



# BILLET D'ÉTAT

WEDNESDAY, 24<sup>th</sup> MAY, 2023

VII  
2023

## *ELECTIONS AND APPOINTMENTS*

1. Committee *for* Employment & Social Security - The Guernsey Legal Aid Service - Appointment of the Legal Aid Commissioner, P.2023/27
2. Election of Members of The Ladies' College Board of Governors, P.2023/30

## *LEGISLATIVE BUSINESS*

### *Legislation laid before the States*

The High Hedges (Guernsey) (Amendment) Regulations, 2023  
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The Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Amendments) Regulations, 2023  
The Reform (Guernsey) (Amendment) Law, 2022 (Commencement) Regulations, 2023  
The Income Tax (Pension Amendments) (Revocation) (Guernsey) Regulations, 2023  
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### *Legislation for Approval*

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CONTINUED OVERLEAF

5. Committee *for* Employment & Social Security - The Long-Term Care Insurance (Guernsey) (Rates) Ordinance, 2023, P.2023/24
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# BILLET D'ÉTAT

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

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I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY the 24<sup>th</sup> May, 2023**, 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

28<sup>th</sup> April, 2023

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

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

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID  
COMMISSIONER

The States are asked to decide:

Whether, after consideration of the Policy Letter entitled “The Guernsey Legal Aid Service - Appointment of the Legal Aid Commissioner”, dated 6<sup>th</sup> April 2023, they are of the opinion:

1. To appoint Advocate Lisa Claire Evans as the Legal Aid Commissioner, with effect from 1<sup>st</sup> June 2023, pursuant to section 16(1) of the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018 (“the Ordinance”),
2. To note that the Committee *for* Employment & Social Security has agreed with Advocate Evans that she will hold office for a period of five years, with effect from that date, pursuant to section 17(1) of the Ordinance,
3. To agree that the Ordinance be amended to enable the Committee *for* Employment & Social Security to appoint one or more Deputy Legal Aid Commissioners to carry out the functions of the Commissioner when the Commissioner is not available or is unable to act for any other reason, and
4. 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 His 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.

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

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

THE GUERNSEY LEGAL AID SERVICE – APPOINTMENT OF THE LEGAL AID  
COMMISSIONER

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

6<sup>th</sup> April 2023

Dear Sir

**1. Executive summary**

- 1.1. The Legal Aid Commissioner is an independent holder of public office, appointed by the States pursuant to the Legal Aid (Guernsey and Alderney) (Schemes and Miscellaneous Provisions) Ordinance, 2018<sup>1</sup> (“the Ordinance”), on the nomination of the Committee *for* Employment & Social Security (“the Committee”).
- 1.2. Following an open recruitment process, the Committee is pleased to recommend to the States the appointment of Advocate Lisa Claire Evans with effect from 1<sup>st</sup> June 2023. The Committee has agreed with Advocate Evans that she will hold office for a period of five years, with effect from that date, pursuant to section 17(1) of the Ordinance,
- 1.3. The Committee is also proposing that the Ordinance be amended to enable the Committee to appoint one or more Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason. This is intended to provide more resilience to the function of the Legal Aid Commissioner to review decisions taken by the Legal Aid Administrator.

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<sup>1</sup> [The Legal Aid \(Guernsey and Alderney\) \(Schemes and Miscellaneous Provisions\) Ordinance, 2018 \(consolidated text\).](#)

## **2. The Guernsey Legal Aid Service**

- 2.1. The Guernsey Legal Aid Service (GLAS) was established in September 2001. The GLAS provides funding for legal advice and representation in criminal and civil cases for members of the public who could not otherwise afford those services.
- 2.2. The Ordinance came into force on 1 January 2019, and put the administration of the GLAS onto a statutory footing in accordance with the Legal Aid (Bailiwick of Guernsey) Law, 2003<sup>2</sup> ("the Law").

## **3. The role of the Legal Aid Commissioner**

- 3.1. Part IV of the Ordinance provides for the independent review of the Legal Aid Administrator's decisions in relation to legal assistance. Section 14(1) establishes the Office of the Legal Aid Commissioner, which is independent of the States of Guernsey, the States of Alderney and any of their committees.
- 3.2. A person who is aggrieved by a specified decision of the Legal Aid Administrator may request the Legal Aid Commissioner to review that decision. The specified decisions relate to applications for, and grants of entitlement to, legal assistance under the GLAS Schemes, which are specified in section 19(3) of the Ordinance<sup>3</sup>.
- 3.3. The grounds for an application to review under section 19(3) of the Ordinance are that:
- the decision was ultra vires or there was some other error of law,
  - the decision was unreasonable,
  - the decision was made in bad faith,
  - there was a lack of proportionality, or
  - there was a material error as to the facts, or as to the procedure.

## **4. Term of office and remuneration**

- 4.1. Section 17 of the Ordinance provides that the term of office of the Legal Aid Commissioner is for such term, not exceeding five years, as may be agreed between the Committee and the Commissioner at the time of appointment.

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<sup>2</sup> [The Legal Aid \(Bailiwick of Guernsey\) Law, 2003 \(consolidated text\)](#).

<sup>3</sup> It should be noted that the right for review does not include a refusal of legal aid assistance on the grounds of not meeting the financial criteria. This includes the financial ineligibility of an applicant or the level of contributions that an assisted person is assessed to have to make towards that person's legal costs.

Furthermore, a Commissioner whose term of office has expired is eligible for reappointment.

- 4.2. The term of office of the first Legal Aid Commissioner, Ms Kathryn Macken, expired on 30 September 2022. Ms Macken has confirmed that she does not wish to seek reappointment to the Office.
- 4.3. The Legal Aid Commissioner is not an employee of the States and receives payment, at an hourly rate, only when required to undertake a review. The Commissioner is called upon infrequently. During the last three years, annual expenditure on the Commissioner's fees has been less than £1,500.

## **5. Appointment of a Legal Aid Commissioner**

- 5.1 Following an open recruitment process, the Committee is pleased to recommend Advocate Lisa Claire Evans for appointment to the Office of Legal Aid Commissioner with effect from 1<sup>st</sup> June 2023. Advocate Evans has been a practising lawyer for over 30 years. She is qualified in three jurisdictions, including Guernsey. She has significant court and advisory experience which includes legally aided matters in each jurisdiction. In particular, she has extensive experience of conducting cases involving family and childcare, criminal, employment and housing. Since her arrival in Guernsey in 2009, she has worked for the Law Officers and has also been in private practice. A summary of Advocate Evans' professional experience is appended to this Policy Letter.
- 5.2 The States is asked to note that the Committee has agreed with Advocate Evans that she will hold office for a period of five years, with effect from the aforementioned date, pursuant to Section 17(1) of the Ordinance.

## **6. Proposed amendment to the Ordinance**

- 6.1 Section 16(1) of the Ordinance provides for the appointment of "the Commissioner". Having taken appropriate advice, the Committee considers that this can only mean one person and is therefore concerned that there is no resilience in respect of the function to carry out reviews of decisions of the Legal Aid Administrator. If the Commissioner were to be unavailable due to sickness or an extended holiday, or were to be professionally conflicted in respect of a particular matter, there is currently no alternative person who can undertake the review.
- 6.2 To address this issue, the Committee proposes that the Ordinance is amended to enable the Committee to appoint one or more Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason.

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

- 7.1 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.
- 7.2 In accordance with Rule 4(1)(a), the Committee confirms that this represents business as usual. Therefore, this is not referenced in the Government Work Plan.
- 7.3 In accordance with Rule 4(1)(b), it is confirmed that the Committee has not consulted with other Committees or stakeholders in respect of the propositions set out in this Policy Letter as this is considered unnecessary.
- 7.4 In accordance with Rule 4(1)(c), it is confirmed that the propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- 7.5 In accordance with Rule 4(1)(d), it is confirmed that the cost of the Office is factored into the approved budget for GLAS.
- 7.6 In this Policy Letter, the Committee has set out its proposals for Advocate Lisa Claire Evans to be appointed to the Office of Legal Aid Commissioner and to amend the Ordinance to enable the Committee to appoint Deputy Legal Aid Commissioners to carry out the function of the Commissioner when the holder of that Office is not available or is unable to act for any other reason. The Committee seeks the States support for the propositions, which are based on the Committee's purpose:

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

- 7.7 In accordance with Rule 4(2)(b), 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

**Lisa Evans**

*Advocate and Barrister-at-law*

**Qualifications**

- LL. B (Hons) (1990)
- Barrister – Inner Temple (England & Wales) (1991)
- Barrister – Supreme Court of Queensland (2002)
- Practitioner – High Court of Australia (2003)
- Certificat d'Études Juridiques Françaises et Normandes (2009)
- Advocate – Guernsey Bar (2011)

**Positions/ experience**

**August 2021 – March 2023**

**Guernsey Financial Services Commission, Guernsey** - Senior Legal Counsel

Specialist legal advice to the Commission on laws and regulations relating to regulated entities within the Bailiwick on:

- investments;
- fiduciaries;
- trusts; and
- enforcement matters.

Appearing in Court on behalf of the Commission relation to various applications and appeals including:

- winding up applications;
- administration management applications;
- injunctions; and
- appeals against decisions of Senior Decision Makers.

**April 2017 – July 2020**

**Specsavers Optical Group, Guernsey** - Head of Legal – Dispute Resolution

I led a multi-disciplinary team that provided advice and support to the Specsavers Group of Joint Venture Companies in the UK and ROI. I advised on:

- Regulatory proceedings relating to optometrists & audiologists;
- Breach of contract and contract disputes;
- Disputes relating to Company Law matters in the High Court.
- Employment law.
- Disputes relating to shareholders and director's duties.
- Company Secretary matters relating to company structure.

**February 2015 – March 2017**

**Trinity Chambers, Guernsey** - Advocate and Partner

I specialised in all aspects of general civil law, inquests, family and childcare, housing and criminal law before the Royal Court, Magistrates Court and the Child and Youth Community Tribunal. I undertook both legal aid and privately funded matters.

**March 2009 – February 2015**

**Law Officers of the Crown, Guernsey** - Lawyer and Advocate

I represented States Departments, the States of Alderney and Sark on civil litigation matters including:

- Health and Social Services Department in relation to childcare matters.
- The Office of Convenor in relation to processes and procedure affecting matters before the Child and Youth Community Tribunal.
- The GFSC in relation to Director Disqualification applications, regulatory investigations and breaches of regulatory laws.
- Her Majesty's Greffier in relation to their role and responsibilities as Registrar General.
- The Registrar of Companies on registered company strike offs and winding ups.
- Her Majesty's Procureur in relation to Guardianship applications under the Mental Health (Guernsey) Law, 2010, civil forfeiture matters involving asset recovery, in cross jurisdictional matters involving judgment debts and reciprocal enforcement orders; and in relation to cross jurisdictional requests for assistance from foreign Courts.
- Planning applications and appeals.
- Housing applications and appeals.

**February 2003 – March 2009**

**Department of Justice & Attorney-General, Brisbane** - Senior Principal Lawyer

Member of the management team of the Public Law Group comprising of 26 lawyers and 8 support staff. I provided legal advice and representation on:

- child protection hearings;
- applications relating to dangerous prisoners and sexual offenders;
- large complex commissions of inquiry involving Government Departments.

**March 2002 – February 2003**

**Gilshenan & Luton Lawyers, Brisbane** - In-House Counsel

I advised on a wide variety of matters for both privately funded and legally aided clients, including personal injury litigation, contract disputes and negligence and tortious matters.

**1992 – January 2002**

**Chambers of Rex Tedd QC, St. Philips Chambers, Birmingham** - Barrister

I provided legal advice in relation to personal injury, negligence actions, breach of contract, criminal law, and family and child law.

**1991 – 1992**

**Chambers of Sir James Hunt QC, 1 Kings Bench Walk, Temple** -

Pupil Barrister - training

**ELECTION OF MEMBERS OF THE  
LADIES' COLLEGE BOARD OF GOVERNORS**

The States are asked:

- (1) To re-elect Deputy H. J. R. Soulsby MBE as a member of the Ladies' College Board of Governors, who has been nominated in that behalf by the Chairman, the two States-appointed Governors and the two Governors appointed by the States on the nomination of the Committee *for* Education, Sport & Culture, on the expiry of her current term of office on the 31<sup>st</sup> May 2023.

*N.B. Nominations cannot be made from the floor of the Assembly.*

- (2) To re-elect Mr Brian Acton as a member of the Ladies' College Board of Governors, who need not be a member of the States, on the expiry of his current term of office on 31<sup>st</sup> May 2023, in accordance with Rule 16 of The Rules of Procedure of the States of Deliberation, as set out in Section 1 of The Rules of Procedure of the States of Deliberation and their Committees.

*N.B. Nominations may be made from the floor of the Assembly.*

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

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

No. 17 of 2023

### **THE HIGH HEDGES (GUERNSEY) (AMENDMENT) REGULATIONS, 2023**

In pursuance of section 34(6) of the High Hedges (Guernsey) Law, 2016, “The High Hedges (Guernsey) (Amendment) Regulations, 2023”, made by the Development & Planning Authority on 15th March, 2023, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations amend section 1 of the High Hedges (Guernsey) Law, 2016 so that one tree (whether or not it is a hedge within the ordinary meaning of that word) may be a high hedge to which the Law applies provided that it meets the description in all of paragraphs (a) to (c) of section 1(1) and in section 1(2). A consequential amendment is made to section 35.

These Regulations came into force on 15th March 2023.

No. 18 of 2023

### **THE LAND PLANNING AND DEVELOPMENT (IMMUNITY CERTIFICATE FEE) REGULATIONS, 2023**

In pursuance of section 89(4) of the Land Planning and Development (Guernsey) Law, 2005, “The Land Planning and Development (Immunity Certificate Fee) Regulations, 2023, made by the Development & Planning Authority on 15th March, 2023, are laid before the States.

#### **EXPLANATORY NOTE**

These Regulations revoke and replace the Land Planning and Development (Immunity Certificate Fee) Regulations, 2016. The main effect of the Regulations is to increase the application fee for an immunity certificate under the Land Planning and Development (Enforcement) Ordinance, 2007 from £70 to £250. The current application fee was set in 2016 and the new fee reflects the current cost to the Development & Planning Authority of providing an immunity certificate. The new fee has been calculated following consultation with stakeholders and will apply to applications for immunity certificates made on or after the 27th March, 2023.

These Regulations came into force on 27th March 2023.

No. 19 of 2023

**THE REGULATION OF INVESTIGATORY POWERS (PRESCRIPTION OF OFFICES, RANKS AND POSITIONS) (AMENDMENT) REGULATIONS, 2023**

In pursuance of sections 20(2), 25, 28(1), 36(4), 41 and 65 of the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003, section 20(c)(iv) of the Interpretation and Standard Provisions (Bailiwick of Guernsey) Law, 2016, the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) (Amendment) Regulations, 2023 made by the Committee for Home Affairs on 20 March 2023, is laid before the States.

**EXPLANATORY NOTE**

These Regulations make amendments to the Regulation of Investigatory Powers (Bailiwick of Guernsey) Law, 2003 ("the Law") that reflect the establishment of the Economic and Financial Crime Bureau. They also amend the Schedule to the Regulation of Investigatory Powers (Prescription of Offices, Ranks and Positions) Regulations, 2004, which Schedule prescribes offices, ranks and positions for the purposes of sections 20(2), 25(1), 28(1) and 41(2) of the Law, under which individuals holding such offices, ranks or positions as are prescribed may grant or may be authorised to grant authorisations and notices for the purposes of the Law.

These Regulations come into force on the 20<sup>th</sup> day of March, 2023, which is the day they are made.

No. 20 of 2023

**THE REFORM (GUERNSEY) (AMENDMENT) LAW, 2022 (COMMENCEMENT) REGULATIONS, 2023**

In pursuance of section 4(1) of The Reform (Guernsey) (Amendment) Law, 2022, and all other powers enabling them in that behalf, "The Reform (Guernsey) (Amendment) Law, 2022 (Commencement) Regulations, 2023" made by the States' Assembly & Constitution Committee on 23<sup>rd</sup> March 2023, are laid before the States.

**EXPLANATORY NOTE**

These Regulations bring into force the Reform (Guernsey) (Amendment) Law, 2022 on the 22<sup>nd</sup> May, 2023.

No. 21 of 2023

**THE INCOME TAX (PENSION AMENDMENTS) (REVOCATION) (GUERNSEY) REGULATIONS,  
2023**

In pursuance of section 203 of The Income Tax (Guernsey) Law, 1975, as amended, “The Income Tax (Pension Amendments) (Revocation) (Guernsey) Regulations, 2023”, made by the Policy and Resources Committee on 28<sup>th</sup> March, 2023, are laid before the States.

**EXPLANATORY NOTE**

These Regulations revoke The Income Tax (Pension Amendments) (Guernsey) Regulations, 2023 which made provision in respect of triviality payments from approved pension and annuity schemes.

These Regulations came into force on 1<sup>st</sup> April, 2023.

No. 22 of 2023

**THE PAROCHIAL ELECTIONS (ST PETER PORT) REGULATIONS, 2023**

In pursuance of Articles 54(4) and 77C of the Reform (Guernsey) Law, 1948<sup>a</sup> and all other powers enabling it in that behalf, “The Parochial Elections (St Peter Port) Regulations, 2023” made by the States' Assembly & Constitution Committee on 23<sup>rd</sup> March, 2023, are laid before the States.

**EXPLANATORY NOTE**

These Regulations prescribe the date for the election of two Douzeniers in the Parish of St Peter Port on the 12<sup>th</sup> April, 2023.

These Regulations came into force on the day they were made, 23<sup>rd</sup> March, 2023.

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

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

**THE SOCIAL INSURANCE (RATES OF CONTRIBUTIONS AND BENEFITS ETC.)  
ORDINANCE, 2022 (AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Social Insurance (Rates of Contributions and Benefits etc.) Ordinance, 2022 (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Social Insurance (Rates of Contributions and Benefits etc.) Ordinance, 2022 by substituting the First Schedule setting out rates and amounts of social security benefits.

The effect of the amendment is to increase the current listed rates and amounts of benefits by 2.9% with effect from 3<sup>rd</sup> July, 2023 which is the date on which the Ordinance comes into force.





# **The Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2022 (Amendment) Ordinance, 2023**

**THE STATES**, in pursuance of their Resolutions of the \*\* April, 2023<sup>a</sup>, and in exercise of the powers conferred upon them by sections 19, 48(2), 49(4), 61 and 116 of the Social Insurance (Guernsey) Law, 1978<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the 2022 Ordinance.**

1. (1) The Social Insurance (Rates of Contributions and Benefits etc.) Ordinance, 2022<sup>c</sup> is amended as follows.

(2) For the First Schedule, substitute the First Schedule set out in the Schedule to this Ordinance.

## **Citation.**

4. This Ordinance may be cited as the Social Insurance (Rates of Contributions and Benefits, etc.) Ordinance, 2022 (Amendment) Ordinance, 2023.

## **Extent.**

5. This Ordinance shall have effect in the Islands of Guernsey, Alderney,

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<sup>a</sup> Article V of Billet d'État No. VI of 2023.

<sup>b</sup> Ordres en Conseil Vol. XXVI, p. 292. This enactment has been amended.

<sup>c</sup> Ordinance No. XXV of 2022.

Herm and Jethou.

**Commencement.**

6. (1) This Ordinance shall come into force on the 3<sup>rd</sup> July, 2023.

# SCHEDULE

Section 1(2)

## "FIRST SCHEDULE

Section 7

### RATES AND AMOUNTS OF BENEFITS

#### PART I

**Benefit, other than industrial disablement benefit, death grant,  
maternity grant, adoption grant and bereavement payment**

Description of Benefit (1)	Weekly rate (2)	Increase for adult dependant (where payable) (3)
1. Industrial injury benefit	£189.49	Nil
2. Incapacity benefit	£227.71	Nil
3. Maternal health allowance	£257.95	
4. Newborn care allowance	£257.95	
5. Parental allowance	£257.95	
6. States pension:		
(a) payable to a woman by virtue of her husband's insurance while he is alive	£128.97	-
(b) in any other case	£257.48	£128.97
7. Sickness benefit	£189.49	Nil
8. Unemployment benefit	£189.49	Nil
9. Widowed parent's allowance	£270.76	-

10. Widow's pension/Bereavement allowance	£232.82	-
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## PART II

### Industrial disablement benefit

Degree of disablement	Weekly rate
100%	£207.49
90%	£186.74
80%	£165.99
70%	£145.24
60%	£124.49
50%	£103.74
40%	£83.00
30%	£62.25
20%	£41.50

### PART III

#### Death grant, maternity grant, adoption grant and bereavement payment

Description of grant	Amount
1. Death grant	£741
2. Maternity grant	£474
3. Adoption grant	£474
4. Bereavement payment	£2,339".

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

**THE INCOME SUPPORT (IMPLEMENTATION) (AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Income Support (Implementation) (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the Income Support (Implementation) Ordinance, 1971 to substitute Tables 1 to 4 in the Appendix to the First Schedule to the 1971 Ordinance. It also amends paragraph 6 of that First Schedule relating to rent.

The effect of the amendments is to amend the short term and long-term requirement rates on which the calculation of income support is based, related rent allowances added in calculating a claimant's requirements and the level of personal allowances for people in residential homes who are in receipt of income support (sections 2 and 3 and the Schedule). It also increases the limit of weekly income support payable for persons in residential and nursing homes.

All rates and allowances are increased by 2.9% with effect from 7<sup>th</sup> July, 2023 which is the date the Ordinance comes into force.





# **The Income Support (Implementation) (Amendment)**

## **Ordinance, 2023**

**THE STATES**, in pursuance of their Resolutions of the \*\* April, 2023<sup>a</sup>, and in exercise of the powers conferred on them by sections 3(2) and (4), 15 and 15B of the Income Support (Guernsey) Law, 1971<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

### **Amendment of Ordinance.**

1. The First Schedule (including its Appendix) to the Income Support (Implementation) Ordinance, 1971<sup>c</sup> is amended as follows.

2. In paragraph 6 (rent), in subparagraphs (1)(b) and (2A)(a), for "£86.00" substitute "£88.50".

3. For Tables 1 to 4 set out in the Appendix to the First Schedule, substitute the numbered Tables 1 to 4 set out in the Schedule to this Ordinance.

### **Extent.**

4. This Ordinance has effect in the Islands of Guernsey, Alderney, Herm and Jethou.

### **Repeal.**

5. The Income Support (Implementation) (Amendment) (No. 2)

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<sup>a</sup> Article V of Billet d'État No. VI of 2022.

<sup>b</sup> Ordres en Conseil Vol. XXIII, p. 26. This enactment has been amended.

<sup>c</sup> Recueil d'Ordonnances Tome XVII, p. 139. This enactment has been amended.

Ordinance, 2022<sup>d</sup> is repealed.

**Citation.**

6. This Ordinance may be cited as the Income Support (Implementation) (Amendment) Ordinance, 2023.

**Commencement.**

7. This Ordinance shall come into force on the 7<sup>th</sup> July, 2023.

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<sup>d</sup> Ordinance No. XXXVIII of 2022.

## SCHEDULE

Section 3

"Table 1

(Paragraph 3)

Limitation of weekly benefit payable for certain persons as from the week  
commencing 7<sup>th</sup> July, 2023

<i>Residential home</i>	<i>Nursing Home, etc</i>	<i>Personal Allowance</i>	<i>UK Personal Allowance</i>
£659.00	£947.00	£45.05	£63.68

Table 2

(Paragraph 5(1) and (2))

Short-term Weekly Requirements as from week commencing

7<sup>th</sup> July, 2023

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ")	£249.84
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ")	£149.77
Person who is not a householder (" <b>Non-householder</b> ") -	£114.31
Member of a household -	
Aged 11 years or over	£109.66
Aged 5 years or over but less than 11	£85.83
Aged less than 5 years	£70.37

Table 3

(Paragraph 5(2) and (2A))

Long-term Weekly Requirements as from week commencing

7<sup>th</sup> July, 2023

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ")	£355.52
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ")	£213.83
Person who is not a householder (" <b>Non-householder</b> ") -	£162.81
Member of a household -	
Aged 11 years or over	£124.90
Aged 5 years or over but less than 11	£95.02
Aged less than 5 years	£82.95

Table 4

(Paragraph 6(4))

Maximum Rent Allowances as from week commencing

7<sup>th</sup> July, 2023

<i>Description</i>	<i>Amount</i>
Married couple or other persons falling within paragraph 2(1) (" <b>Couple</b> ") with no child dependants	£263.57
Person not falling within paragraph 2(1) who is directly responsible for household necessities and rent (if any) (" <b>Single householder</b> ") with no child dependants	£263.57
Couple or Single householder with one child dependant	£306.16
Couple or Single householder with two child dependants	£389.77
Couple or Single householder with three or more child dependants	£476.47
Person living in shared accommodation	£204.05".

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

**THE LONG-TERM CARE INSURANCE (GUERNSEY) (RATES) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Long-Term Care Insurance (Guernsey) (Rates) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends rates of Long-term care benefit and the weekly contribution which a claimant must make, towards the cost of the claimant's care, under the Long-term Care Insurance (Guernsey) Law, 2002, with effect from 3<sup>rd</sup> July, 2023 which is the date on which the Ordinance comes into force. The long-term care benefit rates and the weekly contribution or co-payment from claimants are increased by 2.9%.





# **The Long-term Care Insurance (Guernsey) (Rates)**

## **Ordinance, 2023**

**THE STATES**, in pursuance of their Resolution of the \*\* April 2023<sup>a</sup>, and in exercise of the powers conferred on them by sections 5 and 31 of the Long-term Care Insurance (Guernsey) Law, 2002<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

### **Rates of benefit.**

1. (1) The maximum weekly rates of care benefit shall be -
  - (a) for persons resident in a residential home -
    - (i) £586.81, or
    - (ii) where also receiving EMI care, £767.06, and
  - (b) for persons resident in a nursing home or the Guernsey Cheshire Home, £1,058,75.
- (2) The maximum weekly rates of respite care benefit shall be -
  - (a) for persons receiving respite care in a residential home -
    - (i) £902.16, or

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<sup>a</sup> Article V of Billet d'État No. VI of 2023.

<sup>b</sup> Order in Council No. XXIII of 2002. This enactment has been amended.

(ii) where also receiving EMI care, £1,082.41, and

(b) for persons receiving respite care in a nursing home or the Guernsey Cheshire Home, £1,374.10.

**Co-payment by way of contribution.**

2. The weekly co-payment which a claimant shall make by way of contribution towards or for the cost of that claimant's care -

(a) as a condition of the right to care benefit, and

(b) which shall be taken into account for the purposes of determining the rate of care benefit,

shall be £315.35.

**Interpretation.**

3. In this Ordinance, unless the context requires otherwise -

"EMI care" means care which, in the opinion of the Administrator, is necessary to meet the needs of a person who is assessed by the Panel as having the characteristics of an elderly and mentally infirm person, and

"nursing home" and "residential home" have the meanings given by section 18(1) of the Nursing Homes and Residential Homes (Guernsey) Law, 1976<sup>c</sup>.

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<sup>c</sup> Ordres en Conseil Vol. XXVI, p. 71. This enactment has been amended.

**Repeal.**

4. The Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2022<sup>d</sup> is repealed.

**Citation.**

5. This Ordinance may be cited as the Long-term Care Insurance (Guernsey) (Rates) Ordinance, 2023.

**Extent.**

6. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

**Commencement.**

7. This Ordinance shall come into force on the 3<sup>rd</sup> July, 2023.

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<sup>d</sup> Ordinance No. XXVI of 2022.

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

**THE SEVERE DISABILITY BENEFIT AND CARER'S ALLOWANCE ORDINANCE, 2022  
(AMENDMENT) ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Severe Disability Benefit and Carer's Allowance Ordinance, 2022 (Amendment) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends section 3 of the Severe Disability Benefit and Carer's Allowance Ordinance, 2022 to substitute the weekly rates of severe disability benefit and carer's allowance under the Severe Disability Benefit and Carer's Allowance (Guernsey) Law, 1984 with effect from the 3<sup>rd</sup> July, 2023 which is the date on which the Ordinance comes into force. The rates of severe disability benefit and the annual income limits are increased by 2.9%.



# **The Severe Disability Benefit and Carer's Allowance Ordinance, 2022 (Amendment) Ordinance, 2023**

**THE STATES**, in pursuance of their Resolution of the \*\* April, 2023<sup>a</sup>, and in exercise of the powers conferred upon them by sections 3 and 23 of the Severe Disability and Carer's Allowance (Guernsey) Law, 1984<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## **Amendment of the 2022 Ordinance.**

1. (1) The Severe Disability Benefit and Carer's Allowance Ordinance, 2022<sup>c</sup> is amended as follows.

(2) In section 3 (rates of allowances) -

(a) in subsection (1), for "£121.52" substitute "£125.02", and

(b) in subsection (2), for "£101.09" substitute "104.02".

## **Citation.**

2. This Ordinance may be cited as the Severe Disability Benefit and Carer's Allowance Ordinance, 2022 (Amendment) Ordinance, 2023.

## **Extent.**

3. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

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<sup>a</sup> Article V of Billet d'État No. VI of 2023.

<sup>b</sup> Ordres en Conseil Vol. XXVIII p. 353. This enactment has been amended.

<sup>c</sup> Ordinance No. XXXVII of 2022.

**Commencement.**

4. This Ordinance shall come into force on the 3<sup>rd</sup> July, 2023.

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

**THE FAMILY ALLOWANCES ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Family Allowances Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance amends the rate of family allowance under the Family Allowances (Guernsey) Law, 1950 with effect from 3<sup>rd</sup> July, 2023 which is the date on which the Ordinance comes into force. On and from that date the rate will be £16.30 a week. The rate is increased by 2.9% from the current rate.





# The Family Allowances Ordinance, 2023

THE STATES, in pursuance of their Resolution of the \*\* April, 2023<sup>a</sup>, and in exercise of the powers conferred upon them by sections 1 and 3 of, and paragraph 1 of the Schedule to, the Family Allowances (Guernsey) Law, 1950<sup>b</sup>, and all other powers enabling them in that behalf, hereby order:-

## Amount of allowance.

1. The amount of allowance referred to in section 1(1) of the Family Allowances) Law, in respect of each child in the family is at the rate of £16.30 a week.

## Amount as to contribution to the cost of providing for a child.

2. (1) The rate of contribution to the cost of providing for a child, for the purposes of section 3(2) of the Family Allowances Law, is £16.30 a week or more.

(2) The rate of contribution to the cost of providing for a child, for the purposes of the proviso to paragraph 1(1) of the Schedule to the Family Allowances Law, is £16.30 a week.

## Interpretation.

3. In this Ordinance, "**the Family Allowances Law**" means the Family Allowances (Guernsey) Law, 1950.

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<sup>a</sup> Article V of Billet d'État No. VI of 2022.

<sup>b</sup> Ordres en Conseil Vol. XIV, p. 332. This enactment has been amended.

**Repeal.**

4. The Family Allowances Ordinance, 2022<sup>c</sup> is repealed.

**Citation.**

5. This Ordinance may be cited as the Family Allowances Ordinance, 2023.

**Extent.**

6. This Ordinance shall have effect in the Islands of Guernsey, Alderney, Herm and Jethou.

**Commencement.**

7. This Ordinance shall come into force on the 3<sup>rd</sup> July, 2023.

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<sup>c</sup> Ordinance No. XXXVI of 2022.

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

**THE CRIMINAL JUSTICE (DEFENCE CASE STATEMENTS) (BAILIWICK OF GUERNSEY)  
ORDINANCE, 2023**

The States are asked to decide:-

Whether they are of the opinion to approve the draft Ordinance entitled "The Criminal Justice (Defence Case Statements) (Bailiwick of Guernsey) Ordinance, 2023", and to direct that the same shall have effect as an Ordinance of the States.

**EXPLANATORY MEMORANDUM**

This Ordinance creates defence disclosure obligations in criminal cases. The aim of this Ordinance is to ensure the prompt clarification of issues in dispute, resulting in a focused approach to criminal litigation that reduces the risk of unnecessary delays and prevents resources being spent on issues that are not contested. There are broadly similar provisions in place in Jersey, and England and Wales. The obligation will arise in all cases going to a contested trial, whether in a court of summary jurisdiction or on indictment (section 1).

The obligation is met by submitting a defence case statement ("DCS") to the court and the prosecution (section 3). A DCS need only be served after the defendant has received the case papers and disclosable unused material from the prosecution, meaning the defendant is fully informed prior to submitting the DCS. There is an obligation to provide an updated DCS where a defendant or their legal representative becomes aware of a material change (section 4).

The DCS will set out the nature of the defence, the facts in dispute and why, any points of fact or law on which the defendant intends to rely, details of any alibi, and details of any other witness whom the defendant intends to call (sections 5 and 6).

The defendant will be obliged to sign the DCS to confirm that they either authored the document or have read the document (or have had it read to them) and agree with the contents (section 3(7)). The aim of this provision is to prevent any accusation from a defendant that the contents of the DCS are contrary to the instructions they gave to their legal representative, and so protects the defendant and their legal representative by ensuring that the defendant has expressly confirmed those contents. The court can waive this signature requirement for exceptional reasons, such as where a defendant is unable to sign due to ill health or disability.

The presiding trial judge will have a power to direct that the finder of fact be given a copy of the DCS (edited if necessary) where this would help the finder of fact to

understand the case or resolve any issue in the case (section 7). The “finder of fact” will be the presiding judge in a Magistrate’s Court trial, or a panel of jurats in a Royal Court trial.

If a defendant fails to fully comply with the duty to provide a DCS, two consequences may flow from that failure (section 9). The first consequence is that the court or another party may comment on the failure, although the Ordinance contains the safeguard that a party may require permission of the court before they can make such comment, depending on the nature of the failure. The second consequence is that the finder of fact can draw such adverse inferences as appear proper in deciding whether the defendant is guilty. The phrase “as appear proper” gives the court considerable flexibility to ensure a fair and just outcome having regards to the particular circumstances of the case. The court is obliged to consider whether there is any justification for the failure before drawing such an adverse inference. It is also important to note that this adverse inference is not sufficient on its own to establish the defendant's guilt.

# **The Criminal Justice (Defence Case Statements) (Bailiwick of Guernsey) Ordinance, 2023**

**THE STATES**, in pursuance of their Resolution of the 30<sup>th</sup> September, 2022<sup>a</sup>, and in exercise of the powers conferred on them by sections 85 and 93 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003<sup>b</sup> and all other powers enabling them in that behalf, hereby order:-

## **Application.**

1. (1) The provisions of this Ordinance apply to all criminal proceedings commenced after this Ordinance comes into force, before any court in the Bailiwick in which a not guilty plea is entered, unless (for any reason) that not guilty plea is not going to be the subject of a contested trial.

(2) Where there is more than one defendant in any proceedings, the provisions of this Ordinance apply separately in relation to each defendant who has entered a plea as described in subsection (1).

## **Duty of the prosecution to furnish a written statement concerning unused material.**

2. (1) Subject to subsection (3), the prosecution must -

(a) continue to disclose to the defendant, in accordance with existing custom and practice, any unused prosecution material which has not previously been disclosed to the defendant and which might reasonably

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<sup>a</sup> Article X of Billet d'Etat No. XVII of 2022.

<sup>b</sup> Order in Council No. XXIII of 2003; this enactment has been amended.

be considered capable of undermining or weakening the case for the prosecution or of assisting the case for the defendant ("**the disclosure test**"), and

- (b) give to the defendant a written statement confirming -
  - (i) that all unused prosecution material of a description mentioned in subsection (1)(a) has been disclosed to the defendant, or
  - (ii) that the prosecution holds no material of such a description.

(2) The prosecution must carry out the steps described in subsection (1) after the defendant has formally entered a not guilty plea and in accordance with any directions given by the court as to the service of that material.

- (3) For the avoidance of doubt, nothing in subsection (1) affects -
  - (a) the existing right of the prosecution to apply to the court for an order that it is not in the public interest to disclose certain unused prosecution material,
  - (b) any prohibition on disclosure in criminal proceedings imposed by any other enactment, or
  - (c) the prosecution's continuing duty under existing custom and practice to disclose any unused prosecution material, including material relevant to

any matters set out in the defendant's defence case statement, until the defendant's case is concluded.

(4) The prosecution's duty referred to in subsection (3)(c) includes a duty to consider whether a defence case statement received by one defendant satisfies the disclosure test in respect of a co-defendant, and so should be disclosed to that co-defendant.

**Duty to give a defence case statement.**

3. (1) Where -

- (a) the prosecution has served on the defendant a copy of the set of documents containing the evidence which is the basis of the charge,
- (b) the prosecution have complied with, or have purported to comply with, their obligation to disclose unused prosecution material, and
- (c) the written statement referred to in section 2(1)(b) has been given to the defendant,

the defendant must, subject to subsection (8), give a defence case statement to the court and the prosecution.

(2) The defence case statement must be served within 21 days of receipt of the statement referred to in section 2(1)(b), unless the court extends this period on application by the defendant, in which case the court will specify the number of days this period is extended by.



(3) Where the court grants an extension under subsection (2), it may further extend that period upon further application by the defendant, and there is no limit on the number of times that the defendant can make such an application for a further extension.

(4) An application for an extension under subsection (2) or further extension under subsection (3) must -

(a) be made before the period for providing a defence case statement expires, unless the court permits an application to be made to it after that period on the grounds that there is a good reason for -

(i) the failure to apply before the expiry of that period, and

(ii) any delay since then in applying for an extension,

(b) specify the grounds on which it is made, and

(c) state the number of days by which the defendant wishes the relevant period to be extended.

(5) The court will only grant an extension under subsection (2) or further extension under subsection (3) if it would be unreasonable to require the defendant to give a defence case statement within the period that would be applicable but for that extension or further extension, as the case may be.

(6) The defence case statement must -

- (a) if a form is prescribed, be in that form,
- (b) contain the particulars set out in section 5,
- (c) if a manner of service is prescribed, be served in that manner.

(7) Unless for exceptional reasons (such as due to a defendant's ill health or disability) a court directs otherwise, a defence case statement must be signed by the defendant personally, whether or not it is also signed by their legal representative, and that signature must be accompanied by a statement that the defendant either -

- (a) authored the document, or
- (b) has read through the document, or has had the document read to them, and agrees with its content.

(8) If the defendant has no legal representative the court may, on application by the defendant or of the court's own motion, dispense with the requirement to give a defence case statement.

(9) In any case where -

- (a) the court has dispensed with the requirement to give a defence case statement under subsection (8), and
- (b) the defendant subsequently instructs a legal representative in connection with those criminal proceedings,

either the defendant or that legal representative must, within seven days or prior the start of the defendant's trial (whichever is sooner), notify the court of that instruction.

(10) Should the defence fail to comply with subsection (9), the court may disregard any dispensation under subsection (8) when assessing, for the purpose of section 9, the defendant's compliance with the duties imposed under this Ordinance.

(11) Upon receipt of a notification under subsection (9), the court must reassess whether the dispensation should continue and, if it determines it should not continue, must set a date for the service of a defence case statement, which shall be treated as an extension under subsection (2).

(12) Where a period stipulated in subsections (2) or (3) would end on a day that is not a business day, it will instead end on the next business day.

(13) The Committee may, by regulations, amend the period stipulated in subsection (2).

**Duty to update a defence case statement.**

4. (1) Until the defendant's case is concluded, the defendant must give an updated defence case statement to the court and the prosecution whenever the defendant, or their legal representative, becomes aware of a material change in respect of any matter that must be disclosed in a defence case statement.

(2) Without prejudice to the generality of subsection (1), a material change includes -

- (a) where a defendant, or their legal representative, is made aware that the content of the defence case statement is no longer accurate in any respect,
- (b) where a defendant, or their legal representative, has discovered information that the defendant would have had to include in the defence case statement, including the witness notice, if the defendant had been aware of that information when giving the defence case statement,
- (c) a decision by the defendant to call a person (other than themselves) who is not included in the witness notice as a proposed witness, or a decision not to call a person who is so included.

(3) An updated defence case statement given in accordance with subsection (1) is subject to the provisions of sections 3(6), 3(7), 5 and 6 as though any reference in those sections to a defence case statement is instead a reference to an updated defence case statement under this section.

(4) Where an updated defence case statement is required under subsection (1), it must be given by the defendant to the court and the prosecution as soon as possible and in any event within seven days of the defendant or their legal representative, as the case may be, becoming aware of the material change, unless the court extends this period on application by the defendant, in which case the court will specify the number of days this period is extended by.

(5) An application for an extension under subsection (4) must -

- (a) be made as soon as reasonably practicable after it becomes apparent to the defendant, or their legal representative, that the defendant will be unable to file the updated defence case statement within seven days,
- (b) specify the grounds on which it is made, and
- (c) state the number of days by which the defendant wishes the relevant period to be extended.

(6) Where the court grants an extension under subsection (4), it may further extend that period upon further application by the defendant, and there is no limit on the number of times that the defendant can make such an application for a further extension.

(7) An application for a further extension under subsection (6) must -

- (a) be made before the period for providing an updated defence case statement would otherwise expire, unless the court permits an application to be made to it after that period on the grounds that there is a good reason for –
  - (i) the failure to apply before the expiry of that period, and
  - (ii) any delay since then in applying for an extension,

- (b) specify the grounds on which it is made, and
- (c) state the number of days by which the defendant wishes the relevant period to be extended.

(8) The court will only grant an extension under subsection (4) or further extension under subsection (6) if it would be unreasonable to require the defendant to give an updated defence case statement within the period that would be applicable but for that extension or further extension, as the case may be.

(9) Where a period stipulated in subsection (4) or (6) would end on a day that is not a business day, it will instead end on the next business day.

(10) The Committee may, by regulations, amend the period stipulated in subsection (4).

**Content of a defence case statement.**

5. (1) A defence case statement is a written statement which -
- (a) sets out the nature of the defence, including any particular defences on which the defendant intends to rely,
  - (b) indicates the matters of fact on which the defendant takes issue with the prosecution,
  - (c) sets out, in the case of each such matter of fact, why the defendant takes issue with the prosecution,

- (d) sets out particulars of the matters of fact on which the defendant intends to rely for the purposes of their defence,
- (e) indicates any point of law (including any point as to the admissibility of evidence or an abuse of process) which the defendant wishes to take, and any authority on which the defendant intends to rely for that purpose, and
- (f) contains a witness notice that complies with section 6.

(2) A defence case statement that discloses an alibi must give particulars of that alibi, including -

- (a) the name, address and date of birth of any witness the defendant believes is able to give evidence in support of the alibi, or as many of those details as are known to the defendant when the defence case statement is given, and
- (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the defence case statement is given.

**Witness notice forming part of a defence case statement.**

6. (1) The defence case statement must include a notice indicating whether the defendant intends to call any person (other than themselves), including a

person mentioned in section 5(2), as a witness at the defendant's trial and, if so, such a notice ("**witness notice**") must include the following particulars -

- (a) the name, address and date of birth of each such proposed witness, or as many of those details as are known to the defendant when the witness notice is given, and
- (b) any information in the defendant's possession which might be of material assistance in identifying or finding any such proposed witness in whose case any of the details mentioned in paragraph (a) are not known to the defendant when the notice is given.

(2) The particulars mentioned in subsection (1) do not have to be given under this section to the extent that they have already been given under section 5(2).

**Provision of the defence case statement to the finder of fact.**

7. (1) The presiding judge in a trial may direct that the finder of fact be given a copy of the defence case statement and, if they do so, may direct that it be edited so as not to include references to matters evidence of which would be inadmissible.

(2) A direction under subsection (1) -

- (a) may be made either of the presiding judge's own motion or on the application of any party, and



- (b) may be made only if the judge is of the opinion that seeing a copy of the defence case statement would help the finder of fact to understand the case or to resolve any issue in the case.

**Warning at a pre-trial hearing.**

8. (1) If, at any hearing that takes place between the service of a defence case statement and the start of the trial, it appears to a presiding judge that the defendant has failed to comply fully with this Ordinance, so that there is a possibility of comment being made or inferences drawn under section 9(2), the judge must warn the defendant accordingly.

(2) A failure to provide a warning under subsection (1) does not of itself prohibit comment from being made or inferences from being drawn under section 9(2).

(3) The giving of a warning under subsection (1), or a failure to give such a warning, may be taken into account by the court in doing anything under section 9(2) or in deciding whether to do anything under it, or in deciding whether to grant leave under section 9(3).

**Non-compliant defence case statements.**

9. (1) This section applies where a defendant -

- (a) fails to give an initial defence case statement containing the particulars required under section 5,
- (b) provides the defence case statement beyond any applicable time periods under sections 3(2), 3(3), 4(4) or 4(6).

- (c) fails to give an updated defence case statement in circumstances where one is required by section 4(1), or gives one that does not cover every material change,
- (d) sets out inconsistent defences in the defence case statement,
- (e) at the defendant's trial -
  - (i) puts forward a defence which was not mentioned in the defence case statement or is different from any defence set out in that statement,
  - (ii) relies on a matter or any particular of any matter of fact which, in contravention of section 5, was not mentioned in the defence case statement,
  - (iii) adduces evidence in support of an alibi without having given particulars of the alibi in the defence case statement,
  - (iv) calls a witness to give evidence in support of an alibi without having complied with section 5(2) as regards the witness in the defence case statement, or

- (v) calls a witness (other than themselves) not included, or not adequately identified, in a witness notice.

(2) Where this section applies -

- (a) the court or, subject to subsections (3) and (4), any other party, may make such comment as appears appropriate, and
- (b) the finder of fact may draw such inferences as appear proper in deciding whether the defendant is guilty of the offence concerned.

(3) Where -

- (a) this section applies by virtue of subsection (1)(e)(ii) and the matter that was not mentioned is a point of law (including any point as to the admissibility of evidence or an abuse of process) or an authority, or
- (b) this section applies by virtue of subsection (1)(b) or (1)(e)(v),

comment by another party under subsection (2)(a) may only be made with the leave of the court.

(4) Where the defendant puts forward a defence which is different from any defence set out in the defence case statement, in doing anything under

subsection (2) or in deciding whether to do anything under it, the court must have regard to -

- (a) the extent of the difference in the defences, and
- (b) whether there is any justification for it.

(5) Where the defendant calls a witness whom the defendant has failed to include, or to identify adequately, in a witness notice, in doing anything under subsection (2) or in deciding whether to do anything under it, or in deciding whether to grant leave under subsection (3), the court must have regard as to whether there is any justification for the failure.

(6) A defendant must not be convicted of an offence solely on an inference drawn under subsection (2)(b).

**Subordinate Legislation.**

10. (1) In addition to the powers expressed in sections 3(13) and 4(10), the Committee may by regulation provide for -

- (a) the form of defence case statements, and
- (b) the method of service to be used for giving defence case statements.

(2) Regulations under this section -

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

- (b) may contain such consequential, incidental, supplemental and transitional provision as may appear to the Committee to be necessary or expedient, and
- (c) must be laid before a meeting of the States as soon as possible and must, if at that or at the next meeting the States resolve to annul them, cease to have effect, but without prejudice to anything done under them or to the making of new regulations.

**Interpretation.**

11. In this Ordinance -

"**the Committee**" means the States Committee for Home Affairs,

a reference simply to a "**defence case statement**" is a reference -

- (a) where the defendant has given only an initial defence case statement, to that statement,
- (b) where the defendant has given both an initial and an updated defence case statement, to the updated defence case statement,

with the exception of section 3, in which "**defence case statement**" always means an initial defence case statement,

"**evidence in support of an alibi**" is evidence tending to show that by reason of the presence of the defendant at a particular place or in a particular

area at a particular time the defendant was not, or was unlikely to have been, at the place where the offence is alleged to have been committed at the time of its alleged commission,

**"finder of fact"** means a judge or panel of jurors (as the case may be) tasked with determining whether facts have been proven to the requisite standard in a criminal trial and, for the avoidance of doubt, the presiding judge and the finder of fact can be the same person,

**"initial defence case statement"** means the first defence case statement given by the defendant under section 3(1),

**"prescribed"** means prescribed by regulations,

**"updated defence case statement"** means a defence case statement given by the defendant under section 4(1), and

**"witness notice"** means that part of a defence case statement referred to in section 6.

**Citation.**

12. This Ordinance may be cited as the Criminal Justice (Defence Case Statements) (Bailiwick of Guernsey) Ordinance, 2023.

**Commencement.**

13. This Ordinance shall come into force on the 26<sup>th</sup> May, 2023.

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

**POLICY & RESOURCES COMMITTEE**

**THE GRANT OF ROYAL ASSENT TO PROJETS DE LOI, COUNSELLORS OF STATE AND  
OTHER CONSTITUTIONAL MATTERS**

The States are asked to decide: -

Whether, after consideration of the Policy Letter entitled 'The Grant of Royal Assent to Projets de Loi, Counsellors of State and other Constitutional Matters', they are of the opinion: -

1. To agree that Royal Assent for Projets de Loi approved by a Bailiwick legislature may be granted by His Excellency the Lieutenant-Governor of the Bailiwick, on behalf of the King-in-Council (as set out in Section 7 of the Policy Letter).
2. To direct the Policy & Resources Committee to liaise with the Lieutenant-Governor, the Bailiff, the Ministry of Justice and the authorities in Alderney and Sark on the practical and legislative arrangements that will be required to give effect to Proposition 1 and to authorise the Committee to agree to those arrangements on behalf of the States.
3. To signify their agreement to the substance of the proposed Order in Council required to implement Proposition 1, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
4. In Resolution 1 of Article XV of Billet d'État No. I of 2016, relating to the Policy Letter entitled "Proposal to Achieve Greater Autonomy in the Legislative Process and International Affairs for Guernsey", to delete the words "the granting of Royal Sanction;".
5. To acknowledge that the Counsellors of State Act 2022, regarding the addition of further Counsellors of State, has effect in Guernsey (and the whole Bailiwick of Guernsey) by necessary implication.
6. To signify their agreement to the substance of the Counsellors of State Act 2022 insofar as it has effect in Guernsey by necessary implication, for the purposes of Article 72A of the Reform (Guernsey) Law, 1948, as amended.
7. To note the contents of the remainder of the Policy Letter.

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

**POLICY & RESOURCES COMMITTEE**

THE GRANT OF ROYAL ASSENT TO PROJETS DE LOI, COUNSELLORS OF STATE  
AND OTHER CONSTITUTIONAL MATTERS

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

Date 31<sup>st</sup> March, 2023

Dear Sir

**1 Executive Summary**

- 1.1 Significant constitutional events, including the death of Her Majesty Queen Elizabeth II, have recently taken place in the United Kingdom which affect, or have the potential to affect, Guernsey and the Bailiwick. In light of this, the Policy & Resources Committee ("the Committee") has continued to progress Resolutions relating to the work of Guernsey's Constitutional Investigation Committee ("CIC"), as well as further reviewing the Island's constitutional position and developing proposals to reflect relevant changes.
- 1.2 Royal Assent is currently granted to Projets de Loi ("Projets") by HM The King acting through the Privy Council<sup>1</sup>. This process relies on regular meetings of the Privy Council, and timely review of Projets by UK Ministers (acting in their capacity as Privy Counsellors). These reviews are limited to the compliance with the international obligations that extend to the Bailiwick.
- 1.3 This Policy Letter proposes that an alternative Royal Assent process should be introduced whereby His Excellency the Lieutenant-Governor can grant Royal Assent on behalf of the Privy Council, unless the Projet is specifically reserved for consideration by the Privy Council. In order to permit the Lieutenant-Governor to do so, an Order in Council is required which would set out the process. This alternative process for granting Royal Assent should result in faster processing of legislation, would not be reliant on existing schedules for Privy Council meetings, and would also underline the Bailiwick's domestic legislative autonomy and international identity.

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<sup>1</sup> Although it is formally the "King-in-Council" who grants Royal Assent to Projets de Loi, this Policy Letter will use the familiar term "the Privy Council" for ease of understanding.



- 1.4 The Policy Letter also provides information about the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order, 2022 (made to ensure continuity of the current Royal Assent process for the approval of Projets following the death of Her Majesty Queen Elizabeth II), the addition of further Counsellors of State and progress undertaken following the States' Resolutions relating to the CIC's work.
- 1.5 This Policy Letter also formally seeks the agreement of the States to the substance of (a) the Order in Council which will implement the alternative Royal Assent process, and (b) the Counsellors of State Act 2022 which adds further additional Counsellors of State, for the purposes of article 72A of the Reform (Guernsey) Law 1948, as amended<sup>2</sup> (see paragraph 11.3).

## **2 Background to the review of the Royal Assent process for Projets de Loi**

- 2.1 In 2014/15, the CIC considered whether to change the model by which Royal Assent is granted for Projets. It was formed in January 2014<sup>3</sup>, following earlier decisions of the States of Deliberation<sup>4</sup>, to investigate proposals for Guernsey to achieve greater autonomy in relation to the legislative process and international affairs more generally.
- 2.2 The CIC's considerations and recommendations were detailed in a 2016 Policy Letter<sup>5</sup>. The States agreed with the CIC's recommendations to change the model for Royal Assent and made relevant Resolutions on 27<sup>th</sup> January 2016.
- 2.3 The CIC was dissolved on 30<sup>th</sup> April 2016. Thereafter, the Policy & Resources Committee took over the responsibility to progress the Resolutions relating to the CIC's work<sup>6</sup>. Appendix 1 sets out further background to this work.

## **3 Current Royal Assent process for Projets de Loi**

- 3.1 The Channel Islands have formally been possessions of the English Crown for approximately 800 years. In order to govern the Islands, the Sovereign originally made Orders in Council under the Royal Prerogative, but this approach was

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<sup>2</sup> [Reform \(Guernsey\) Law, 1948](#). The equivalent Sark provision is set out in section 63A of the [Reform \(Sark\) Law, 2008](#).

<sup>3</sup> [Billet d'État I of 2014, Article V](#) and [Resolutions of 30<sup>th</sup> January, 2014](#).

<sup>4</sup> [Billet d'État XVIII of 2013 \(Volume I\), Article II](#) and [Resolutions of 26<sup>th</sup> September, 2013](#).

<sup>5</sup> [Billet d'État I of 2016, Article XV](#) and [Resolutions of 27<sup>th</sup> January, 2016](#).

<sup>6</sup> For Resolution 3 (proposal to amend the Reform (Guernsey) Law, 1948), the CIC was initially responsible for progressing the work (January 2016-June 2017); that responsibility was then transferred to the Policy & Resources Committee.

eventually superseded by the grant of Royal Assent to Projets approved by Bailiwick legislatures<sup>7</sup>.

- 3.2 Currently, where a Bailiwick legislature<sup>8</sup> approves a Projet, it is sent through official channels for (a) consideration by the Lord Chancellor and (b) the grant of Royal Assent by the Privy Council. Each Projet is accompanied by an explanatory memorandum prepared by the Law Officers of the Crown setting out the Projet's purpose and confirming its compliance with existing international obligations.
- 3.3 The Committee for the Affairs of Jersey and Guernsey, which was previously established by a 1952 Order in Council<sup>9</sup>, reports on each Projet submitted to the Privy Council and, assisted by the scrutiny already undertaken by or on behalf of the Lord Chancellor, advises whether Royal Assent should be granted to that legislation.
- 3.4 Following the grant of Royal Assent, the Clerk to the Privy Council signs the Order in Council which is then transmitted via official channels for registration in the Royal Court, along with the relevant Projet. At the direction of the Royal Court, Orders in Council applying to Alderney and/or Sark are then transmitted by His Majesty's Greffier to the Clerk of the Court of Alderney and to the Seneschal of Sark (as relevant) for registration on the records of those islands.
- 3.5 Jersey follows a similar process to the Bailiwick for the approval of its legislation and Royal Assent, as noted by the CIC in its 2016 report.<sup>10</sup>
- 3.6 Although the current process works reasonably efficiently (as Projets are generally approved within three or four months of being sent to the Ministry of Justice), the approval of legislation remains tied to formal sittings of the Privy Council. As the Privy Council does not sit in August or September, nor during certain periods relating to UK General Elections, Royal Assent to legislation cannot be given during those months, which can affect the timescales for approving Channel Island legislation. In addition, the deadlines for submission to the Privy Council are fixed and even a small delay might mean that a Projet must wait until the next meeting. This can cause minor delays which can have an impact on time-critical legislation.

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<sup>7</sup> An exception is where the Taxes and Duties (Provisional Effect) (Guernsey) Law, 1992 applies, whereby legislation relating to tax and duties may have effect notwithstanding the fact that Royal Assent has not yet been given.

<sup>8</sup> Meaning the States of Deliberation, the States of Alderney and Chief Pleas of Sark.

<sup>9</sup> [Order in Council 22<sup>nd</sup> February, 1952.](#)

<sup>10</sup> [Billet d'État I of 2016, Article XV](#), p. 133, paragraph 4.1.

## **4 The Royal Assent process proposed by the CIC for Projets de Loi**

- 4.1 Having considered various options, the CIC recommended the adoption of a streamlined process for the granting of Royal Assent for Projets, as set out in the 2016 Policy Letter<sup>11</sup>. The Policy & Resources Committee ('the Committee') is, however, now proposing a variation to the CIC recommended model for the reasons set out in Section 6.
- 4.2 "The CIC saw the benefits of bringing the process of Royal Sanction closer to Guernsey, where it would not cause a problem for the UK Government, and that the Lieutenant Governor would be well placed - given the constitutional position of his role - to act as an agent for Her Majesty in the granting of Royal assent. This accurately reflects Guernsey's maturity as a jurisdiction with responsibility for its own affairs and provides benefits such as speed and efficiency in processing legislation."<sup>12</sup>
- 4.3 Under the CIC's proposals, the Lieutenant-Governor would be granted delegated authority to grant (or withhold) Royal Assent for Guernsey primary legislation. The Lord Chancellor would still exercise the same degree of oversight over Projets submitted for Royal Assent by the Lieutenant-Governor as already occurs for Projets submitted for Royal Assent using the current procedure.
- 4.4 The CIC recommendations included a six-week period for the Ministry of Justice to intervene on certain grounds. If no demurrals were received from the Lord Chancellor by the end of that period, the Lieutenant-Governor could consider whether to exercise delegated responsibility and grant Royal Assent to the legislation. The CIC model would have continued to use, and increasingly relied on, certification by the Law Officers of the Crown to ensure compliance with existing international obligations and requirements of good government.

## **5 The Royal Assent process for Isle of Man primary legislation**

- 5.1 The process for Royal Assent operates differently in the Isle of Man from that operating in the Bailiwicks of Guernsey and Jersey. The Isle of Man process has existed for more than 40 years.
- 5.2 In the Isle of Man, an Order in Council gives the Lieutenant-Governor power to grant Royal Assent to primary legislation on behalf of the Privy Council.<sup>13</sup> When the legislation is submitted to the Ministry of Justice for its lawyers to advise the

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<sup>11</sup> As set out in section 6, "Proposal for change in the making of Orders in Council" [Billet d'État I of 2016, Article XV](#), p.140.

<sup>12</sup> Extract from paragraph 5.4 [Billet d'État I of 2016, Article XV](#), p.138.

<sup>13</sup> The power to do this was originally set out in The Royal Assent to Legislation (Isle of Man) Order 1981 (as amended), which was replaced by [The Royal Assent to Legislation and Sodor and Man Diocesan Synod Measures \(Isle of Man\) Order, 2022](#).

Lord Chancellor<sup>14</sup>, the Lieutenant-Governor recommends whether it would be appropriate for the legislation to be reserved to the Privy Council or whether Royal Assent could be granted using the powers under the Order in Council. Additionally, the Lieutenant-Governor must consult the Lord Chancellor when the legislation relates to specified subjects<sup>15</sup> and may only grant Royal Assent where satisfied that the Lord Chancellor has decided not to direct that the legislation is reserved to the Privy Council. Unless legislation is specifically reserved to the Privy Council in accordance with that Order, the Lieutenant-Governor can then exercise delegated powers to grant Royal Assent to the primary legislation.

- 5.3 It should be noted that the CIC considered the Isle of Man model and other options during its investigations in 2015.<sup>16</sup> At that time, the CIC opined that, when considering the timescale of Royal Assent by delegated authority as operated in the Isle of Man compared with the Privy Council procedures, any timescale reduction would not be significant because the same administrative and legal process would be undertaken by the Ministry of Justice and the Lord Chancellor in each instance prior to Royal Assent being given. Conversely, the CIC also noted that adopting the Isle of Man process would mean that Royal Assent could be granted more quickly (compared to the current process) during periods when the Privy Council did not meet (including August, September and during UK General Election periods).

## **6 Consideration of the CIC and Isle of Man processes for the grant of Royal Assent**

- 6.1 Having reviewed the proposed CIC process and compared it with the Isle of Man's established process, the Committee considers that there may be benefits to the Bailiwick if it adopted the Isle of Man process with relevant modifications. As identified by the CIC, *Projets* would no longer be dependent upon scheduled Privy Council meetings. This process would also provide increased flexibility, and potentially more convenient deadlines, for the approval of *Projets* which may better suit and support the relevant Bailiwick parliament's legislative priorities. This would be particularly helpful for approving urgent *Projets* and also could potentially reduce the timescales for the approval of other *Projets*.
- 6.2 If the Lieutenant-Governor (who is resident in the Bailiwick) has power to grant Royal Assent to *Projets*, this could serve to underline the Bailiwick's legislative autonomy. This approach would also assist with developing Guernsey's international identity, in accordance with directions from the States of

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<sup>14</sup> The advice relates to compliance with international obligations, in particular human rights.

<sup>15</sup> The requirement to consult applies where the legislation (i) deals wholly or partly with defence, international relations, nationality and citizenship, the powers and remuneration of the Lieutenant Governor or the constitutional relationship between the United Kingdom and the Isle of Man; or (ii) affects the Royal Prerogative or the Rights of His Majesty in His private capacity.

<sup>16</sup> [Billet d'État I of 2016, Article XV](#), p138, Paragraphs 4.2-4.4, 5.4.

Deliberation, the Island's developing international relations approach and the international identity framework agreed between Guernsey and the UK in 2008<sup>17</sup>. The CIC referred to the importance of developing Guernsey's autonomy, where appropriate, in accordance with that framework.<sup>18</sup> Work to develop this autonomy is addressed in the Government Work Plan ('GWP') which states that 'Guernsey must retain its autonomy and assert its international identity while continuing to meet international obligations and norms'<sup>19</sup> and the GWP actions to 'Assert the Bailiwick's constitutional position'; and 'continue development of Guernsey's international identity'.

- 6.3 The Committee has noted that there could be disadvantages with the CIC process as the proposed demurral procedure might give rise to uncertainty, as it would not be clear until the deadline had passed whether the Lord Chancellor intended to object to the grant of Royal Assent by the Lieutenant-Governor.
- 6.4 The Ministry of Justice has indicated its support for the adoption of an alternative process based on that of the Isle of Man, at least in part because established procedures could be adapted to apply to Projets. However, the Ministry of Justice does not support the adoption of the CIC process because it is untested and, due to the demurral procedure, the presumption would arise that the Lieutenant-Governor could decide whether to grant Royal Assent if no response was received from the Lord Chancellor within the time limit, even if this was contrary to the Lord Chancellor's final considered conclusion.
- 6.5 The Committee therefore recommends that the Isle of Man process be modified for Guernsey and the wider Bailiwick. The States of Alderney and Chief Pleas of Sark will also be asked to approve the alternative process for Royal Assent.
- 6.6 The Bailiwick authorities have already communicated their clear wish to achieve greater constitutional resilience in the future and will continue to work with the UK Government to review and build upon the modified Isle of Man process, in accordance with the Bailiwick's needs.

## **7 The proposed alternative process for Royal Assent for Projets de Loi**

- 7.1 In order to give the Lieutenant-Governor power to grant Royal Assent to Projets, an Order in Council must be made by the Privy Council. The necessary procedural and operational changes will be implemented in conjunction with the drafting of the Order in Council. For the avoidance of doubt, the power of the Lieutenant-Governor to grant Royal Assent to Projets could also be exercised by a Deputy Lieutenant-Governor where there is no Lieutenant-Governor in post or where

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<sup>17</sup> [International Identity Framework, 2008](#), signed 18<sup>th</sup> December 2008.

<sup>18</sup> [Billet d'État I of 2016, Article XV](#), p129, paragraph 1.2.

<sup>19</sup> At section 5.8, page 18.

the Lieutenant-Governor is unavailable to act for the purposes of the Order in Council.

- 7.2 The Law Officers of the Crown have proposed appropriate modifications to the current Order in Council for the Isle of Man which streamline the process as much as possible and do not introduce any unnecessary additional procedures. Of note, the proposed process will not change how Projets are debated or approved by any of the Bailiwick parliaments.
- 7.3 The flow chart (attached as Appendix 2) outlines the proposed new process.
- 7.4 After a Projet has been approved by the relevant legislature(s) within the Bailiwick, the explanatory memorandum accompanying the Projet will also include the Law Officers' advice whether the Lieutenant-Governor must consult the Lord Chancellor (see paragraph 7.7) and may grant Royal Assent.
- 7.5 The Lieutenant-Governor will consider that advice and decide whether to reserve the Projet to the Privy Council or whether Royal Assent can be granted using the powers under the Order in Council.
- 7.6 In accordance with the Order in Council, the Lieutenant-Governor must consult the Lord Chancellor when deciding whether Projets relating to certain subjects should be reserved to the Privy Council. In line with the Isle of Man process, it is proposed that these Projets would deal wholly or partly with:

- Defence,
- international relations,
- nationality and citizenship,
- the powers and remuneration of the Lieutenant-Governor,
- the constitutional relationship between the UK and the Bailiwick (or any jurisdiction of it), or
- any matters affecting the Royal Prerogative or the rights of the Sovereign in their private capacity.

- 7.7 For clarity, simply because the Lieutenant-Governor must consult the Lord Chancellor in accordance with the Order in Council, this does not automatically mean that the Projet will be reserved to the Privy Council.
- 7.8 After the Lieutenant-Governor has made a decision whether or not to reserve the Projet to the Privy Council, both it and the accompanying documents will be submitted in the normal way to the Ministry of Justice, to review the Projet on behalf of the Lord Chancellor.

- 7.9 If the Lieutenant-Governor does not reserve the Projet and the Lord Chancellor agrees that Royal Assent may be given, the Lieutenant-Governor may grant Royal Assent to the Projet by signing a document called a “Signification of Royal Assent”.
- 7.10 Any Projet reserved for the grant of Royal Assent by the Privy Council will follow the current process, as confirmed in the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022 (see Section 9 and Appendix 3).
- 7.11 Following Royal Assent being granted (whether by the Privy Council or by the Lieutenant-Governor), all Projets will continue to be registered in the Royal Court. Where Royal Assent is granted by the Lieutenant-Governor, the Signification will be registered together with the Projet. On the direction of the Royal Court, all Projets applicable to the islands of Alderney and Sark will then be transmitted with the relevant Order in Council or Signification to the relevant Island(s) for registration on their records.

## **8 Legislative requirements and article 72A of the Reform (Guernsey) Law, 1948**

- 8.1 The drafting of the Order in Council is being undertaken by the Ministry of Justice and the Law Officers of the Crown. A draft has enabled detailed technical discussions to take place regarding the legal and practical aspects of the proposed alternative Royal Assent process. The Order will be made in perpetuity, so will continue to have effect following the death of the Sovereign.
- 8.2 As the Order in Council will have effect in Guernsey, article 72A(1)(b)(iii) of the Reform (Guernsey) Law, 1948 applies (see paragraph 11.3). The Committee has therefore included the substance of this proposal in Section 7 of this Policy Letter to allow the States to signify their views on it.
- 8.3 The Committee recommends that the States signify their agreement to the substance of the proposed Order in Council which will introduce an alternative Royal Assent process allowing the Lieutenant-Governor to grant Royal Assent to a Projet on behalf of the Privy Council, unless it is specifically reserved for consideration by the Privy Council (see Proposition 3).
- 8.4 Sark has enacted equivalent legislation<sup>20</sup> in section 63A of the Reform (Sark) Law, 2008. Consequently, Sark’s Policy & Finance Committee will submit the same proposal to Chief Pleas, inviting them to signify their agreement to it.
- 8.5 Although Alderney has not enacted equivalent legislation, the States of Alderney will be requested to agree the same proposal, as a matter of constitutional importance.

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<sup>20</sup> Section 63A of the [Reform \(Sark\) Law, 2008](#).

## **9 Consolidation of existing Orders in Council for the grant of Royal Assent**

- 9.1 When Her Majesty Queen Elizabeth II died in September 2022, it was necessary to accelerate work already underway to ensure that Royal Assent could continue to be granted to primary legislation, principally from the Channel Islands.
- 9.2 Work was undertaken by the Law Officers of the Crown, Committee officers and the Ministry of Justice to consolidate and update Orders in Council from 1952<sup>21</sup> and 2011<sup>22</sup> which set out the Royal Assent process for Projets granted by the Privy Council. Similar work was undertaken by Jersey for its own Royal Assent process.
- 9.3 The Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022<sup>23</sup> (“the 2022 Order”), attached as Appendix 3, was made by the Privy Council on 9<sup>th</sup> November, 2022<sup>24</sup>. The 2022 Order replaced the Orders in Council made in 1952 and 2011 and reconstituted the Committee for the Affairs of Jersey and Guernsey<sup>25</sup>. The Order was also made in perpetuity so that it will continue to have effect following the death of the Sovereign. If the Bailiwick were to adopt the alternative Royal Assent process set out in Section 7 of this Policy Letter, the process set out in the 2022 Order would continue to be used for matters reserved to the Privy Council.

## **10 Additional Counsellors of State**

- 10.1 The UK recently enacted the [Counsellors of State Act 2022](#) (“the 2022 Act”)<sup>26</sup> to add further Counsellors of State who may discharge royal functions on behalf of HM The King, if he is temporarily unable to do so because of illness or absence from the UK<sup>27</sup>. HRH The Earl of Wessex<sup>28</sup> and HRH The Princess Royal were therefore added, as it was considered that there might otherwise be insufficient Counsellors of State able to discharge those functions<sup>29</sup>. The 2022 Act has effect

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<sup>21</sup> [Order in Council 22<sup>nd</sup> February, 1952.](#)

<sup>22</sup> [Order in Council 13<sup>th</sup> July, 2011.](#)

<sup>23</sup> [Order in Council 9<sup>th</sup> November, 2022.](#)

<sup>24</sup> It should be noted that article 72A of the Reform (Guernsey) Law, 1948 did not apply in this case, as the Order in Council related to an internal process of the Crown occurring in the UK rather than one that had effect in the Bailiwick.

<sup>25</sup> The number of Privy Counsellors required to attend the Committee was reduced to two.

<sup>26</sup> The 2022 Act modified the interpretation of the [Regency Act 1937](#) to include HRH The Earl of Wessex and HRH The Princess Royal as Counsellors of State.

<sup>27</sup> Under section 6 of the Regency Act 1937, the Counsellors of State are the Sovereign’s spouse and the four adults next in the line of succession to the Crown, unless otherwise disqualified by the Act. The Sovereign may delegate royal functions to Counsellors of State by Letters Patent for the period of illness or absence. “Royal functions” include most of the powers and authorities belonging to the Crown, including attendance at Privy Council meetings.

<sup>28</sup> Since the enactment of the 2022 Act, HRH The Earl of Wessex has been created Duke of Edinburgh.

<sup>29</sup> The Counsellors of State before the enactment of the 2022 Act were The Queen Consort; The Prince of Wales; The Duke of Sussex; The Duke of York; and Princess Beatrice. [royal.uk website](https://royal.uk)



in the Bailiwick, the other Crown Dependencies and the British Overseas Territories by necessary implication.

- 10.2 In 2013, similar constitutional matters were considered by the Bailiwick following the UK's enactment of the [Succession to the Crown Act 2013](#) which amended the rules on succession to the Crown<sup>30</sup>. These rules extended to the Crown Dependencies and British Overseas Territories by necessary implication. On that occasion, the States of Deliberation resolved<sup>31</sup> to direct preparation of a *Projet de Loi* expressly providing for the rules governing succession to the Crown in respect of Guernsey to be determined in accordance with the relevant law of the United Kingdom. The Succession to the Crown (Bailiwick of Guernsey) Law, 2016<sup>32</sup> was subsequently approved by all three Bailiwick legislatures and brought into force. Similar legislation was introduced in Jersey in order to establish a common Channel Island position.
- 10.3 As the 2022 Act has effect in the Bailiwick by necessary implication, article 72A(1)(b)(iii) of the Reform (Guernsey) Law, 1948 applies (see paragraph 11.3). The Committee has therefore included the substance of this proposal to allow the States to signify their views on it.
- 10.4 The Committee recommends that the States signify their agreement to the substance of the 2022 Act, as set out in this section.
- 10.5 Sections 8.4 and 8.5 in relation to Sark and Alderney respectively apply equally in relation to the 2022 Act as they do to the proposed Order in Council.
- 10.6 However, the Committee does not recommend that domestic legislation is required on this occasion. The Committee considers that debate of this Policy Letter and the making of a Resolution (see Proposition 6) is an appropriate and proportionate way to formally recognise the constitutional position, the Bailiwick's identity and its relationship with the Crown. It should be noted that, if the alternative Royal Assent process set out in this Policy Letter is introduced, fewer *Projets* will be sent to the Privy Council for the grant of Royal Assent; this is therefore likely to reduce the impact of any actions by the Counsellors of State in relation to the Bailiwick.

## **11 Update on other constitutional matters**

- 11.1 In the last States' term, the previous Policy & Resources Committee considered a number of options to reaffirm or strengthen the constitutional resilience of

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<sup>30</sup> [Succession to the Crown Act 2013](#). This legislation introduced measures to recognise female heirs equally to male heirs in the line of succession and to remove the disqualification from the Succession of the Crown arising from marriage to a Roman Catholic.

<sup>31</sup> [Article VIII of Billet d' État No. XXIV of 2013](#) and [Resolutions of 11th December, 2013](#).

<sup>32</sup> [Succession to the Crown \(Bailiwick of Guernsey\) Law, 2016](#).

Guernsey and the wider Bailiwick, building on the recommendations made by the CIC's 2016 report. That work has been continued by the current Committee.

- 11.2 Progress has been made regarding other topics identified in the CIC's report. These include:

Duty of Policy & Resources Committee to refer certain UK legislation to the States of Deliberation before registration:

- 11.3 In accordance with Resolution 3 on the CIC's 2016 Policy Letter, the Reform (Guernsey) Law, 1948 was amended in 2019<sup>33</sup> to insert article 72A, which requires the Policy & Resources Committee (unless it considers it unnecessary) to refer any proposal that:

- (a) a provision of an Act of Parliament should apply directly to Guernsey, or
- (b) an Order in Council should be made extending a provision of an Act of Parliament or a Church of England measure, or that is otherwise expressed to have effect in, or to be applicable to or otherwise binding upon, Guernsey,

to the States of Deliberation to signify their views on it. Article 72A also requires the Royal Court to refer to the States such a provision of an Act or such an Order in Council which has been transmitted for registration where the States have not already signified their agreement to the substance of the provision or Order in Council.<sup>34</sup>

The review of processes for the extension of international agreements to Guernsey and the wider Bailiwick

- 11.4 This matter was explored in the CIC report<sup>35</sup> and later identified in a Requête titled "Extension to the Bailiwick of the UK-US-Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments" which was considered and approved by the States in August 2020<sup>36</sup>. The

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<sup>33</sup> The Reform (Guernsey) Law, 1948, was amended following consideration of a [Policy Letter \('Referral of UK Acts of Parliament and Orders in Council to the States of Deliberation'\)](#) in March 2019. [The Reform \(Guernsey\) \(Amendment\) Law, 2019](#) came into effect from 4<sup>th</sup> November, 2019.

<sup>34</sup> Examples of occasions on which the Committee has referred matters to the States under Article 72A of the Reform (Guernsey) Law, 1948 include:

- Policy Letter dated 7<sup>th</sup> January, 2020, 'The Withdrawal Agreement between the United Kingdom and European Union – Implications for the Bailiwick of Guernsey', [Billet d'État II of 2020](#).
- Policy Letter dated 16<sup>th</sup> November, 2020, 'Brexit & biometric data: Extending relevant provision of UK Immigration Acts', [Billet d'État XXVII of 2020](#).

<sup>35</sup> Section 7 of CIC 2016 report [Billet d'État I of 2016, Article XV](#) and Resolution 1.

<sup>36</sup> Postponed from the March 2020 meeting.

Resolutions from 2020 provided a target date of the end of 2021 for proposals to be brought to the States<sup>37</sup>.

- 11.5 A Policy Letter entitled “Consideration of Guernsey’s Participation in International Agreements”<sup>38</sup> (‘the 2021 Policy Letter’) was considered by the States of Deliberation in December 2021 and Resolutions made that modernise processes for considering and approving Guernsey’s participation in international agreements, by granting delegated authority to the Policy & Resources Committee to request and/or agree to Guernsey’s participation in new or existing international agreements in defined circumstances (and including Alderney and Sark’s participation in relevant agreements, following consultation and subject to approval by those Islands). The revised process is intended to provide sufficient flexibility to react to fast-paced events, such as for participation in Free Trade Agreements, and to enable additional transparency and increased public awareness.

Entrustment for the Bailiwick (or part of it) to enter directly into international agreements

- 11.6 The UK, as the State having responsibility for Guernsey’s international relations, may give an entrustment to Guernsey’s government in order that it can negotiate and conclude certain international agreements directly with other countries, rather than being represented by the UK. An entrustment can be specific to a particular agreement or on a more general basis.
- 11.7 The CIC recommended<sup>39</sup> that a general entrustment should be sought from the UK to widen its scope, so that it could be used more frequently to deal with other countries.
- 11.8 As summarised in the 2021 Policy Letter, entrustment has been used by Guernsey on various occasions (including generally for tax matters, such as Tax Information Exchange Agreements (TIEAs)<sup>40</sup> and Double Taxation Agreements (DTAs)<sup>41</sup>, and a specific entrustment to enter into a reciprocal social security agreement between Guernsey and Latvia<sup>42</sup>). Engagement with the Ministry of

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<sup>37</sup> Requête titled ‘[Extension to the Bailiwick of the UK-US-Extradition Treaty of 2003 and changes to the processes relating to the approval of international instruments](#)’ ; [Resolutions of 25 August, 2020](#).

<sup>38</sup> [Billet d’État XXV of 2021](#).

<sup>39</sup> Section 7.6 of CIC report.

<sup>40</sup> There is information on the Tax Information Exchange Agreements which Guernsey has signed to date available at <https://www.gov.gg/tiea>. At the time of writing, Guernsey has agreed and signed 61 TIEAs.

<sup>41</sup> There is information on the Double Taxation Agreements which Guernsey has signed to date available at <https://www.gov.gg/dta>. At the time of writing, Guernsey currently has full DTAs in force with 14 jurisdictions and partial DTAs in force with 12 jurisdictions.

<sup>42</sup> On 30<sup>th</sup> October, 2015, the States agreed, in principle, to enter into a Social Security Agreement with the Republic of Latvia. This Proposition was included in the Committee’s annual ‘uprating report’ (‘[Benefit and Contribution Rates for 2016](#)’, paragraphs 106-125). Following negotiations, an agreement on social

Justice regarding future entrustment opportunities is continuing and is being kept under review. The UK has issued entrustments to Jersey for Bilateral Investment Treaties on a case-by-case basis, opening up this option for Guernsey.

Establishment of a treaty management function in the External Relations team in the office of the Policy & Resources Committee

- 11.9 Funding for a Treaties Officer was secured within the 2020 Budget process<sup>43</sup>. Recruitment for that role has been completed.

Development of Guernsey's international identity

- 11.10 In 2008, the Guernsey and UK governments agreed and signed the "Framework for Developing the International Identity of Guernsey"<sup>44</sup>.
- 11.11 The CIC report<sup>45</sup> noted the adoption of the framework and the intention: "to ensure that, where appropriate, greater autonomy for managing its affairs can continue to be secured. It is an important measure of Guernsey's maturity as a jurisdiction that it is able to demonstrate effective democratic self-determination within its existing constitutional relationship with the UK".
- 11.12 Guernsey has continued to develop its international identity, including by building political and working relationships directly with other jurisdictions when appropriate. Reference to the International Identity Framework has been made in correspondence with the UK Government and with UK parliamentary Committees as required.
- 11.13 Prioritisation of work following the UK's withdrawal from the European Union and the negotiations for the future relationship with the EU, and the effects of the COVID-19 pandemic, have affected progress of constitutional work, including matters mentioned in a statement to the States in May 2018 by the former President of the Committee<sup>46</sup>. Those workstreams included: working with the UK Government to ensure that the convention is upheld that the UK does not legislate without Guernsey's consent on purely domestic matters, work to ensure

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security between the States of Guernsey and the Government of the Republic of Latvia was signed simultaneously in Guernsey and Riga on 23 September 2020. The agreement is the first of its type to be negotiated and concluded by the States under entrustment from the UK. Due to the ongoing COVID-19 related travel restrictions the signing of the Agreement took place via video conference. [Media release. The Social Security \(Reciprocal Agreement with the Republic of Latvia\) Ordinance, 2020](#) approved by the States of Deliberation at its Meeting of 25<sup>th</sup> November 2020.

<sup>43</sup> [Billet d'État XXI of 2019](#) and [Resolutions, Paragraph 11.4 of the CIC report and Resolution 5 following the CIC report.](#)

<sup>44</sup> [International Identity Framework.](#)

<sup>45</sup> [Billet d'État I of 2016, Article XV](#), p129, paragraph 1.2.

<sup>46</sup> [Statement 16<sup>th</sup> May 2018 by the President of the Policy & Resources Committee.](#)

effective measures are in place to combat financial crime and the development of a referendum process for Guernsey.

## **12 Engagement and consultation**

- 12.1 This section focuses mainly on the proposed Royal Assent process, but also considers wider issues as considered in this Policy Letter as appropriate.
- 12.2 The Law Officers of the Crown – both Law Officers have advised on the proposed alternative Royal Assent process, including on the legislative and practical changes required. They have also provided advice about international agreements and entrustment matters as referenced in this Policy Letter.
- 12.3 Alderney and Sark – the Law Officers made initial enquires with the Alderney and Sark authorities with regard to their views on a possible alternative Royal Assent process. In order for this process to apply throughout the Bailiwick, it must also be approved by the States of Alderney and Chief Pleas of Sark. The Committee has consulted the Policy & Finance Committees of Alderney and Sark. Those Committees have confirmed that they are supportive of an alternative Royal Assent process based on the Isle of Man process with modifications. They are also content that the same Policy Letter will be used for all three jurisdictions, with Resolutions tailored for each of them. Alderney and Sark have been regularly apprised of the work on Guernsey's process for deciding whether and how to participate in international agreements and the likely practical effect for those Islands and have been consulted when constitutional matters have Bailiwick-wide implications.
- 12.4 The Ministry of Justice – Discussions have taken place between Guernsey and the UK at Ministerial and officer level and it has been agreed that the three Bailiwick parliaments should firstly approve the principles of the change to the process of Royal Assent. Following such approval, a formal request to introduce the process could then be made by the Bailiwick authorities to the Lord Chancellor, including the making of the required Order in Council to introduce the necessary provisions.
- 12.5 Ministry of Justice officers have agreed to continue to work with Bailiwick officers to review the new process once it has been implemented to ensure that it operates efficiently and effectively. Regular engagement has taken place at Ministerial and Officer level regarding the matters considered in this Policy Letter.
- 12.6 Jersey – Discussions have taken place with officers in Jersey to ascertain whether Jersey's government might also recommend the adoption of an alternative model for Royal Assent. Jersey has confirmed that it is not seeking to adopt the Isle of Man process (or a modification of it) at this time.

- 12.7 The Isle of Man – Isle of Man officers have assisted in sharing information to enable the Bailiwick to consider their procedures and adapt its process.
- 12.8 Regular engagement has also taken place between the three Crown Dependencies at both Ministerial and officer level regarding the wider matters considered in this Policy Letter.
- 12.9 The Lieutenant-Governor – Both the current and the former Lieutenant-Governors have been consulted and updated on the proposals regarding an alternative Royal Assent process for Projets, and the practical and operational changes that will need to be introduced. Joint working has been undertaken regarding these changes. This Policy Letter has been shared with the Lieutenant-Governor and his office.
- 12.10 The Bailiff – The Bailiff has been consulted on the proposals regarding an alternative Royal Assent process, the practical and operational changes required and the drafting of the Order in Council that will be required to give the Lieutenant-Governor power to grant Royal Assent. This Policy Letter has been shared with the Bailiff.

### **13 Resource implications of the proposed alternative Royal Assent process and for the wider issues**

- 13.1 Following approval by the three Bailiwick parliaments, an *ad hoc* working group including Bailiwick officials, representatives from the Lieutenant-Governor's office, the Law Officers' Chambers and relevant UK officials will continue to plan and then implement the alternative Royal Assent process.
- 13.2 Once established, it is not anticipated that additional resources will be required to deliver the new process.
- 13.3 No additional resources are sought for the other matters considered in this Policy Letter.

### **14 Compliance with Rule 4**

- 14.1 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.
- 14.2 In accordance with Rule 4(1)(a), the changes proposed within this Policy Letter contribute to the States' objectives and policy plans. Extant Resolutions relating to Royal Assent, made following the CIC's 2016 recommendations, were

considered as part of the Government Work Plan (GWP)<sup>47</sup>. Those Resolutions are included in the current iteration of the GWP within ‘Priority 4 Reshaping Government actions’, as part of the focus on ‘effective government’. The Propositions also relate to the Committee’s mandated responsibilities for external relations and international and constitutional affairs, which include the Island’s constitutional position and the relationship with the Crown. The Committee’s mandate also includes exercising powers and performing duties conferred on it by extant legislation (in this case, those in article 72A of the Reform (Guernsey) Law, 1948 as amended). The GWP Priority 2: Managing the Effects of Brexit and our international Obligations, and related workstreams relate to the wider constitutional matters set out in this Policy Letter (as set out in section 6.2)<sup>48</sup>.

- 14.3 In accordance with Rule 4(1)(b), the Committee’s consultation with other parties is outlined in Section 12. The Committee will continue to consult and engage with relevant stakeholders regarding the implementation of the new model for Royal Assent and regarding the constitutional resilience work referred to in this Policy Letter.
- 14.4 In accordance with Rule 4(1)(c), the Propositions have been submitted to His Majesty’s Procureur for advice on any legal or constitutional implications.
- 14.5 In accordance with Rule 4(1)(d), the resources required to fulfil the Propositions of this Policy Letter are set out in Section 13.
- 14.6 In accordance with Rule 4(2)(b), it is confirmed that the Propositions have the unanimous support of the Committee.

Yours faithfully

P T R Ferbrache  
President

M A J Helyar  
Vice-President

J P Le Tocq  
D J Mahoney  
R C Murray

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<sup>47</sup> Government Work Plan – Stage 1, [Billet d’État VI of 2021](#) and [Resolutions](#) of 26<sup>th</sup> March, 2021 and Government Work Plan – Stage 2, [Billet d’État XV of 2021](#) at Annex 1 at pages 71 and 112 and [Resolutions](#) of 23<sup>rd</sup> July, 2021.

<sup>48</sup> GWP- Stage 2 Priority 2 at Annex 1, p41.

## **APPENDIX 1**

### **Background to review of Royal Assent process for Projets de Loi**

In 2013, the House of Commons Justice Committee report<sup>49</sup> on 'Crown Dependencies; developments since 2010' suggested the possible adoption by Guernsey and Jersey of a model for Royal Assent which was already used in the Isle of Man. That report considered the interface and developments in the relationship between the UK and the Crown Dependencies.

Engagement has been undertaken with the Ministry of Justice (both at Ministerial and officer level) from 2018 to date. The UK's decision in June 2016 to leave the European Union (Brexit) resulted in a significant volume of work for the UK and Guernsey's government. Consequently, work on the Resolutions made regarding the CIC's report happened more slowly than originally planned.

In May 2018, the Policy & Resources Committee indicated its intention to progress the CIC work during a statement made by the former President of the Committee to the States<sup>50</sup>. The Committee notified the Ministry of Justice accordingly, causing the Rt Hon the Lord Keen of Elie KC (then Minister with responsibility for Crown Dependency business) to respond that, "We also stand ready to listen and examine any future proposals that Guernsey has in this regard." Work was undertaken by the Policy & Resources Committee and a dialogue with the Ministry of Justice commenced.

Unfortunately, in early 2020, due to the COVID-19 pandemic and the consequent reprioritisation of work, the progress of this constitutional workstream was further delayed. However, in April 2020, the Ministry of Justice wrote to the Bailiwick's Lieutenant-Governor to ask whether the insular authorities of the Bailiwick wished to explore the adoption of the Isle of Man model of Royal Assent. It is understood that the enquiry was prompted by Jersey's need to fast-track urgent legislation during the pandemic. HM Procureur, at His Excellency the Lieutenant-Governor's request, approached the governments of Sark and Alderney about the enquiry and the Isle of Man model. The current Committee (and its predecessor) decided later in 2020 to progress work to explore changing the model for Royal Assent separately to other constitutional resilience workstreams as soon as it was pragmatic to do so.

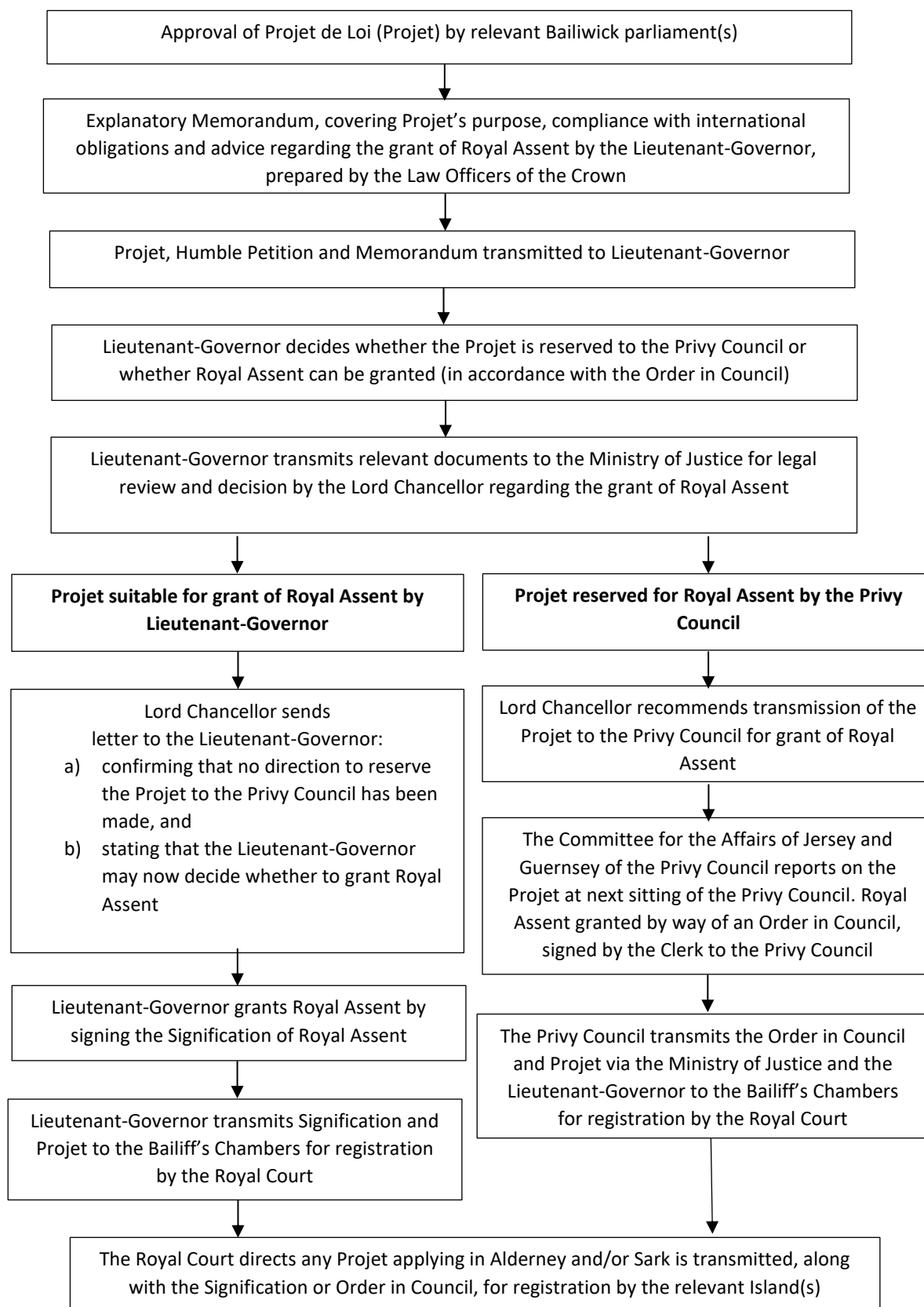
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<sup>49</sup> [House of Commons Justice Committee Report: 'Crown Dependencies: developments since 2010' from 2013 p 15-24.](#)

<sup>50</sup> [Statement 16<sup>th</sup> May 2018 by the President of the Policy & Resources Committee](#)



**Flow Chart of proposed Royal Assent processes for Projets de Loi**



**Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022**



*At the Court at Buckingham Palace*

THE 9th DAY OF NOVEMBER 2022

PRESENT,

THE KING'S MOST EXCELLENT MAJESTY  
IN COUNCIL

**Royal Assent to Legislation and Petitions  
(Bailiwick of Guernsey) Order 2022**

His Majesty, by virtue and in exercise of all the powers in His Majesty vested, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered for Himself, and His Heirs and Successors in Council, as follows –

1. This Order may be cited as the Royal Assent to Legislation and Petitions (Bailiwick of Guernsey) Order 2022 and shall commence the day after the day on which it is made.
2. The whole Privy Council, or any two or more of them, are hereby appointed a single Committee for the Affairs of Jersey and Guernsey under this Order and the Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022, as, from time to time, amended, supplemented, or re-enacted (with or without modification).
3. All Projets de Loi approved by the States of Deliberation, the States of Alderney, or the Chief Pleas of Sark (including any two or all of those Island legislatures), and submitted to His Majesty in Council, for His Majesty's approval, and all Petitions received in relation to any such Projet de Loi shall be referred to, and they are hereby referred to, the said Committee for its consideration and report.
4. Their Lordships shall report thereupon to His Majesty at this Committee in like manner as if such Projets de Loi and Petitions had been referred to the said Committee by a special Order of His Majesty in Council.
5. The said Committee shall not ordinarily postpone its consideration of any such Projets de Loi if a Petition is made against them and is received later than 28 days after their final approval by the relevant Island legislature(s).
6. This Order will continue in effect for His Majesty's Heirs and Successors in Council, until He or They further Order.

*Richard Tilbrook*

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#### EXPLANATORY NOTE

(This note is not part of the Order)

This Order replaces the General Order of Reference dated 22 February 1952 and the Supplementary Order dated 13 July 2011 (“the previous Orders”), both made by Her Late Majesty Queen Elizabeth II, relating to the grant of Royal Assent to Projets de Loi approved by legislatures in the Bailiwick of Guernsey.

This Order reconstitutes a single Committee for the Affairs of Jersey and Guernsey in order to perform the duties set out in this Order. Its duties in respect of the Bailiwick of Jersey are set out in the Royal Assent to Legislation and Petitions (Bailiwick of Jersey) Order 2022.

This Order consolidates the previous Orders for the purposes of the Bailiwick of Guernsey and promotes continuity and stability by continuing in effect for His Majesty’s Heirs and Successors in Council.

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

**STATES' ASSEMBLY & CONSTITUTION COMMITTEE**

**COMMISSIONER FOR STANDARDS - REVISIONS TO THE CODE OF CONDUCT**

The States are asked to decide:-

Whether, after consideration of the policy letter entitled 'Commissioner for Standards – Revisions to the Code of Conduct' dated 17<sup>th</sup> March 2023, they are of the opinion:-

1. To appoint in accordance with paragraph 2(1) of the First Schedule to the Reform (Guernsey) Law 1948, Dr Melissa McCullough as Commissioner for Standards with immediate effect and for a term ending on 26<sup>th</sup> April 2028.
2. For Parts II, and III of and Appendix 1 to the Code of Conduct for Members of the States of Deliberation substitute the Part and Appendix set out in Appendix A to the Policy Letter; renumbering the subsequent sections of and cross references in the Code and amending the Table of Contents accordingly.

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

**STATES' ASSEMBLY & CONSTITUTION COMMITTEE**

COMMISSIONER FOR STANDARDS – REVISIONS TO THE CODE OF CONDUCT

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

6<sup>th</sup> April 2023

Dear Sir,

**1 Executive Summary**

- 1.1 In September 2022, the States of Deliberation approved the Projet de Loi entitled ["The Reform \(Guernsey\) \(Amendment\) Law, 2022"](#) (the law) which came into force by regulations made by the Committee on 22<sup>nd</sup> May 2023.
- 1.2 The law amends the Reform (Guernsey) Law, 1948 (the 1948 Law) by inserting provisions which establish the post of Commissioner for Standards and replace the States Members' Conduct Panel and is in accordance with the resolutions of [Billet d'État No XVI of 2020](#). The post has been recruited jointly with Jersey thereby establishing a Pan-Island Commissioner who will fulfil a distinct role in each Island.
- 1.3 The joint recruitment process culminated in February 2023 with the offer of the post to Dr Melissa McCullough the current Commissioner for Standards for Northern Ireland. Dr Mc McCullough has already been appointed in Jersey where the post of a Commissioner for Standards has been in place since 2017. Dr McCullough's career summary is attached at Appendix B.
- 1.4 To bring the Code of Conduct for Members of the States of Deliberation (the Code) into conformity with the legislation and the appointment of a Commissioner the following revisions are now proposed.

## **2 Proposed Amendments to the Code**

- 2.1 The amendments to the code as set out at Appendix A have been drawn up in line with the recommendations of the Policy Letters dated [25<sup>th</sup> February 2020](#) and [6<sup>th</sup> May 2022](#).
- 2.2 Part II of the Code “States’ Members Conduct Panel” has been deleted and Part III “Procedure for Complaints relating to Part I” has also been deleted and replaced as Part II, with a consequent renumbering of sections of the remaining parts of the code. Appendix 1 has been revised in line with information appropriate for the post of Commissioner.
- 2.3 Those sections of the Code which are now replaced or rendered otiose by the law have been removed. These are sections 22 -27 in respect of the establishment of the now defunct Conduct Panel and sections 31-34 in respect of functions relating to investigations, complaints and other matters, which are now covered by paragraph 5 of the First Schedule inserted by the law into the 1948 Law.
- 2.4 Section 41 of the code which relates to appeals has been deleted as it is dependent on the existence of the Conduct Panel.
- 2.5 In accordance with the resolution of [Billet d’État XII of 2022](#) Part V of the Code (now renumbered IV), continues to reserve allegations of abuse of privilege to the Privileges Panel.
- 2.6 In accordance with paragraph 7 of the First Schedule to the law as inserted into the 1948 Law, the Commissioner for Standards may make and publish a statement of the manner in which he or she proposes to discharge his or her functions which the Committee must as soon as practicable lay before the States. The statement of Dr McCullough, should the States agree to her appointment, will be laid before the States as an Appendix report to the June Billet. It is anticipated that in line with the Pan-Island aspirations of this post the Guernsey and Jersey statements will be closely aligned.

## **3 Compliance with Rule 4**

- 3.1 Rule 4 of the Rules of Procedure of the States of Deliberation and their Committees sets out the information which must be included in, or appended to, motions laid before the States.
- 3.2 In accordance with Rule 4(1):
  - a) The propositions contribute to the States’ objectives and policy plans by progressing Resolution 1a made by the States of Deliberation on 19<sup>th</sup> August

2020, following consideration of the policy letter entitled "Review of the Code of Conduct for Members of the States of Deliberation" (Billet d'État XVI of 2020, Article 10).

- b) In preparing the propositions, consultation has been undertaken with the Law Officers of the Crown.
- c) The propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
- d) There are no additional financial implications to the States of carrying the proposal into effect.

3.3 In accordance with Rule 4(2):

- a) The propositions relate to the Committee's duties and powers to advise the States and to develop and implement policies in relation to "matters concerning the propriety and conduct of States' members".
- b) The propositions have the unanimous support of the Committee.

Yours faithfully

Deputy C.P. Meerveld  
President

Deputy L.C. Queripel  
Vice-President

Deputy S.P. Fairclough  
Deputy J.A.B. Gollop  
Deputy L.J. McKenna

**PART II****Complaints to the Commissioner for Standards**

22. Any person may complain to the Commissioner for Standards (the Commissioner) that an elected Member has breached the Code of Conduct.

**Procedure for Complaints relating to Part I matters**

23. Complaints, whether from Members or from members of the public, alleging that the conduct of a Member is in breach of the Code of Conduct set out in Part I must be addressed in writing to the Commissioner.
24. In the interests of natural justice, a complaint shall be made to the Commissioner in private and not publicised until the complaint has been determined and the decision communicated to the parties involved.
25. Whilst a complaint will normally be submitted by a third party, the Commissioner may initiate an investigation if they believe that a breach of the Code may have occurred. A Member can also request that their own behaviour is investigated by the Commissioner to establish if a breach of the Code has taken place.
26. Immediately upon receipt of a complaint, or notification that the Commissioner is initiating an investigation, the Greffier shall notify the Member concerned that a complaint has been made and the nature of the complaint.
27. All Members are required to co-operate fully and promptly with the Commissioner during any investigation, even if the Member concerned considers that the alleged breach is unsubstantiated. Failure to co-operate in any investigation will, in itself, be regarded as a breach of the Code.
28. If the Commissioner, in the course of the investigation, has cause to believe that a criminal offence may have been committed, he or she shall immediately suspend the proceedings and forthwith refer the matter to the Chief Officer of Police. The investigation shall not be resumed until either judicial proceedings have been concluded or the Chief Officer of Police has certified to the Commissioner that they have no further interest in the matter.
29. Where the Commissioner finds that a complaint has been substantiated but is of the view that the breach of conduct was of a minor nature he or she will normally dispose of the matter by cautioning the Member concerned. A report of the Commissioner's decision in such cases shall be forwarded to the Presiding Officer and to the Greffier who shall make the said report available for public inspection whenever the Greffe is open for normal business.



30. Where the Commissioner finds that a complaint has been substantiated and is of the opinion that the Member should be formally reprimanded, suspended, removed from a particular office or expelled, or, where a Member refuses to accept a caution in the circumstances set out in the previous paragraph, he or she shall report their findings to the States Assembly and Constitution Committee which, in turn, shall submit that report to the Presiding Officer for inclusion in a Billet d'État with the recommendations of the Commissioner and, where the Committee does not agree with any recommendation of the Commissioner, any recommendations that the Committee may have. Notwithstanding a Member's refusal to accept a caution, the States may resolve that the Member be cautioned.
31. Where the complaint concerns the President or a Member of the States Assembly and Constitution Committee, and where the Commissioner finds that the complaint has been substantiated and is of the opinion that the Member should be formally reprimanded, suspended, removed from a particular office or expelled, he or she shall report their findings to a panel comprising the five most senior Members of the States by length of service who do not have a seat on the States Assembly and Constitution Committee who, in turn, shall submit that report to the Presiding Officer for inclusion in a Billet d'État with the recommendations of the Commissioner.
32. For the avoidance of doubt mediation between the complainant and the accused Member is not permitted in the processing of complaints made pursuant to this Code of Conduct.

## Appendix 1

### COMMISSIONER FOR STANDARDS

**Commissioner  
for Standards** Dr Melissa McCullough

**Address:** Commissioner for Standards  
c/o The States' Greffier  
The Royal Court House,  
St Peter Port,  
GY1 2NZ

**E-mail Address:** [statesmemberscodeofconduct@gov.gg](mailto:statesmemberscodeofconduct@gov.gg)

**Website Address:** [www.gov.gg/memberscodeofconduct](http://www.gov.gg/memberscodeofconduct)

# Melissa McCullough

## Career History Summary

Role	Organisation	Dates
Commissioner for Standards	Northern Ireland Assembly	Sept 2020 – Present
Advisor, Ethics Committee	BMJ (British Medical Journal)	Sept 2022 – Present
Visiting Academic	Royal College of Surgeons in Ireland	Sept 2007 – Present
Chair and Panel Assessor; Ethics Panel	Medical Council Ireland	Sept 2017 – Present
Non-Executive Director	Health & Social Care Board NI	April 2009 – Aug 2020
Director	MTM Consultancy	Sept 2017 – Sept 2020
NICE Guideline Committee Member	National Institute for Health and Care Excellence	Sept 2016 – May 2018
Senior Lecturer, Clinical Ethics & Law	Brighton & Sussex Medical School	Sept 2015 – Aug 2016
Lecturer, Ethics, Law & Professionalism	Queen's University Belfast School of Medicine	April 2005 – Sept 2015
Company Director	Designco Ltd	Feb 2007 – Present

## Qualifications

PhD	Biomedical Sciences	Queen's University of Belfast, N Ireland	1997
LLB	Law	University of London, UK	2005
MSc	Applied Ethics	Albany Medical College, New York, USA	2010
Cert	Values & Public Policy	University of Oxford, UK	2022
Cert	Diversity & Inclusion	Cornell University, New York, USA	2018
BA	Biology	Temple University, Philadelphia, USA	1992
Cert	Artificial Intelligence	University of Helsinki, Finland	2019
PG Cert	Higher Education Teaching	Queen's University Belfast, N Ireland	2007
Cert	Mediation	Centre for Effective Dispute Resolution, UK	2007

## Career History

### Commissioner for Standards, Northern Ireland Assembly (2020–Present)

- Investigate complaints relating to the conduct of Ministers and Members of the Legislative Assembly (MLAs)
- Encourage and promote high ethical standards in public life
- Develop strategy and influence policy relating to standards in public life
- Manage the office, including budgets, processes and systems
- Since being in post, I have cleared a three-year backlog of complaints, transformed processes, procured a new complaint handling system and developed/launched new website

### Visiting Academic, Royal College of Surgeons in Ireland (Sept 2007–Present)

- MSc Healthcare Ethics; Law, Ethics and Resource Allocation

### Panel Chair and Assessor for Undergraduate Medical Programs, Medical Council Ireland (2017–Present)

*The Council's purpose is to protect the public by promoting and better ensuring high standards of professional conduct and professional education, training and competence among doctors.*

### Company Director, Designco Ltd (Jan 2007–Present)

- Manage finances and finance team
- Develop annual business strategy and plan
- Procure and implement new IT systems
- Since its inception in 2007, the company has been profitable in all but the pandemic year (2020-21)

**Non-Executive Director, Health & Social Care Board NI, Ministerial Appointment (2009–2020)**

*The HSCB, the then arm's length body of the Department of Health Northern Ireland, commissioned health and social care services for the whole of the Northern Irish population.*

- Member of Reference, Governance and Remuneration HSCB sub-committees
- Champion for equality, justice, human rights in decision and policy-making
- Designated Board Director “Whistle-Blower Advocate”
- Oversight and input into the development and implementation of transformational policies

**Guideline Committee Member, National Institute for Health and Care Excellence (NICE) London (2016-2018)**

*NICE is a non-departmental public body that has a statutory duty to improve outcomes for people using the NHS and other public health and social care services by, among other things, producing evidence-based guidance and advice for health, public health and social care practitioners.*

- Developed with the team the Lyme Disease Guideline; reviewed and analysed evidence, identified issues of concern for people with Lyme Disease, public health evidence and issues, and assisted in developing the final published guidance

**Senior Lecturer, Clinical Ethics & Law, Brighton & Sussex Medical School, University of Sussex (2015-2016)**

- Appointed Governor for Brighton & Sussex Medical School, West Sussex Foundation Trust
- Ethics & Law teaching, research, evaluation, curriculum development at undergraduate and postgraduate level
- Quantitative and qualitative research and program evaluation

**Lecturer, Medical Ethics, Bioethics & Law, Centre for Medical Education, Queen’s University Belfast, School of Medicine (2005–2015)**

- Curriculum Lead for Ethics, Law and Professionalism, Undergraduate and Postgraduate Medicine 2008-2015
- Director MSc Interprofessional Health and Social Care Management 2006-2015
- Director Patients as Partners program; recruitment, training, monitoring 2006-2015
- Deputy Director of Student Support & Guidance for medical school 2009-2014
- Lead for Diversity & Inclusion Training: “Enhancing Service Quality” University initiative, 2009-2011
- Scholarly Education Research Network, Research Lead for Ethics and Professionalism 2013-2015
- Research Ethics Committee Member, School of Medicine, Dentistry and Biomedical Sciences, 2005-2015
- Internationalisation Faculty Group, North America 2011-2014
- Institute for Collaborative Research in the Humanities, Member 2012-2015
- Dissertation module director and supervisor for MSc research students
- Postgraduate Taught Board (w/rotating chair) 2006-2015

**Public Policy Work**

Department of Health, Hyponatraemia Inquiry, Education & Training Workstream, Member	2018-2020
Diversity and Inclusion in Senior Recruitment NHS Northern Ireland, Department of Health	2016-2017
Complaints Evaluation Implementation Group, Health & Social Care Board NI	2012-2019
Medical Students, Professional Values and Fitness to Practice, General Medical Council UK	2014-2015
Stormont Knowledge Exchange Seminar Series, NI Assembly	2012
Human rights-based approach to policy-making: Transforming Your Care, HSCB NI	2011-2014
Diversity & Inclusion Theatre Event, General Medical Council UK	2010
Consultation group for GMC Consent Guideline, General Medical Council UK	2008

**Professional Memberships/Affiliations**

2021-date	International Ombudsman Association, Member
2011-date	Fellow UK Higher Education Academy
2008-2015	Northern Ireland Ethics Forum, Council Member
2002-date	Holy Family Parish, Belfast, Reader
2001-date	Down’s Syndrome Association, Strategic Advisor and Volunteer
2006-2015	Association of Medical Educators in Europe (AMEE), Member

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

**COMMITTEE *FOR* HOME AFFAIRS**

**AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION**

The States are asked to decide:-

Whether, after consideration of the Policy Letter entitled 'Amendments to Criminal Justice Legislation', dated 6<sup>th</sup> March 2023, they are of the opinion:-

1. To agree to amend the Proceeds of Crime (Bailiwick of Guernsey) Law, 1991 and the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 as set out in sections 4, 5, and 6 of this Policy Letter
2. To agree to amend the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 as set out in section 6 of this Policy Letter
3. To agree to amend the Drug Trafficking (Bailiwick of Guernsey) Law, 2000, and any other necessary secondary legislation, as set out in Section 7 of this Policy Letter.
4. To agree to amend the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 as set out in Section 8 of this Policy Letter.
5. 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 HOME AFFAIRS**

AMENDMENTS TO CRIMINAL JUSTICE LEGISLATION

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

6<sup>th</sup> March 2023

Dear Sir

**1 Executive Summary**

- 1.1 Following discussions with the Law Officers, the Committee *for* Home Affairs (“the Committee”) has become aware of the need for a number of technical amendments with regard to criminal justice and related issues. These technical amendments are proposed to the States in this Policy Letter following the formal advice and recommendation of His Majesty’s Comptroller.
- 1.2 The advice from His Majesty’s Comptroller summarises the various issues and sets out how they might be addressed – this advice has been provided in full in this Policy Letter. The Committee fully supports His Majesty’s Comptroller’s conclusions.

**2 Advice from His Majesty’s Comptroller**

- 2.1 The advice from His Majesty’s Comptroller in respect of the proposed amendments, which was provided through a letter from the Law Officers, is set out below:
- 2.2 *The purpose of this letter is to recommend some technical changes to the Bailiwick’s framework for dealing with criminal justice and related issues. The first comprises the introduction of a dedicated extradition process in respect of Jersey and the Isle of Man. The second concerns amendment to the wording of the money laundering offences in the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1991 and the Drug Trafficking (Bailiwick of Guernsey) Law, 2000 (respectively, the Proceeds of Crime Law and the Drug Trafficking Law). The third concerns the approach to dealing with restrained funds under the Proceeds of*

*Crime Law and the Drug Trafficking Law. The fourth involves the enforcement of investigatory orders made by the court. The fifth relates to the removal of a restriction under the Drug Trafficking Law on assisting other jurisdictions with recovering property used to carry out drugs offences. The sixth comprises an amendment to the Beneficial Ownership of Legal Persons (Guernsey) Law, 2017 (the Beneficial Ownership Law) to give the Director of the Economic and Financial Crime Bureau (EFCB) and the Head of the Financial Intelligence Unit (FIU) direct access to the Register of Beneficial Owners of Legal Persons (the Register).*

- 2.3 All of these changes can be made by Ordinance or, in the case of the Forfeiture of Money, etc in Civil Proceedings (Bailiwick of Guernsey) Law, 2007 (the Forfeiture Law), by primary legislation that is currently being drafted.*

### **3 Extradition to Jersey and the Isle of Man**

- 3.1 Extradition is the legal process for rendition of a person by one country to another country at the request of that other country, in circumstances where the person is accused of an offence within the jurisdiction of the requesting country or is alleged to be unlawfully at large after having been convicted of an offence there. Until 2021, when the Extradition (Bailiwick of Guernsey) Law, 2019 (the Extradition Law) came into force, extradition from the Bailiwick was governed by the Extradition Act 1989 (the 1989 Act). The effect of the Extradition Law is that the Bailiwick now has its own comprehensive regime for the extradition of persons from the Bailiwick, under which extradition only occurs following a decision by HM Procureur and an extradition hearing before the court, and extradition is also subject to various restrictions such as a forum bar. However, as was the case under the 1989 Act, the Extradition Law does not apply to rendition to the United Kingdom (UK). This is because, in line with the close relationship between the UK and the Crown Dependencies, there is a separate, simplified and long established process for rendition between the UK on the one hand and the Crown Dependencies on the other. Under this process, arrest warrants in relation to indictable offences that are issued in the United Kingdom are given effect in the Bailiwick and the other Crown Dependencies (and vice-versa). This means in turn that a request from the UK is not subject to the processes under the Extradition Law outlined above that apply to requests from countries with which the Bailiwick does not have the same close relationship.*

- 3.2 However, the simplified process applicable to the UK does not cover rendition from the Bailiwick to Jersey and the Isle of Man. Neither is this dealt with under the Extradition Law (again, in line with the position under the 1989 Act). To date, sending people to the other Crown Dependencies has been dealt with when necessary by relying on various other enactments or mechanisms on a case by case basis, but the scope and applicability of these enactments and mechanisms has not always been obvious, and it would plainly be desirable to put the process for rendition from the Bailiwick to the other Crown Dependencies on a clear and*

*unambiguous statutory footing. In anticipation of this, the Extradition Law contains a power for the States to make special provision by Ordinance in relation to the extradition of persons to Jersey and the Isle of Man.*

- 3.3 I advise that this should now be done, and that the process put in place by such an Ordinance should be the same as that for rendition to the UK. This would properly reflect the fact that the Bailiwick enjoys the same close relationship and high levels of cooperation with the other Crown Dependencies as it does with the UK. It would also mirror the position for rendition to the Bailiwick under the Isle of Man's Summary Jurisdiction Act 1989 and, it is anticipated, is likely to be in line with measures that are currently under consideration in Jersey to clarify the position regarding rendition to the Bailiwick.*

#### **4 Money Laundering Offences**

- 4.1 The Bailiwick has a dual regime for the criminalisation of money laundering, in that laundering the proceeds of drug trafficking is dealt with at sections 57 to 59 of the Drug Trafficking Law, and laundering the proceeds of all other indictable offences is dealt with at sections 38 to 40 of the Proceeds of Crime Law. This dual regime, and the wording of the Bailiwick's money laundering offences, mirror the position in the UK before the introduction of the Proceeds of Crime Act 2002 (POCA).*
- 4.2 The Bailiwick's money laundering offences apply to three distinct forms of money laundering activity. These are:*
- a) concealing, disguising, converting or transferring the proceeds of criminal conduct or drug trafficking or removing them from the jurisdiction;*
  - b) making an arrangement to help another to acquire, retain, use or control the proceeds of criminal conduct or drug trafficking; or*
  - c) acquiring, using or possessing the proceeds of criminal conduct or drug trafficking.*
- 4.3 This tripartite approach reflects international standards on the criminalisation of money laundering.*
- 4.4 The tripartite approach has been retained by the UK (at sections 327 to 329 of POCA). However, with the introduction of POCA the distinction between drug trafficking and other forms of offence was replaced with a new regime applicable to all forms of indictable offences, and in addition, some changes were made to the wording of the money laundering offences.*
- 4.5 The principal change to the money laundering offences was in relation to the mental element that the prosecution must prove. This was done by introducing the concept of criminal property, which is defined at section 340 of POCA as property that comprises or represents a person's benefit from criminal conduct and which*

*the defendant knows or suspects to comprise or represent such a benefit. In broad terms, the effect of the change is to direct the mental element more towards the status of the property being laundered and away from the conduct or status of a specific person. While this change applies to all three types of money laundering offence, it is particularly relevant to the offence of entering into an arrangement to help a third party (i.e. the type of offence at b. above). The wording of that offence before the introduction of POCA (and as remains the case for the corresponding Bailiwick offence) made it necessary for the prosecution to prove that the defendant knew or suspected either that the property in question was the proceeds of the third party's criminal conduct or that the third party had benefited from criminal conduct. Experience in the UK had been that difficulties in proving this mental element was both dissuading prosecutors from bringing money laundering cases and contributing to a low conviction rate in cases that were brought. Essentially this meant that financial services providers or other professionals were able to turn a blind eye, to money laundering.*

- 4.6 *The POCA approach to the mental element required for money laundering offences has since been adopted by Jersey and the Isle of Man. Therefore, the wording of the offences in the Bailiwick is now out of step with that in comparable jurisdictions. To date, this issue has not prevented successful prosecutions in the Bailiwick, because of the particular facts of the money laundering offences that have been taken forward. However, the difficulties in proving the mental element required by the money laundering offences as they stand has been highlighted by recent case experience. Clearly this has the potential to undermine the effective implementation of the Bailiwick's regime for prosecuting money laundering.*
- 4.7 *I therefore advise that the Proceeds of Crime Law and the Drug Trafficking Law should be amended to bring the wording of the money laundering offences in line with that of the UK offences. I do not currently consider it necessary to make the more fundamental amendments that would be necessary to replace the current dual regime with a single regime for all types of offence. However, this is something that may be recommended at some point in the future.*

## **5     *Restrained Assets***

- 5.1 *Under the Proceeds of Crime Law and the Drug Trafficking Law, the court may make an order restraining assets pending the outcome of criminal proceedings in order to prevent asset flight. Restraint orders may be made against property belonging to a defendant or to property in third party hands (realisable property), and the court may vary a restraint order at any time on the application of an affected party. However, neither the Proceeds of Crime Law nor the Drug Trafficking Law contain any explicit provision about the approach that the court should take in exercising its powers in this area. The position is different in the UK, as this is addressed under section 69 of POCA by what is sometimes referred to as a "legislative steer". This provides that the court's powers must be exercised with*



*a view either to preserve sufficient value to satisfy a confiscation order, or if there is no confiscation order, to secure that there is no diminution in the value of realisable property. In the latter case, variation should not prevent non-defendants and non-recipients of tainted gifts from being able to recover the value of their interest in the restrained funds.*

- 5.2 *In practice, even though there is no corresponding legislative steer in Guernsey, the court has generally adopted a similar approach to that required in the UK. However, in the interests of clarity and certainty, I advise that this should be put on a statutory footing. I therefore advise that the Proceeds of Crime Law and the Drug Trafficking Law are amended to introduce into both enactments a provision corresponding to section 69 of POCA.*

## **6 Sanctions for Breaching Court Orders**

- 6.1 *A recent review of the criminal justice framework has identified an inconsistency in the enforcement of investigatory orders made by the court. This concerns the Proceeds of Crime Law and the Drug Trafficking Law on the one hand and the Forfeiture Law on the other. Under the Forfeiture Law, which enables criminal proceeds to be frozen or forfeited without the need for a criminal conviction, the court may make orders for the production of material or for granting entry to premises to obtain access to that material and certain other investigatory orders. These orders are underpinned by a range of criminal offences. However, while corresponding orders may be made under the Proceeds of Crime Law and the Drug Trafficking Law, those orders are not underpinned by criminal offences in this way. I therefore recommend that the Proceeds of Crime Law and the Drug Trafficking Law should be amended to ensure that the enforcement of orders made under them is supported by the same offences as under the Forfeiture Law. I further recommend that an additional offence is included in the Proceeds of Crime Law and the Drug Trafficking Law in relation to the destruction of material required in an investigation, along the lines of a corresponding offence in the Criminal Justice (Fraud Investigation) (Bailiwick of Guernsey) Law 1991. This offence should also be included in the new civil forfeiture legislation that has previously been approved by the States and is currently being drafted.*
- 6.2 *It is also possible to make investigatory orders under the Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 (the Terrorism Law). In most respects these orders are supported by criminal penalties, but there are some areas where this is not the case. I therefore advise that the Terrorism Law is amended to ensure that all necessary offences to underpin investigative orders are in place.*

## **7 Designations under the Drug Trafficking Law**

- 7.1 *When the Bailiwick's legal framework for addressing money laundering and terrorist financing was first introduced, it provided that in order for the Bailiwick*

*to provide assistance to another jurisdiction, the jurisdiction in question had to have been designated for that purpose. This was in line with the position in the UK, and international practice more widely, at that time. The framework provided that designations could be made by Ordinance, with one exception. This was in respect of the seizing and confiscation of items that had been used to perpetrate a drug trafficking offence (sometimes referred to as instrumentalities of drug trafficking). For these cases, under section 49 of the Drug Trafficking Law assistance could only be provided to jurisdictions that were designated in the UK by an Order in Council under the Criminal Justice (International Co-operation) Act.*

*7.2 In line with the evolution of international practice since then, the Bailiwick's regime has been amended so that the possibility of providing assistance is no longer limited to designated countries. This was done by adding a general designation provision to the relevant enactments, including the Drug Trafficking Law, which specified that any country that was not already designated under the enactment in question was deemed to have been designated for the purposes of that enactment and any Ordinance or subordinate legislation made under it. The reason it was done in this way was to avoid the extensive and resource intensive drafting exercise that would have been necessary to remove the references to designation across the legal framework, and it has proved to be an effective solution in practice.*

*7.3 However, it has been drawn to my attention that although the general designation provision is widely worded, there is a lack of clarity as to whether it in fact applies to designations in respect of the seizure and forfeiture of instrumentalities under the Drug Trafficking Law. This is because the general designation provision refers to section 35 of the Drug Trafficking Law (which deals with external confiscation orders for sums of money), under which designations may be made by Ordinance of the States, but it does not refer to section 49 (which addresses enforcement of external forfeiture orders), under which designations may only be made by the UK.*

*7.4 This is therefore a possible anomaly in the Bailiwick's legal framework. While to date it has not prevented the Bailiwick from providing assistance to a country that has not been designated under the Criminal Justice (International Co-operation) Act, this cannot be ruled out, and if it did occur that would clearly be an undesirable outcome and one that could attract negative attention internationally. I therefore recommend that the Drug Trafficking Law and, if necessary, related secondary legislation, should be amended to remove this possibility.*

## **8 Beneficial Ownership**

*8.1 Under the Beneficial Ownership Law, the Registrar has the power to disclose information where required for specific purposes such as the prevention or detection of crime. In addition to, and separate from this power, the Beneficial Ownership Law provides that the Guernsey Financial Services Commission, the*

*Director of the Revenue Service and the Economic Crime Division of the Guernsey Border Agency shall have direct access to the Register. This direct access is in recognition of the particular economic crime functions of those authorities.*

- 8.2 *However, the economic crime functions of the Economic Crime Division of the Guernsey Border Agency have now been transferred to the EFCB. Therefore, I advise that the Beneficial Ownership Law should be amended to replace the reference to the Economic Crime Division of the Guernsey Border Agency with a reference to the Director of the EFCB.*
- 8.3 *The list of persons or bodies that shall have direct access to the Register does not currently include the Head of the FIU. Direct access is available to the FIU in practice because of the way in which the Register is kept. However, for the avoidance of doubt, and to make things clear from an external perspective, I advise that a right to direct access to the Register for the Head of the FIU should also be specified in the Beneficial Ownership Law.*

## **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 The following information is provided in conformity with Rule 4(1):
- a) The Propositions accord with the States' objective and policy plan to keep the Island safe and secure, which was agreed as a workstream under the Government Work Plan 2022, through the appropriate maintenance and updating of relevant criminal justice legislation.
  - b) Consultation has been undertaken with the Alderney and Sark Policy & Finance Committees in the preparation of this Policy Letter.
  - c) The Propositions have been submitted to His Majesty's Procureur for advice on any legal or constitutional implications.
  - d) There are no financial implications to the States of Guernsey of carrying the proposals into effect.
- 9.3 For the purposes of Rule 4(2):
- a) The propositions relate to the Committee's purpose and policy responsibilities Committee to advise the States and to develop and implement policies on matters relating to its purpose including law enforcement, including policing and customs.

b) the propositions have the unanimous support of the Committee.

Yours faithfully,

R G Prow  
President

S P J Vermeulen  
Vice-President

S Aldwell  
L McKenna  
A W Taylor

P A Harwood OBE  
Non-States Member

# **RESPONSIBLE OFFICER FOR THE BAILIWICK OF GUERNSEY**

**Under “The Regulation of Health Professions  
(Medical Practitioners) (Guernsey and Alderney)  
Ordinance, 2015”**

## **ANNUAL REPORT FOR THE YEAR 2022**

**Dr Peter Rabey, MBChB, FRCA.**

**Responsible Officer**

**States of Guernsey.**

**Date: 3<sup>rd</sup> February 2023**

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## 1. Executive summary

The Responsible Officer is required to submit an annual report to the States of Guernsey, through the Committee *for* Health & Social Care, as to the discharge of his or her functions. This report provides a summary of activity relating to regulation and revalidation of doctors in 2022.

### Key Findings:

- At the end of 2022 there were a total of 285 doctors on the Bailiwick Register and with a licence to practice. Of these 158 were “local practitioners” and 127 were “UK-connected Practitioners”. A breakdown is given in section 7 of this report.
- All local practitioners had completed appraisals in 2022, although 3 were late.
- Revalidation recommendations were made for 16 local doctors to the GMC by the RO in 2022. Four doctors had a ‘defer’ recommendation for lack of evidence, three of whom have since had positive recommendations. The remaining doctor will come up for revalidation again in 2023. Positive recommendations were made for the other doctors. All recommendations were accepted by the GMC.
- No doctors received sanctions or warnings from the General Medical Council in 2022.

## 2. Purpose of the Report

This report is to inform the Committee *for* Health & Social Care and through them the States of Guernsey, as to the discharge of the Responsible Officer’s functions during the calendar year 2022. This is a requirement of the Responsible Officer under the Ordinance.

## 3. Background

In 2015 the Bailiwick established the role of Responsible Officer for the States of Guernsey as part of “The Regulation of Health Professions (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015” (“the Ordinance”). The role mirrors, to a significant extent, that established in 2010 UK legislation (“The Medical Profession (Responsible Officers) Regulations 2010”).

The Responsible Officer has prescribed obligations regarding medical practitioners which include ensuring that appropriate annual appraisals take place (for local practitioners), liaising with UK RO’s (for UK-connected doctors working here), making recommendations to the General Medical Council (GMC), investigating and referring concerns, protecting patients, and ensuring that any conditions are complied with.

The ordinance describes two classes of medical practitioner: “Local Practitioners”

(those doctors on the local register who do not have a connection to UK designated body), and “UK Connected Practitioners” (those who do).

Although defined as Responsible Officer in local law, the GMC recognise a Suitable Person role for local practitioners in the Bailiwick, rather than a Responsible Officer role under the UK Regulations. This is because the Bailiwick is not a UK Designated Body under their legislation, and is the same in the other Crown Dependencies. The Suitable Person role is similar to the UK Designated Body Responsible Officer role in terms of making recommendations to the GMC about revalidation of doctors.

Dr Rabey remained the Responsible Officer for all but one local doctor in the Bailiwick in 2022. Dr John McInerney, Responsible Officer in Jersey, continued to act as RO for one doctor working in the Bailiwick because of a conflict of interest (as described in previous reports).

Every licensed doctor who practices medicine in the Bailiwick of Guernsey must be registered with the General Medical Council and must take part in medical revalidation.

#### **4. Duties of the Responsible Officer**

Previous reports have set out the duties of the Responsible Officer with respect to revalidation of doctors. These remain as set out in schedules 2 and 3 of the Ordinance.

#### **5. Governance Arrangements**

Governance arrangements remained largely unchanged from my 2021 report. The local register of doctors may be accessed by the public through the HSC website at <https://gov.gg/healthprofessionalregisters> . The GMC register may be accessed through their website at <https://www.gmc-uk.org> .

No decisions of the RO were appealed to the Registration Panel in 2022.

The RO remains an active participant in the Responsible Officer Network organised by NHS England, and takes part in Suitable Person Reference Group meetings organised by the General Medical Council.

The RO meets regularly with their designated GMC Employment Liaison Advisor and has further ad-hoc communication as required. A contract is in place with NHS Resolution to provide expert advice, support, and interventions for concerns regarding doctors. The RO has an external Responsible Officer – Mr Peter Lees of the Faculty of Medical Leadership and Management and takes part in appraisal and revalidation under their auspices. The RO’s appraisal position is fully up to date.



## 6. Register of Doctors

The Register of doctors is a live document and is amended regularly to reflect additions, departures, and other changes. The Bailiwick Register is available in summary form on-line at <https://gov.gg/healthprofessionalregisters>.

At the end of 2022 there were a total of 285 doctors on the Guernsey Register and with a licence to practice – an increase of 40 from the end of 2021. Of these 158 were “Local Practitioners” and 127 were “UK-connected Practitioners”. The increase was largely in the UK connected group and includes more locum doctors providing services locally and doctors involved in privately prescribing medical cannabis.

A breakdown for the position at the end of 2022 is provided in the table below, with the change from 2021 identified in brackets.

Local Register of Medical Practitioners 2020										
	HSC		MSG		GP's		Others		Total	
	2022	+/-	2022	+/-	2022	+/-	2022	+/-	2022	+/-
Local Practitioners	36	(+4)	51	(-)	67	(-1)	4	(+3)	158	(+6)
UK-Connected Practitioners	54	(-3)	30	(+17)	22	(+14)	21	(+6)	127	(+34)
Total	90	(+1)	81	(+17)	89	(+13)	25	(+9)	285	(+40)

UK Connected Doctors: 54 UK-connected doctors worked for HSC in 2022. This includes locums, visiting doctors, and visiting appraisers for doctors. 30 doctors working for MSG in 2022 retained a UK connection, most were here as locums. There was an increase from 8 to 22 GP's connected to UK designated bodies; most acted as locums (including for Alderney and Sark) while in the Bailiwick, although some are in permanent posts in Guernsey but have retained their status on the UK Performers List.

Doctors Classed as “Others”: This group consist largely of doctors who hold private clinics, provide medical advice to local firms, and services to Guernsey prison. Four were connected locally, 21 had UK or no declared connection.

Conditions: The RO has powers to add conditions to a doctor's local registration. In 2022 this power was not exercised. The GMC also did not impose conditions on the practice of any locally registered doctors in 2022.

## 7. Medical Appraisal

### a. Appraisal and Revalidation Performance Data

In 2022 there were 149 locally connected doctors who required an appraisal in-year. A total of 146 appraisals were completed within the agreed time period. The table below gives details:

Appraisals 2022					
	HSC	MSG	GP's	Others	Total
Number with appraisal due in 2022	31	47	67	4	149
Appraisals within agreed time period	31	46	66	3	146
%	100%	97.9%	98.5%	75%	98%

The 3 late appraisals were for doctors who required a 'deferral' recommendation to the GMC for revalidation.

The overall in-year appraisal rate for local practitioners was 98%.

No cases of non-engagement with appraisal were notified to the GMC in 2022, although 4 doctors in total required deferral recommendations to the GMC due to insufficient evidence for a positive recommendation. In each case an action plan was put in place to remedy the position and 3 have now successfully revalidated. One was deferred until later in 2023.

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## b. Appraisers

Medical appraisal remains the cornerstone of revalidation of doctors. Doctors with a UK connection take part in appraisal and revalidation with their UK designated body. For locally-connected doctors there are 2 main groups of appraisers. Most doctors fit cleanly into one of these groups, but for doctors in the "other" category, their appraiser is determined by best-fit (nearly always obvious).

Primary Care: Doctors in General Practice in Guernsey continue to demonstrate high levels of engagement in appraisal. GP's undertake appraisals with the Wessex Appraisal Service, a service run by Health Education England; they use a mix of off-island and on-island appraisers.

Secondary Care: Approximately half of appraisals in secondary care are conducted on-island, with the remainder conducted by an off-island appraiser (usually remotely). The on-island appraisals were delivered by a group of eight trained doctors comprising of both States-employed doctors and doctors from the Medical Specialist Group. Off-island appraisers were largely delivered by experienced appraisers from Southampton.

Individual appraiser feedback continues to demonstrate high levels of satisfaction with the quality of appraisers.

A local Appraisers Network meeting takes place regularly, chaired by the Appraisal Lead, Dr Flambert.

### **c. Quality Assurance**

As in previous years, routine ongoing quality assurance continues with active involvement of the appraisal leads and the RO, including reviews of appraisal portfolios and reflection and feedback for individual appraisers.

### **d. Access, Security and Confidentiality**

The Responsible Officer is registered through HSC with the Data Protection Commissioner and has up-to-date Data Protection training.

### **e. Clinical governance**

Prior to their appraisal, doctors receive information about all complaints and incidents in which they are named. This report is available to the appraiser, appraisal lead and to the RO. In addition some doctors may be asked to reflect with their appraiser about specific incidents or events at their appraisal. The appraisal systems allow for such specific items to be identified clearly to both the appraiser and to the RO, to ensure that appropriate reflection and learning has taken place and been evidenced.

## **8. Revalidation Recommendations**

Revalidation typically takes place over a five-year cycle, at the end of which the GMC seek a recommendation from the doctor's RO / Suitable Person (if they have one).

Revalidation recommendations were made for 16 local doctors to the GMC by the RO in 2022. Four doctors had a 'defer' recommendation because there was insufficient evidence for a positive recommendation. Two of these have since had positive recommendations. The remaining two have remedial plans in place and will come up for revalidation again in 2023. Positive recommendations were made for 13 other doctors. All recommendations were accepted by the GMC

There were no notifications to the GMC of non-engagement by a doctor in processes for revalidation.

All recommendation were made on schedule and were accepted by the GMC. (Appendix A presents numerical details using the NHS England audit template.)

## **9. Recruitment and engagement background checks**

Background checks remain in place for doctors seeking to join the local Register, including:

- Checks of GMC registration:
  - o Current GMC Registration
  - o Holds a valid Licence to Practice
  - o On the Specialist Register or GP Register (as appropriate)

- Curriculum Vitae (CV) of the doctor
- References (minimum of two)
- Recent enhanced Disclosure and Barring Service (DBS) check
- Form of information completed (contact details, training, qualifications, etc.)
- Specimen Signature
- Registration fee paid.

When a doctor's name is added to the local register a circular is sent widely (including all island pharmacies) informing them of the name, specialty, and role of the new doctor, and providing a specimen signature.

Doctors undergo normal employment checks by their prospective employer in addition to the process of adding to the local register.

Guernsey remains in a favourable position in terms of obtaining appropriate information for background checks before a doctor's name is added to the local register. The use of very short-term locums is impractical for geographical and regulatory reasons, and there are robust processes for identifying and checking on any new doctors who work in the Bailiwick.

## 10. Responding to Concerns and Remediation

As noted in previous reports, concerns about doctors can be raised in many ways. In addition to the powers given to the RO under the Ordinance, local policies for responding to concerns are in place for both Primary and Secondary Care. The policies are based on "Maintaining High Professional Standards" (MHPS) and provide pathways for action when a concern arises.

Concerns about doctors may result in informal or formal management. Informal management typically is used for minor matters when there is no risk to patients and the doctor demonstrates insight.

The Responsible Officer continues to meet his obligation to investigate concerns and to liaise with the GMC about any fitness to practice issues.

Due to the small number of cases, details of investigations are not included in this report. This is to protect doctors against possible identification in our small community. Where action needs to be taken on a doctor's registration the information is available in the public domain. Public identification in cases where no substantive concern has been upheld by investigation can cause unfair and lasting harm to a doctor's reputation.

### General Medical Council and Medical Practitioners Tribunal Service.

No doctors received sanctions or warnings from the GMC in 2022.

## 11. Risks and Issues:

Complaints: No new complaints were received in 2022 about the discharge of the RO function.

Conflicts of Interest: No new conflicts of interests were reported in 2022.

## 12. Conclusion

This annual report has presented details of the discharge of the Responsible Officer's functions in the year 2022. Standards around revalidation remain high, and processes for identifying and acting on concerns are in place and working effectively.

The RO would like to thank all those involved in helping to deliver high quality regulation of doctors in the Bailiwick in 2022.

### 13. Annual Report Appendix A: Audit of revalidation recommendations.

Revalidation recommendations between 1 January 2022 to 31 December 2022	
Recommendations completed on time (within the GMC recommendation window)	16
Late recommendations (completed, but after the GMC recommendation window closed)	0
Missed recommendations (not completed)	0
TOTAL	16
Primary reason for all late/missed recommendations: For any late or missed recommendations only one primary reason must be identified	
No responsible officer in post	0
New starter/new prescribed connection established within 2 weeks of revalidation due date	0
New starter/new prescribed connection established more than 2 weeks from revalidation due date	0
Unaware the doctor had a prescribed connection	0
Unaware of the doctor's revalidation due date	0
Administrative error	0
Responsible officer error	0
Inadequate resources or support for the responsible officer role	0
Other	0
Describe other	-
TOTAL [sum of (late) + (missed)]	0



Committee *for*  
Education, Sport & Culture

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14 March 2023

Dear Sir

**Election of Second Non-Voting Member to the Committee *for* Education,  
Sport & Culture**

In accordance with Rule 46(5) I am pleased to inform you that Mrs Diane Elizabeth Mitchell has been elected as a non-voting member of the Committee *for* Education, Sport & Culture, with effect from 13<sup>th</sup> March 2023.

In accordance with Rule 46(2) I can confirm that Mrs Mitchell has provided a completed Declaration of Unspent Convictions and a completed Declaration of Interest, and the Committee is satisfied that there is no conflict of interest that cannot be managed. Both of these documents will now be lodged with HM Greffier for publication.

The Committee would be grateful if you could arrange for this letter to be published as an appendix to a future Billet d'Etat.

Yours faithfully

**Deputy Andrea Dudley-Owen**  
President  
The Committee *for*  
Education, Sport & Culture