRUSTEE

We have audited the financial statements of The Office of the Public Trustee for the year ended 31st December, 2021 on pages 5 to 8 which comprise the Statement of Income, the Statement of Financial Position and notes to the financial statements, including a summary of significant accounting policies. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards, including Financial Reporting Standard 102 The Financial Reporting Standard applicable in the UK and Republic of Ireland (United Kingdom Generally Accepted Accounting Practice).

In our opinion the financial statements:

- give a true and fair view of the state of The Office's affairs as at 31st December 2021 and of its result for the year then ended;
- have been prepared in accordance with United Kingdom Generally Accepted Accounting Practice; and
- the financial statements have been properly prepared in accordance with The Public Trustee (Bailiwick of Guernsey) Law, 2002.

Basis for opinion

We conducted our audit in accordance with International Standards on Auditing (UK) (ISAs (UK)) and applicable law. Our responsibilities under those standards are further described in the Auditor's responsibilities for the audit of financial statements section of our report. We are independent of the office in accordance with the ethical requirements that are relevant to our audit of the financial statements, including the Financial Reporting Council's Ethical Standard, and we have fulfilled our other ethical responsibilities in accordance with these requirements. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our opinion.

Conclusion relating to going concern

We have nothing to report in respect of the following matters in relation to which the ISAs (UK) require us to report to you where:

- the Public Trustee's use of the going concern basis of accounting in the preparation of the financial statements is not appropriate; or
- the Public Trustee has not disclosed in the financial statements any identified material uncertainties that may cast significant doubt about the office's ability to continue to adopt the going concern basis of accounting for a period of at least twelve months from the date when the financial statements are authorised for issue.

Other information

The Public Trustee is responsible for the other information. The other information comprises page 1. Our opinion on the financial statements does not cover the other information and, except to the extent otherwise explicitly stated in our report, we do not express any form of assurance conclusion thereon. In connection with our audit of the financial statements, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial statements or our knowledge obtained in the audit or otherwise appears to be materially misstated. If we identify such material inconsistencies or apparent material misstatements, we are required to determine whether there is a material misstatement in the financial statements or a material misstatement of the other information. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

INDEPENDENT AUDITOR'S REPORT TO THE OFFICE OF THE PUBLIC TRUSTEE**Matters on which we are required to report by exception**

In the light of the knowledge and understanding of the office and its environment obtained in the course of the audit, we have not identified material misstatements in the information contained in page 1. We have nothing to report in respect of the following matters in relation to which The Public Trustee (Bailiwick of Guernsey) Law, 2002 requires us to report to you if, in our opinion:

- adequate accounting records have not been kept; or
- the financial statements are not in agreement with the accounting records; or
- we have not received all the information and explanations we require for our audit.

Responsibilities of the Public Trustee

As explained more fully in the Public Trustee's responsibilities statement set out on page 1, the Public Trustee is responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view, and for such internal control as the Public Trustee determines is necessary to enable the preparation of financial statements that are free from material misstatement, whether due to fraud or error. In preparing the financial statements, the Public Trustee is responsible for assessing the ability of the office of the Public Trustee to continue as a going concern, disclosing, as applicable, matters related to going concern and using the going concern basis of accounting.

Auditor's responsibilities for the audit of the financial statements

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance, but is not a guarantee that an audit conducted in accordance with ISAs (UK) will always detect a material misstatement when it exists. Misstatements can arise from fraud or error and are considered material if, individually or in the aggregate, they could reasonably be expected to influence the economic decisions of users taken on the basis of these financial statements.

Irregularities, including fraud, are instances of non-compliance with laws and regulations. We design procedures in line with our responsibilities, outlined above, to detect material misstatements in respect of irregularities, including fraud. The extent to which our procedures are capable of detecting irregularities, including fraud is detailed below:

- As part of the audit we gained an understanding of the legal and regulatory framework applicable to The Office of the Public Trustee and the industry in which it operates, by reviewing relevant legislation, including The Public Trustee (Bailiwick of Guernsey) Law, 2002, as well as any guidance issued. We considered the risk of acts by The Office of the Public Trustee that were contrary to applicable laws and regulations, including fraud, recognising that the risk of not detecting a material misstatement due to fraud is higher than the risk of not detecting one resulting from error, as fraud may involve deliberate concealment by, for example, forgery or intentional misrepresentations, or through collusion.

INDEPENDENT AUDITOR'S REPORT TO THE OFFICE OF THE PUBLIC TRUSTEE**Auditor's responsibilities for the audit of the financial statements (continued)**

- We tailored our audit programmes to include:
- making enquiries of the Public Trustee and key personnel as to whether there had been any non-compliance with laws and regulations; and
- a review of internal documentation, including minutes, policies and procedures, and an assessment of the efficacy of such documentation.
- The engagement partner assessed the appropriateness of the engagement team to identify or recognise non-compliance with laws and regulations, and details of those matters about non-compliance with laws and regulations and fraud that were communicated to the engagement team.
- We performed our audit work within a reasonable timeframe of the year end, corresponding to the Office of the Public Trustee's requirement to present its financial statements to the relevant committee of the States of Deliberation.
- There are inherent limitations in the audit procedures described above and, the further removed non-compliance with laws and regulations is from the events and transactions reflected in the financial statements, the less likely we would become aware of it. We did not identify any material misstatements relating to irregularities, including fraud. As in all of our audits, we also addressed the risk of management override of internal controls, including testing journals and evaluating whether there was evidence of bias by the Board that represented a risk of material misstatement due to fraud.

A further description of our responsibilities for the audit of the financial statements is located on the Financial Reporting Council's website. This description forms part of our auditor's report.

Use of our report

This report is made solely to the Office of the Public Trustee as a body, in accordance with Section 6 of The Public Trustee (Bailiwick of Guernsey) Law, 2002. Our audit work has been undertaken so that we might state to the Public Trustee those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Public Trustee for our audit work, for this report, or for the opinions we have formed.

6th July 2022
AVENUE HOUSE
ST. JULIAN'S AVENUE
ST. PETER PORT
GUERNSEY





LINCE SALISBURY LIMITED
CHARTERED ACCOUNTANTS

OFFICE OF THE PUBLIC TRUSTEE**STATEMENT OF INCOME****FOR THE YEAR ENDED 31ST DECEMBER 2021**

	Note	2021 t	2020 £
Receipts			
Grant from States of Guernsey	I(b)	43,088	20,917
Public Trustee Cost Recoveries	I(c)	146,616	191,615
		<hr/>	<hr/>
		189,704	212,532
		<hr/>	<hr/>
Expenditure	I(d)		
Audit fees		4,260	4,500
Bank charges		97	82
Office administration		3,000	3,329
Contracts for services		165,829	203,103
Legal fees		16,200	1,500
		<hr/>	<hr/>
		189,386	212,514
		<hr/>	<hr/>
Operating surplus before tax		318	18
Tax	2	-	-
		<hr/>	<hr/>
Surplus for the year		318	18

OFFICE OF THE PUBLIC TRUSTEESTATEMENT OF FINANCIAL POSITIONAT 31ST DECEMBER 2021

	Note	2021	2020
			
Current Assets			
Debtors		4,214,823	3,490,267
Bank		11,061	9,848
		<hr/>	<hr/>
		4,225,884	3,500,115
		<hr/>	<hr/>
Current liabilities			
Potential liability - grants	3	4,108,714	3,415,233
Accruals	3	24,789	30,528
Creditors	3	78,250	40,541
		<hr/>	<hr/>
		4,211,753	3,486,302
		<hr/>	<hr/>
Net assets		14,131	13,813
		<hr/>	<hr/>
Funded by:			
The Public Trustee Fund	2, 4		
Opening		13,813	13,795
Surplus/(Deficit) for the year		318	18
		<hr/>	<hr/>
Closing		14,131	13,813
		<hr/>	<hr/>

The statement of account was approved on **b**₄,  2022.

OFFICE OF THE PUBLIC TRUSTEENOTES TO THE FINANCIAL STATEMENTSYEAR ENDED 31ST DECEMBER 2021**1. ACCOUNTING POLICIES**(a) Basis of Preparation

The financial statements have been prepared in accordance with United Kingdom Generally Accepted Accounting Practice including FRS 102 The Financial Reporting Standard applicable in the United Kingdom and Republic of Ireland ('FRS102') Section IA for small entities issued by the Financial Reporting Council in September, 2015 and with The Public Trustee (Bailiwick of Guernsey) Law, 2002.

(b) Grants

Grants from the States of Guernsey Committee for Economic Development are included on a received basis. Grants have been recognised as revenue items where they are not expected to become repayable. Where grants have been received and a corresponding amount is considered recoverable in respect of the underlying transfers to which they relate the potential liability has been recognised.

(c) Public Trustee Cost Recoveries

Costs are recognised when services are delivered by the Office of the Public Trustee in its capacity as trustee. Excluded from the statement of income are any costs for services provided by third party administrators or other parties including professional advisors appointed by the Public Trustee.

(d) Other income and expenditure

Other income and expenditure is included on an accruals basis.

(e) Financial Instruments

The Office of Public Trustee only enters into basic financial instruments that result in the recognition of financial assets and liabilities such as accounts receivable and creditors, and loans from or to banks and related parties. Debt instruments that are payable or receivable within one year (typically loans, accounts receivable and creditors) or that bear a commercial rate of interest and are payable or receivable after more than one year are measured, initially and subsequently, at the undiscounted amount of the cash or other consideration expected to be paid.

Bank balances are repayable on demand.

2. TAXATION

The Public Trustee fund was established for the purposes of:

- a) Paying fees or remuneration to the Public Trustee and his officers and servants; and
- b) meeting all other costs, fees, expenditure and liabilities properly incurred.

The fund and income thereof is not subject to Income Tax.

OFFICE OF THE PUBLIC TRUSTEENOTES TO THE FINANCIAL STATEMENTSYEAR ENDED 31ST DECEMBER 2021**3. CREDITORS AND ACCRUALS**

<u>Creditors</u>	2021	2020
Other creditors	78,250	40,541
	;	t
<u>Accruals</u>		
Audit fee	4,500	9,000
Contracts for Services	11,289	15,528
Other accruals	9,000	6,000
	24,789	30,528
<u>Potential Liabilities - Grants</u>		
Grants from States of Guernsey	4,108,714	3,415,233

Grants (or loans) from the Committee for Economic Development of the States of Guernsey are made in accordance with section 8 of The Public Trustee (Bailiwick of Guernsey) Law, 2002. Any amounts paid to cover expenditure and liabilities that are subsequently recouped from trust structures within the responsibility of the Public Trustee become repayable. The potential liability due represents the disbursements the Public Trustee expects to be recoverable from those structures. Disclosing this amount separately on the balance sheet reflects the understanding of the contingent nature of the corresponding debtor.

4. THE PUBLIC TRUSTEE FUND

	2021	2020
	E	;
Balance brought forward	13,813	13,795
Surplus for year	318	18
Balance carried forward	14,131	13,813

5. GENERAL INFORMATION

The Office of the Public Trustee is an unincorporated entity established under The Public Trustee (Bailiwick of Guernsey) Law, 2002. Its address is Sir Charles Frossard House, La Charotterie, St. Peter Port, GY11FH.

6. NUMBER OF EMPLOYEES

The Office of the Public Trustee was created by The Public Trustee (Bailiwick of Guernsey) Law, 2002. The holder of that office is known as the Public Trustee. During the year there were no employees (2020: nil).