



# BILLET D'ÉTAT

TUESDAY 29th SEPTEMBER 2009

## Volume 1

1. Projet de Loi entitled "The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009", p. 1751
2. The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009, p. 1751
3. The Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009, p. 1751
4. The Fraud (Bailiwick of Guernsey) Law, 2009 (Commencement) Ordinance, 2009, p. 1751
5. Education Department – New Member, p. 1752
6. Treasury and Resources Department – Investigation into Establishing a Land Registry in Guernsey, p. 1753
7. Treasury and Resources Department – Amendments to the Income Tax (Guernsey) Law, 1975, p. 1760
8. Treasury and Resources Department – Corporate Property Plan, p. 1784
9. Treasury and Resources Department – Capital Prioritisation, p. 1814
10. Commerce and Employment Department – Public Holidays 2009, 2010 and 2011, p. 1828

XXIV  
2009

# ***B I L L E T D ' É T A T***

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

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I have the honour to inform you that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **TUESDAY**, the **29<sup>th</sup> SEPTEMBER, 2009**, at 9.30am, to consider the items contained in this Billet d'État which have been submitted for debate.

G. R. ROWLAND  
Bailiff and Presiding Officer

The Royal Court House  
Guernsey  
11 September 2009

**PROJET DE LOI**

entitled

**THE TRADING STANDARDS (ENABLING PROVISIONS)  
(GUERNSEY) LAW, 2009**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the Projet de Loi entitled “The Trading Standards (Enabling Provisions) (Guernsey) Law, 2009” and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

**THE MEDICINES (HUMAN AND VETERINARY)  
(BAILIWICK OF GUERNSEY) LAW, 2008  
(COMMENCEMENT AND AMENDMENT) ORDINANCE, 2009**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008 (Commencement and Amendment) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

**THE PRESCRIPTION ONLY MEDICINES (HUMAN)  
(BAILIWICK OF GUERNSEY) ORDINANCE, 2009**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Prescription Only Medicines (Human) (Bailiwick of Guernsey) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

**THE FRAUD (BAILIWICK OF GUERNSEY) LAW, 2009  
(COMMENCEMENT) ORDINANCE, 2009**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Fraud (Bailiwick of Guernsey) Law, 2009 (Commencement) Ordinance, 2009” and to direct that the same shall have effect as an Ordinance of the States.

**EDUCATION DEPARTMENT**

NEW MEMBER

The States are asked:-

V.- To elect a sitting Member of the States as a member of the Education Department to complete the unexpired portion of the term of office of Deputy A H Langlois, who has resigned as a member of that Department, namely to serve until May 2012 in accordance with Rule 7 of the Constitution and Operation of States Departments and Committees.

**TREASURY AND RESOURCES DEPARTMENT**

## INVESTIGATION INTO ESTABLISHING A LAND REGISTRY IN GUERNSEY

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

30<sup>th</sup> June 2009

Dear Sir

**1. Executive Summary**

At the June 2007 meeting, the States approved the introduction of a new system of property measurement and categorisation for taxation purposes. The Tax on Real Property (TRP) system introduced in January 2008 greatly improved the quality of property data held by the Department.

Whilst the development of the TRP system concentrated on establishing accurate building dimensions to enable equitable calculations of tax to be made, the Department recognised the importance of achieving definitive land records and recommended second phase work to develop the Cadastre Register to improve the accuracy of the Island's land records and introduce a Land Registry.

A Land Registry would be an official record of land ownership plotted accurately on the States Digital Map, as opposed to the current Registry of Deeds held at the Greffe, which is simply an official record of all transactions in land, with no requirement for accurate plotting of land boundaries.

This Report presents proposals for undertaking a review of the way land is recorded, registered and conveyed and for investigating the introduction of a Land Registry in Guernsey.

Now that TRP is fully operational, the Department is recommending the commencement of this second phase of the work, namely this review, which would focus on:

- Consultation with stakeholders
- Establishing clear communication links with stakeholders

- Research into suitable Land Registry models
- Identifying legislative requirements
- Identifying costs and benefits associated with the different models
- Finance and resourcing the project
- Implementation options and timescales

## 2. **Background**

The project to introduce and develop the States Digital Map and Geographical Information System commenced in 1996. The current version of the map, and the underlying land and property data held, is now used by a range of customers, all licensed through a public/private initiative managed by the Digimap Management Board. The States receives royalties from licensing the map and associated data, which funds on-going revenue expenditure for the upkeep of the map.

A report which was considered by the States in June 2007 on the Review of Tax on Rateable Values stated that:

*“the Treasury and Resources Department recognises the importance of a definitive land record and it is recommending that as a second phase, work should commence on the development of the Cadastre Register to improve the accuracy of land records and develop a staged approach to the introduction of a formal register of land in Guernsey.”*

The project to replace Tax on Rateable Values (TRV) was concluded at the end of 2007, with the new system of property measurement and categorisation, Tax on Real Property (TRP), being introduced on the 1<sup>st</sup> January 2008. With the introduction of TRP, the States established the principle of measuring land and buildings, wherever possible, using the plan view area provided by the States Digital Map.

The TRP project has significantly enhanced the quality of building data held by the States. However, land parcel data included in the map has historically been derived from conveyances drafted by Advocates, passed before the Royal Court and registered on the public records at the Greffe. This has meant that land parcel boundaries shown on the digital map have been indicative only.

In recognising the historical problems of determining precise land boundaries, in November 2007 the Department recommended a pragmatic interim solution to the taxation of land for TRP purposes. Effectively, the existing documented Cadastre land parcel records and area measurements are used in TRP assessments and the States endorsed the introduction of minimal tariffs for land for both 2008 and subsequently for 2009, such that the precise area and extent of land parcels were not of significance for taxation purposes.

The States of Alderney currently operates a successful Land Registry and has done so since 1949. The current proposal is to introduce a Land Registry in Guernsey (and Herm), thereby leaving the current Alderney system in place.

### **3. Undertaking the Review**

In accordance with section 12 of the Taxation of Real Property (Guernsey and Alderney) Ordinance, 2007 the Department is required to establish and maintain a property tax register of all real property in the Islands. The Cadastre Register, which contains information relevant to the property, the property owner and its TRP assessment, is open to public access. Together with the inclusion of additional mapping data, it is proposed that the Cadastre Register would form the basis of any future Land Registry.

It is proposed that the review would focus on the following areas:

- **Consultation with stakeholders**

It is important with a project of this nature to ensure that all those who have an interest in a Land Registry have the opportunity to contribute to the review. With that in mind, an early action will be to contact stakeholders such as advocates, estate agents, and others to ensure that their views are considered in any proposed new system.

- **Establishing clear communications links with stakeholders**

Having made initial contact with these stakeholders, it becomes equally important to provide feedback to them on the progress of the project and the likely preferred solutions that have been identified.

- **Researching Land Registry models**

There are a number of options available to the States ranging from a 'simple' solution such as upgrading the current Cadastre Register to allow for a greater accuracy in the recording of land boundaries, to a full-scale reform of property law (as was carried out in the United Kingdom in 1925), in particular the way a conveyancing transaction is undertaken, registered, authorised and paid for. The project would involve moving away from the current register of deeds system, to a register and guarantee of title. The project team has already completed reference visits to the Scottish Registries and H.M. Land Registry (England and Wales).

- **Identify Legislative requirements**

The impact of the legislative programme will be dependent on the model to be adopted for the Land Registry. A full-scale review of property law would be a significant task, but could introduce opportunities to consolidate and reduce the

cost of conveyancing and with the provision of a guarantee achieve additional revenue streams for the States. The extent of the review of existing laws will be dependent on the model adopted.

- **Costs v Benefits**

The review will attempt to identify, quantify and compare the costs and benefits associated with each Land Registry model examined and the various approaches to their implementation.

- **Resource implications**

The Department believes that the basic building blocks for a Land Registry are already in place. One of the key outcomes of the TRP project was the bringing together of the Cadastre and Guernsey Digimap Services into one operational unit, located together at the Old Tobacco Factory, situated at La Ramee, St Peter Port. This is the first time that property measurement, categorisation and taxation functions have been brought together in one operational unit.

Other than the appointment of a Land Registrar to oversee the legal aspects of the Land Registry, it is difficult to predict at this stage what additional resources will be required as this will depend a great deal on the model adopted. However, the Department would aim wherever possible, and without detriment to the effectiveness of the chosen solution, to utilise existing resources to establish, implement and administer the Land Registry.

- **Financing the project**

It is proposed to undertake initial exploratory work before reporting back on the likely funding requirements. However, it is important to re-emphasise that many of the Land Registry building blocks are already in place. This includes a modern computer system that holds extensive property data, which is currently in use by the Cadastre and also the Parishes, who have available a version of the Cadastre system for administering their parochial rates.

The Department considers that other than staff time and the cost of reference site visits, developing the concept of a Land Registry should not require any additional funding beyond the Department's routine capital and revenue allocations at this stage. The level of funding ultimately required if a Land Registry is to be established will clearly be influenced by the model adopted, which will in turn have an impact on the level of revenue collection available and the chosen service to the public.

- **Project governance**

A Land Registry Steering Group has been established, which includes political and staff representation from the Treasury & Resources Department and a representative of the Law Officers of the Crown, HM Greffier, the Alderney



Greffier and the Data Protection Commissioner. It is proposed to retain the current governance structure for the duration of the next phase.

#### **4. Benefits**

One of the many successes of the TRP project was the merging of land and property records used for taxation purposes with the States owned digital map. The development of building data has built on the successful public/private partnership, which now provides mapping and digital aerial photography used by States Departments, public utilities, the emergency services, estate agents and advocates offices, delivery services and many other businesses in the Bailiwick.

The introduction of a Land Registry in Guernsey will bring immediate benefits, such as providing accurate identification, measurement and categorisation of land parcels and boundaries. In addition to ensuring that the Island makes best use of scarce land and building resources, it will enable the States more accurately to reflect the value of land for both commercial and taxation purposes.

Whilst the Land Registry model to be adopted requires further exploration, the States could choose to guarantee title for all property conveyances. In addition to the overarching benefits of simplifying the conveyancing process, which in turn should result in reduced costs when selling property, the introduction of a Land Registry in Guernsey could generate additional revenue for the States.

Based on a median average Local Market property price, as at March 2009, of £290,000, with an average of 1,990 conveyances per year over the 5-year period 2004 to 2008, the legal fees from property conveyances in Guernsey are estimated to be in the region of £4,330,000 per annum. In addition, the review will explore opportunities for new revenue streams by developing services such as on-line access to property information and registration. Whatever approach is adopted, and in particular where bank or building society funding is used to purchase the property, Advocates are likely to continue to be involved in the conveyancing process.

#### **5. Legislation**

The review will need to identify the legislative requirements for the differing Land Registry models and will need to take account of the level of review and reform of the law of property and any impact on current conveyancing processes, including conveyance by share transfer. The review will also consider other areas of the law, in particular the Law of Inheritance and Guernsey Company Law and will assess the impact on planning and taxation laws.

#### **6. Data Protection and Privacy**

A project such as this has the potential to affect the privacy of individuals, in particular the extent to which information about their ownership of property is in the public domain or the ease by which such information may be obtained. The intention is to

conduct privacy impact assessments at key stages of the project lifecycle in order to ensure that any potential changes to the status quo as regards to the privacy of property ownership are fully understood.

## **7. Timescales**

The introduction of a Land Registry in Guernsey is clearly a significant task, although timescales will be influenced by the model adopted and these will be significant if major legislative changes are required. It is proposed to allow twelve months for the completion of the initial review of the available model options, the development of an appropriate model for Guernsey, the legislative requirements and initial consultations.

## **8. Next steps**

Should this proposal be endorsed by the States, the next phase of the project will focus on:

- Completing a consultation process with all stakeholders
- Establishing clear communication links with stakeholders
- Establishing the best fit for Guernsey
- Reviewing legislative requirements
- Undertake a privacy impact assessment on the proposals
- Continuing the development of the States digital map
- Considering the options for establishing the Land Registry

## **9. Conclusions**

The Treasury and Resources Department proposes to undertake a formal review of the opportunities to introduce a Land Registry in Guernsey, with the objective of developing a system of land and property registration that provides accurate and consistent measurements and classifications. In addition to the potential for increased revenue for the States, the other benefits of establishing a Land Registry in Guernsey include simplification of the conveyancing process, with the aim of reducing the cost of property transactions.

## **10. Recommendations**

The Treasury and Resources Department therefore recommends the States:

- 1) To endorse the Department's intention to conduct a review of the options for introducing a Land Registry in Guernsey.

- 2) To direct the Department to report back in due course with proposals for a Land Registry.

Yours faithfully

C N K Parkinson  
Minister

**(NB The Policy Council has no comment on the proposals.)**

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 30<sup>th</sup> June, 2009, of the Treasury and Resources Department, they are of the opinion:-

1. To endorse the Department's intention to conduct a review of the options for introducing a Land Registry in Guernsey.
2. To direct the Department to report back in due course with proposals for a Land Registry.

**TREASURY AND RESOURCES DEPARTMENT**

## AMENDMENTS TO THE INCOME TAX (GUERNSEY) LAW, 1975

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

14<sup>th</sup> July 2009

Dear Sir

1. **Executive Summary**

- 1.1. This Report proposes amendments to The Income Tax (Guernsey) Law, 1975, as amended (“the Income Tax Law”).
- 1.2. The Treasury and Resources Department proposes that the present system of granting relief from tax, to the payer, in respect of payments to charities, only if they are made under Deeds of Covenant, should be replaced with a system under which the payer would receive no relief but, instead, to the extent that the payer makes a donation from his taxed income, the recipient charity (if it is a Guernsey Registered Charity) would be treated as having received a donation net of tax, and as the income of charities is exempt from income tax it would be entitled to reclaim the tax suffered (and this would include donations which are not made under a Deed of Covenant).

It is also proposed that the present limit of £1,500 per annum, that qualifies for relief, be increased to £5,000 per annum in respect of each individual making donations (£10,000 for a married couple).

In respect of donations to Guernsey Registered Charities which are not under a Deed of Covenant, the Department proposes that there will also be a minimum annual contribution level of £500, by an individual (or married couple), before a charity qualifies for repayment. There would continue to be no minimum level in relation to donations under Deeds of Covenant.

It is also proposed that there would be transitional provisions to ensure the preservation of income tax relief in respect of individuals who, prior to 31 December 2009, have committed to make donations to a Guernsey Registered Charity under a Deed of Covenant. Deeds entered into, or revised, with effect from 1 January 2010 et seq would, however, not qualify the covenantor for relief.

- 1.3. In certain circumstances, with effect from 1 January 2008, a tax charge may arise if a company makes loans to certain persons (such as officers, employees and shareholders).

The Income Tax Law provides that where a company, which has made such a loan, subsequently writes off or is deemed to have written off that loan, the recipient of the loan is deemed to have received income in the combined amount of the loan and the tax. Although tax is deemed to have been paid already and the beneficiary of the loan is given an appropriate credit, the Department believes that the Law should be clarified to make it clear that there is no second charge to tax on the write off of the loan.

In addition, the writing off of a loan (which has already been charged to tax when the loan was originally advanced) could in theory give rise to an additional charge to tax because it constitutes a distribution of the company's profits. The Department proposes that the legislation be further revised to make it clear that, to the extent that a loan was charged to tax when it was originally advanced, the subsequent writing off of that loan would not give rise to a further tax charge as a distribution or a further obligation on the company to deduct and account for the amount of the tax.

- 1.4. The Department also proposes an amendment to allow "unilateral tax relief" which, prior to 2008, would have been due to a company, to flow through to a beneficial member when the company's income is distributed or deemed as distributed.
- 1.5. The Department currently has responsibility for hearing appeals against assessments, penalties, directions and orders where an income tax return has not been submitted. All other income tax appeals are heard by the Guernsey Tax Tribunal.

It is proposed that the Income Tax Law be amended to provide that all income tax appeals will be dealt with by the Guernsey Tax Tribunal.

- 1.6. The Department proposes updating certain exemptions, within the Income Tax Law, relating to certain payments made by the Social Security Department which have become outdated with the passage of time.
- 1.7. Following consultation with interested parties, the Department proposes certain amendments to revisions to those parts of the Income Tax Law dealing with the taxation of individuals who are resident but not solely or principally resident for income tax purposes, which were considered by the States in January 2009 (Billet II of 2009 at pages 50 – 54 inclusive).
- 1.8. At their meeting in April 2009, the States resolved to introduce the concept of limited liability partnerships into Guernsey law. The Department proposes that

the definition of “partnership” in the Income Tax Law be extended to include such bodies.

- 1.9. The present restriction on an exempt body obtaining exemption from tax (that it cannot hold shares in a Guernsey company unless that company is itself exempt) has become, in most instances, unnecessary. This provision is principally restricted to collective investment schemes. The Department is, therefore, proposing that this restriction be removed, albeit with appropriate provisions to ensure that such companies having income which would otherwise be taxable at the company intermediate rate (10%) and company higher rate (20%) would continue to pay tax, at those rates, on such sources of income.
- 1.10. At their meeting in January 2009, the States resolved to introduce a facility which would allow a company to elect to distribute at least 65% of its trading profits, the effect of which, broadly, would be to remove that company from the deemed distribution regime. The proposals considered by the States, in January 2009, envisaged that if a company made an election by 30 June 2009, the election should be capable of being valid in relation to 2008 onward. Subsequent consultation with interested parties, referred to elsewhere in this Report, has resulted in delays in the finalisation of the relevant Regulations. The Department proposes, therefore, that the Regulations, once made, will provide for such an election to be valid if it is made before 31 December 2009, rather than 30 June 2009.

In addition the original proposal was that any such election should be irrevocable. Following further consideration of this aspect of the proposals, the Department proposes that the election should be revocable in the event that control of the company is transferred to another person, or persons.

- 1.11 At their January 2009 meeting, the States agreed certain adjustments to the provisions of the Law dealing with the capping of the tax liability of individuals. The Department identified certain tax avoidance opportunities which it proposed be addressed. The perceived solution, identified by the Department at the time, has proven to be overly complex to legislate for. As a consequence, the Department now proposes an alternative anti-avoidance provision, which has been formulated following consultation with the Guernsey Society for Chartered & Certified Accountants.

In addition, it is possible that an individual could have a distribution of profits from a company which arose prior to 2008 (and which, as a consequence, under the provisions of the Income Tax Law, carries a tax credit of 20%) which, as a consequence of the operation of the tax cap, that credit could become repayable. This would amount, in effect, to a repayment of tax for Years of Charge 2009 et seq of income tax that the company had paid in years prior to the introduction of zero/10. The Department proposes that the Income Tax Law be revised such that, whilst credit for the underlying tax would remain available to the beneficial member receiving the distribution, that credit would not be repayable.

- 1.12. The Department has made Regulations which, if approved, will prescribe fees payable by gang leaders who make an application to the Director of Income Tax for the grant or renewal of an ETI exemption certificate, and make other minor modifications to the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations 2007.
- 1.13. Finally, the Department proposes consolidation of the Income Tax Law.

## 2. **Tax relief in respect of donations to charity**

- 2.1. Currently, tax relief is available to an individual who makes payments under a Deed of Covenant in favour of a Guernsey Registered Charity, up to a maximum of £1,500 per annum (£3,000 per annum for a married couple). A “Guernsey Registered Charity” for this purpose is a charity registered in accordance with The Charities & Non Profit Organisations (Registration) (Guernsey) Law, 2008. The present limit on donations under Deeds of Covenant, of £1,500, has been in place since 1 January 2001.
- 2.2. Tax relief is not presently available to Guernsey resident individuals in respect of non-covenanted donations to charities.
- 2.3. For the purposes of obtaining relief, a Covenant in favour of a charity must be irrevocable for a period exceeding three years.
- 2.4. Following consultation with the Association of Guernsey Charities the Department proposes that the present system, of allowing relief to the payer but only in respect of limited donations under Deeds of Covenant, be replaced.
- 2.5. It has been eight years since the present annual contribution limit, for payments qualifying for relief, was set at £1,500. In the light of that, and with a view to encouraging Guernsey residents to make donations to worthy causes, it is proposed that the limit that each individual may make, during the course of a year, and which would qualify for relief, should be increased to £5,000 (£10,000 for a married couple) with effect from 1 January 2010 (but see paragraph 2.8 below concerning the person who would benefit from that relief).
- 2.6. The Department also considers it appropriate to extend relief from contributions made under Deeds of Covenant (which many persons wishing to donate to charity may consider to be overly formal and restrictive) to include all donations to Guernsey Registered Charities. Again, it is proposed that this would become effective from 1 January 2010.
- 2.7. There are many situations where individuals may, spontaneously, make donations to charity in circumstances where, if they and/or the charity receiving the donation, were required to retain/create documentary evidence to support a claim for relief from income tax, this could create significant administrative

difficulties. A very obvious example would be donations made during street collections, sponsored events, etc.

In addition, if a substantial number of Guernsey residents were, as a consequence of these proposals, treated as making contributions which qualified for relief, that could prove to have a significant (and, at present, immeasurable) impact on the island's general tax revenues. Initially, therefore, the Department proposes that there should also be a minimum sum of £500 in total donations for each individual which they would have to make before they qualify for relief, during the course of a year, to any particular Guernsey Registered Charity.

If adopted, the Department will keep under review the impact on general revenues of the extension of the relief under these proposals and, in future years, will propose appropriate adjustments to the minimum and maximum levels referred to above, as is considered appropriate, as part of its budget proposals.

- 2.8. A more significant variation to the present system, however, is that the Department proposes that, again with effect from 1 January 2010, relief should cease to be available to those who are making donations. Instead, the recipient Guernsey Registered Charity would be treated as having received a payment which was net of Guernsey tax, so long as the individual making the donation was able to certify to the charity concerned that:
- other than in respect of payments made under a Deed of Covenant, his donations to that charity during that year had exceeded the de minimis level of £500;
  - the donations made to that charity, during that year, had been made out of income charged to tax in Guernsey at the individual standard rate of 20%;
  - his total qualifying donations to all Guernsey Registered Charities, during that year, did not exceed £5,000 in aggregate; and
  - the donation was not made under a Deed of Covenant entered into prior to 1 January 2010.

For the purposes of the above, in the case of a married couple, the de minimis limit would be £500, irrespective of the apportionment between the spouses, and a maximum of qualifying donations of £10,000 (i.e. the amount applicable to two individuals) again irrespective of the apportionment between them.

- 2.9. On production of the appropriate evidence required by the Director of Income Tax ("the Director") to support the claim, the charity will then be entitled to reclaim, from the Director, the tax paid by the person making the donation. For example:



- Mr X makes a donation of £1,000 to a Guernsey Registered Charity and completes a declaration in the format set out at 2.8 above.
  - The charity is treated, therefore, as having received the £1,000 as a sum net of tax, which gives an equivalent gross donation of £1,250 (i.e. £1,000 x 80/100).
  - The charity would, therefore, be entitled to make a claim, on the Director, for £250 (i.e. £1,250 - £1,000).
- 2.10. The effect of the above is that the charity receiving a donation receives, in effect, an additional contribution, from the States of Guernsey, equivalent to 25% of the contribution made by the individual donor.
- 2.11. The Department recognises, however, that some individuals will already have entered into Deeds of Covenant, obligating them to make payments to charities, in the belief that they would, as a consequence, receive relief in respect of their donations. The Department proposes a transitional provision, therefore, that for any individual who, up to and including 31 December 2009, has entered into a Deed of Covenant such that the donations made under the Deed will qualify for relief for 2009, that person will continue to receive income tax relief, following a claim in his personal income tax return, for the remainder of the life of the Deed of Covenant. Donations made under such a Deed of Covenant would not then be available for relief to the recipient charity, as proposed under paragraph 2.8 above.

If a Deed of Covenant, in existence at 31 December 2009, is renewed after its expiry, or is amended, on 1 January 2010 or subsequently, it would not qualify the person making the payments for relief. Any payment made on 1 January 2010, or subsequently, in relation to such a Deed would only be valid for relief to the extent that the charity could claim under the conditions set out above.

### 3. **Loans made by companies which are written off**

- 3.1. Prior to 2008, companies could make loans to third parties (including officers, employees and shareholders) without charging interest, or charging interest at a rate lower than the market rate, without there being any charge to tax.
- 3.2. With effect from 1 January 2008 and the introduction of the Zero-10 regime, however, the making of a loan (probably interest free) would be a very simple way of avoiding a charge to tax on the distribution of a company's income, under the Income Tax Law, unless legislation was introduced to prevent such avoidance.
- 3.3. As a consequence, for 2008 et seq, legislation has been introduced to charge tax, in certain circumstances, where a company makes loans to certain persons (such as officers, employees and shareholders). In essence, at the point that a company makes a loan which is subject to the legislation, the company is

required to account for tax. The tax is calculated as if the amount lent was net of tax. This gives an effective tax charge, on such a loan, of 25% (which equates to the individual standard rate of tax of 20% on the grossed up amount of the loan).

- 3.4. If a loan previously made is written off by a company, the legislation also provides that the recipient of the loan is treated as having received income in the amount of the loan written off and tax paid in respect of that amount (and receives a credit for that deemed tax). The intention of the provision is to clarify the status of the loan and to crystallise it as "income", not that the loan is taxed once when it is advanced and again when it is written off (because, the recipient being deemed to have paid tax on the writing off of the loan, he is not actually required to make a further payment of tax).
- 3.5. The Department considers however that the provisions should be clarified to avoid any suggestion that there is a second charge to tax on the loan when it is written off.
- 3.6. The Department proposes, therefore, that the legislation be revised to provide for the avoidance of doubt that no further charge will arise on the writing off of a loan if tax was paid on the loan when it was originally advanced.
- 3.7. It could also be argued that when a loan is written off by a company, that constitutes a "distribution" of its profits (as defined in the Income Tax Law) with the result that the company was required to deduct and account for tax on the amount written off, notwithstanding that the loan had already been taxed when it was originally advanced.
- 3.8. The Department therefore proposes that the Income Tax Law be further revised to provide for the avoidance of doubt that where a loan is written off this would not constitute a taxable distribution, for the purposes of the Income Tax Law, if the loan was taxed when it was originally advanced.

#### 4. **Unilateral Relief for Overseas Taxes**

- 4.1. To the extent that a company receives income which is subject to tax in another territory (whether by deduction at source or by direct assessment on the company by an overseas tax authority) if the profits which have suffered that overseas tax were then distributed or deemed as distributed to Guernsey resident beneficial members, and chargeable to tax on those beneficial members, then the credit which would have been available for the company to claim (had it been chargeable to Guernsey income tax in its own name in relation to that overseas income) should be available to the Guernsey resident beneficial members, in proportion to the amount of that income which is distributed, or deemed as distributed, to them.
- 4.2. There are two principal forms of relief for overseas taxes.

Firstly, there is relief in relation to income received from a territory with which Guernsey has a comprehensive Double Taxation Arrangement (presently this is limited to the United Kingdom and Jersey).

When the zero/10 regime was introduced, a provision was incorporated into the relevant section of the Income Tax Law (section 173) allowing the “flow through” of the overseas tax to the beneficial member, as described above.

In addition, there is relief (limited to three-quarters of the Guernsey effective rate of tax) for other overseas taxes suffered (this is commonly referred to as “unilateral relief”).

Due to an oversight, however, a similar provision was not enacted in relation to unilateral relief.

- 4.3. The Department proposes that this oversight be corrected and, so as not to disadvantage any potential claimant, further proposes that the amendment should be treated as having effect from 1 January 2008.

## 5. **Income Tax appeals**

- 5.1. Prior to the formation of the Guernsey Tax Tribunal (“the Tribunal”) (in 1992) responsibility for all income tax appeals lay with the, then, Income Tax Authority.

Notwithstanding that there was a right of appeal to the Royal Court, on a point of law, it was considered appropriate, in 1992, that the Tribunal should be formed to hear all income tax appeals other than those that related to assessments, penalties, directions and orders where an income tax return had not been submitted. These are known as “delay appeals” because they are often instituted where the appellant, not having submitted a tax return, might be perceived to be “buying time” by appealing and thus delaying the enforcement of his liability to tax. In common parlance, the Tribunal heard “contentious” appeals whilst “delay” appeals continued to be the responsibility of the Income Tax Authority (this responsibility now lies with the Department).

- 5.2. HM Procureur has advised the Department that, in view of the fact that the Department’s responsibilities extend further than solely matters relating to taxation (unlike the Income Tax Authority) it would be appropriate for the Department to cease to have any responsibility in relation to income tax appeals. It is also preferable, from a human rights point of view, to have appeals determined by a Tribunal rather than by a political board such as the Department, which might be seen as having an interest in the outcome of the case and thus not impartial.
- 5.3. HM Procureur’s advice is that responsibility for hearing “delay” appeals should be transferred to the Tribunal but the Income Tax Law should provide that a

single Member of the Tribunal could sit for the purpose of hearing “delay” appeals (the requisite number of Members of the Tribunal required for the hearing of “contentious” appeals, namely 3, being unaffected).

- 5.4. It is also proposed that the opportunity be taken to add a power into the Income Tax Law for the Policy Council (which, under the Income Tax Law, has the statutory responsibility for the administration of the Tribunal) to make Regulations, governing the formal procedure and administration of income tax appeals, to the Tribunal, as it sees fit. Such regulations would include the ability to make provisions for the costs of an appeal. At present, these costs are met entirely from public funds and, regrettably, there are a number of instances where a taxpayer has withdrawn an appeal at the last moment, or failed to attend a hearing, after a considerable amount of work has been done on it by both the Clerk, and his support staff, and the Director. A provision for costs would not deter a genuine appellant, who could recover these if successful, but could deter frivolous or vexatious appeals.
- 5.5. At the request of the Tribunal, the Department also proposes that the Income Tax Law should be amended so as to allow a Deputy Clerk to be appointed (at present, any short term absence of the Clerk means that a scheduled hearing cannot proceed).
- 5.6. Finally, it is proposed to make a small procedural change whereby a delay appeal will only be submitted to the Tribunal when the appellant or Director so require, rather than being forwarded immediately to the Tribunal, as currently would be required by the Law.
- 5.7. The Tribunal has been consulted in relation to the above and has consented to the transfer of responsibility for hearing “delay” appeals from the Department to the Tribunal.

## 6. **Social Security Benefits**

- 6.1. Section 27 of the Income Tax Law renders benefits payable under the Social Insurance Law chargeable to income tax, and then exempts from income tax certain specific payments made by the Social Security Department. With the passage of time, certain of these exemptions have become outdated and, as a consequence, and after consultation with the Social Security Department, the Department proposes the following amendments:
- 6.2. In respect of Limited Medical Benefit, which covers the cost of treatment for accidents occurring outside of the work place and only relates to such incidents which took place prior to 1 January 1996, it is proposed that the exemption set out in section 27(2)(d) of the Income Tax Law be repealed.
- 6.3. In respect of Partial Disablement Benefit, which no longer exists, it is proposed that the exemption set out in section 27(2)(k) of the Income Tax Law be repealed.

- 6.4. In the interests of brevity, the Department also proposes that the present wording contained in section 27(1) of the Income Tax Law that "... any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law shall be chargeable to income tax ..." and the exemption contained in section 27(2)(1) of "any sum on account of an allowance in pursuance of the provisions of the Family Allowances Law payable in respect of any period commencing on or after the first day of January, nineteen hundred and eighty one" should be replaced by a simple exemption of "any allowance payable under the Family Allowances (Guernsey) Law 1950" in section 40 of the Income Tax Law.
- 6.5. Finally, section 40 of the Income Tax Law exempts, in paragraphs (u), (v) and (aa) respectively, "any payment of a pension in pursuance of the provisions of the Old Age and Blindness Pensions (Guernsey) Laws 1950 and 1951" and "any payment of outdoor assistance in pursuance of the provisions of the Public Assistance Law 1937" as well as "any pension or allowance payable by the Social Security Department in respect of all injuries or deaths under the War Injuries Scheme approved by resolution of the States on the eighth day of February nineteen hundred and forty six, or by any resolution amending or replacing the same." As these exemptions now have no practical application, the Department also proposes that they be repealed.

7. **The taxation of individuals who are resident but not solely or principally resident for income tax purposes**

- 7.1. In January 2009, following consideration of the Department's Report "Miscellaneous Amendments to the Tax Laws" (Billet II of 2009 at pages 49 – 77 inclusive) the States resolved that certain amendments should be made to those parts of the Income Tax Law dealing with the taxation of individuals who are resident but not solely or principally resident for income tax purposes.
- 7.2. In summary, the States approved revisions to the Income Tax Law, providing that an individual may elect to pay a minimum charge (such election being made on an annual basis) to be accompanied by a declaration that the individual had no Guernsey source income which would be subject to the deduction of tax under section 81A of the Law – essentially income from employment – and that his income from other Guernsey sources did not exceed £125,000. This declaration would constitute the filing of a tax return for the relevant year of charge and no other income tax return would be required from that individual, as a matter of course.

The Department proposed that the minimum charge be set in the sum of £25,000 (which would be equivalent to the tax on Guernsey source income of £125,000 at the individual tax rate of 20%).

- 7.3. Subsequent to the States decision of January 2009, the Department has received representations from the Taxation Sub-Committee of the Guernsey Society of Chartered & Certified Accountants ("the Taxation Sub-Committee") that rather

than preventing an individual from paying the minimum charge, in the event that he has income chargeable to tax under section 81A or has income from other Guernsey sources exceeding £125,000, the individual should be permitted to make the election to pay the minimum charge but that such income should continue to be chargeable to tax, with the proviso that the minimum charge of £25,000 would be available to be offset against any resulting tax liability. (The original proposal, in paragraph 2.1.8 of Billet II of 2009, that an individual making the election would not be entitled to any of the allowances, deductions or reliefs for underlying taxes, in computing his tax liability, that would otherwise have been available to him under the Income Tax Law, would continue to apply.)

- 7.4. The effect of the above would be that an individual making the election would be required to disclose details of his income from Guernsey sources, such a declaration constituting the filing of a tax return for the relevant year of charge (no other return being required as a matter of course).
- 7.5. In all other respects, the proposals relating to individuals who are resident but not solely or principally resident for income tax purposes, contained in Billet II of 2009, would be unaffected.
- 7.6. The Department does not consider that the above proposals, if accepted, would have a negative impact on the island's general revenues. Indeed, the removal of the restrictions on who may make the election to pay the minimum charge may result in more individuals doing so, which may have the effect of increasing general revenues.
- 7.7. As a consequence, the Department proposes that the revisions to the Income Tax Law, originally proposed in Billet II of 2009, be revised to reflect the representations received from the Taxation Sub-Committee, as detailed at paragraph 7.3. above.
- 7.8. In addition, and once again following representations received from the Taxation Sub-Committee, the Department proposes that the Income Tax Law should make it clear that the minimum charge of £25,000 would be regarded, for the purposes of the Income Tax Law, as a tax rather than a fee. This is to ensure that an individual paying the minimum charge of £25,000, and who was required to demonstrate that he had been charged to tax in Guernsey in order to receive a credit for the amount paid against his liability to tax in another jurisdiction, should not have that claim denied on the basis that the Guernsey legislation was ambiguous as to whether or not the amount he had paid was a tax.
- 7.9. Furthermore, it has become apparent that the introduction of the facility for an individual to elect to pay a minimum charge may encourage the "export" of Guernsey bank accounts to other jurisdictions solely for the purposes of ensuring that any interest arising is not a Guernsey source of income (and thus the liability on the income would be covered by the minimum charge).

A similar possibility was encountered when the cap on the level of taxation paid by individuals was extended to Guernsey source income. To counter that, the legislation provides that, for the purposes of the tax cap, Guernsey bank deposit interest is treated as if it arose from a non-Guernsey source.

To address the same issue in relation to the minimum charge, the Department proposes that, for the purposes of the minimum charge, Guernsey bank deposit interest would be treated as if it was income arising from a non-Guernsey source which had been remitted to the island.

## 8. **Limited Liability Partnerships**

- 8.1. At their meeting on 29 April 2009, the States approved the development of legislation to enable limited liability partnerships to be formed under Guernsey legislation (Billet XI of 2009 at page 760).
- 8.2. Under the Income Tax Law at present, partnerships are effectively treated as transparent vehicles and the individual partners are assessed and tax is charged on them as individuals. The Department believes it is appropriate to maintain this treatment for limited liability partnerships.
- 8.3. To do so will require the addition of the necessary wording to the definition of “partnership” in the Income Tax Law and the introduction of a definition of “limited liability partnership”.

## 9. **Permitting exempt bodies to hold interests in Guernsey companies**

- 9.1. For 2008 et seq, the majority of Guernsey companies are taxable at the company standard rate (0%) with tax only being paid on the profits of those companies when it is distributed to a company’s Guernsey resident beneficial members (or, in certain circumstances, when the profits are deemed as distributed).
- 9.2. Some companies – principally banks and finance companies – have certain parts of their income taxable at the company intermediate rate (10%).
- 9.3. In addition, some companies – principally those carrying on activities regulated by the Office of Utility Regulation and those deriving their income from land and buildings situated in Guernsey – pay tax at the company higher rate (20%).
- 9.4. For 2008 et seq, however, there remains an, albeit restricted, ability for certain companies or unit trusts to obtain exemption from tax. This facility is now effectively restricted to collective investment schemes.
- 9.5. The conditions which a body has to satisfy in order to be exempt from tax are set out in the Income Tax (Exempt Bodies) (Guernsey) Ordinance 1989, as amended (“the Ordinance”).

- 9.6. If an exempt collective investment scheme was to beneficially own another company or, if that other company were a wholly owned subsidiary, that company would also be eligible for exemption from income tax, under the provisions of the Ordinance.

One of the principal conditions of approval is:

“That no investment or other property situated in Guernsey, other than a relevant bank deposit or an interest in another body to which an exemption from tax has been granted under this Ordinance, is acquired or held.”

- 9.7. The original restriction on exempt bodies holding shares in other Guernsey companies, which were not themselves exempt, was intended to ensure that those “subsidiary” companies would not escape taxation on income which would otherwise have been taxed at 20% (prior to 2008).
- 9.8. As the Guernsey resident beneficial members of an exempt company are taxable on the income of the company when it is distributed to them and recognising that, under the conditions of the Ordinance, an exempt body can currently beneficially own a company incorporated/registered in another jurisdiction, with that “subsidiary” being granted exemption from tax, the Department considers that where the income of the “subsidiary” company would be taxable at 0%, this prohibition no longer serves any practical purpose.
- 9.9. When exemption is granted, this is subject to a condition that exemption will apply only for so long as control of the exempt body does not lie with Guernsey residents. This is to curtail possible exploitation of exempt status for tax avoidance purposes. The Director would continue to impose this condition if the current prohibition was removed, again to ensure the prevention of avoidance of tax.
- 9.10. The Department also considers that the prohibition on the ownership of shares in Guernsey companies, by exempt bodies, could be removed where the company has income taxable at the company intermediate rate (10%) or company higher rate (20%) provided that if the exempt body had beneficial ownership of a company with such sources of income, the “subsidiary” company would only be eligible for exemption from tax in relation to its income which was taxable at the company standard rate (0%). In this way the “subsidiary” company would continue to be chargeable to tax on any profits taxable at 10% and/or 20%, as at present.

The Department proposes, therefore, that the Ordinance be amended accordingly.



10. **Exemption from deemed distribution regime**

- 10.1. In the Department's Report "Miscellaneous Amendments to the Tax Laws" (Billet II of 2009) referred to in paragraph 7.1 above, the Department set out its proposals for the introduction of a facility to allow a company to be able to make an irrevocable election that it will distribute at least 65% of its trading profits, the consequence of which would be that the company may then be able to avoid the deemed distribution regime in relation to its undistributed income and also benefit from reduced reporting requirements, under the Income Tax Law.
- 10.2. In addition, the Report contained a proposal (paragraph 2.3.11 at page 62) that:
- "where a company is already in existence at the time that the ability to make an election becomes effective, and makes an election prior to 30 June 2009, the election should be capable of being valid in relation to 2008 onward and [the] anti-avoidance provisions [set out in the Department's Report] would not apply."
- 10.3. Following the Resolution of the States to introduce such a facility, the Director received representations from interested parties that certain aspects of the proposal could prove to be unduly onerous in practice (see paragraph 11 below). Finalisation of the Regulations that would be required to introduce the exemption from the deemed distribution regime has been unavoidably delayed. As a consequence, the date by which an election would have had to be made, of 30 June 2009, became unachievable.
- 10.4. The Department proposes, therefore, that, once made, the relevant Regulations will specify that the election referred to above would have to be made by 31 December 2009 rather than 30 June 2009, in order to be valid for 2008 onwards.
- 10.5. As set out in paragraph 10.1, the Department's original proposals, considered by the States, anticipated that the election made by a company would be irrevocable. This was to avoid the inevitable complications, and possibilities of tax avoidance, that may arise if companies were able to elect to distribute at least 65% of their profits for some years and to withdraw that election for others.
- 10.6. Whilst the owners of a company may make an election in good faith, the fact that such an election is irrevocable may have the consequences of making disposal of that company difficult if the consequences of the election are not attractive to potential purchasers of the company. This could mean that the making of the election, which is intended to reduce administrative burdens on companies from the zero/10 regime, may ultimately act to the company's detriment.
- 10.7. As a consequence, the Department asks the States to agree that, notwithstanding that the original proposal was that the election should be

irrevocable, the appropriate Regulations required in order to give effect to the election should provide that where in the course of any company's accounting period there is a transfer of control, and that company has made an election referred to in paragraph 10.1 above, the company may, before the expiration of 12 months from the date that control of the company was transferred, notify the Director of Income Tax, in writing, that the election should cease to have effect from the date that control was transferred.

- 10.8. The consequences of the above would be that, from the date of the transfer of control, any undistributed income of the company would, once again, become subject to the provisions of the Income Tax Law relating to deemed distributions. As a consequence there should be no detrimental effect on States revenues.

11. **Tax Capping**

- 11.1. At its January 2009 meeting, the States considered proposals, from the Department, to revise the provisions relating to the limiting of the liability of individuals ("the tax cap").
- 11.2. Those proposals incorporated an anti-avoidance provision designed to prevent an individual "rolling up" the profits of a company in which they had an interest with a view to taking a substantial distribution of those profits during the course of a single tax year when the tax cap would apply (with the effect of thus limiting the liability to tax on those profits) (Billet II of 2009 at page 59).
- 11.3. The solution proposed by the Department involved limiting the benefit of the tax cap to an individual, in respect of his Guernsey source income (other than bank deposit interest) to those companies which had elected to distribute at least 65% of their profits.
- 11.4. Whilst the States resolved to accept the Department's proposal, it has subsequently proven to be difficult to draft the necessary legislation without introducing overly complex provisions which, in the final analysis, may be limited to a relatively small number of individuals.
- 11.5. As a consequence, and in consultation with the Taxation Sub-Committee of the Guernsey Society of Chartered & Certified Accountants, the Director has formulated an alternative anti-avoidance provision which will have the combined benefits of protecting the island's general revenues, will be more straightforward to legislate for and, finally, will be more straightforward to operate in practice.
- 11.6. Rather than linking the anti-avoidance provision to the necessity for a company to elect to distribute a certain element of its profits, the new anti-avoidance provision concentrates, instead, on the extent to which the profits being distributed originate from a year in which the individual's income is not already subject to the tax cap.

- 11.7. The proposal is, therefore, that where a distribution is made by a company of profits from the carrying on of a business in Guernsey, and that distribution is income of a beneficial member for a year of charge to which the tax cap will apply, the following consequences will have effect:
- the amount of the additional tax, if any, that would have been payable by the beneficial member, had those Guernsey trading profits been distributed during the course of the year of charge for which they were assessable on the company would be calculated, and
  - that amount of tax would then be payable, by the beneficial member, in the year of charge in which the distribution was made, notwithstanding that the beneficial member's tax liability for that year of charge is otherwise limited under the tax capping provisions.
- 11.8. The effect of the above would be to negate any advantage gained by an individual "rolling forward" the profits of a company for distribution in a later year, solely for the purposes of taking advantage of the tax cap.
12. **The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2009**
- 12.1. At present the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations 2007 allow the Director of Income Tax to collect unpaid tax through an individual's wages, by allowing the amount unpaid to be added to the tax required to be deducted under the coding or direction notice. The taxpayer's consent is required to use this procedure for amounts in excess of £500.
- 12.2. The limit of £500 was set some time ago and the mechanism has proved to be a useful process for collecting unpaid tax, the advantage to the taxpayer being that it is collected over the course of a year rather than requiring direct payment.
- 12.3. The Department proposes that the limit be increased from the current £500 to £1,000, to further facilitate the collection of States revenues.
- 12.4. For some time, gang leaders who provide services of their gang to a main contractor, usually in the building industry, have been able to obtain gross payment where they can produce an exemption certificate (known as a "gold card") to that contractor when receiving payment.
- 12.5. Exemption certificates are issued on application and require the production of a credit card style certificate on which the gang leader's details, including a photograph, are printed.
- 12.6. In order to recoup some of the administrative costs required in producing and issuing these certificates, the Department has made amended Regulations which enable the Director to make a charge of £50 for an initial application or an

application which is renewed after its expiry date; to encourage early renewal, a reduced fee of £25 if renewal is made before the previous certificate expires.

- 12.7. The attached Regulations contain the relevant provisions to enable the matters dealt with in the above paragraphs to be introduced. Section 81A(5) of the Law requires approval by Resolution of the States before these Regulations may have effect.

13. **Consolidation of the Income Tax Law**

The Department proposes, for ease of reference, that the Income Tax Law, as a whole, be consolidated in order to simplify the burdensome system of identifying sections which has arisen as a consequence of the number of amendments made to the Income Tax Law since its enactment in 1975 (for example, section references such as “section 81A(2)(bA)” could be eliminated). This is likely to be a major and resource intensive task, both for the Income Tax Office and for the Law Officers, and the Department does not suggest that it should take priority over other tax related work.

14. It is intended that, pursuant to section 1 of the Taxes & Duties (Provisional Effect) (Guernsey) Law 1992, a Projet de Loi enacted to implement the proposals contained in paragraphs 2 – 8 and 11 of this Report shall have effect as if it were a law sanctioned by Her Majesty in Council and registered on the records of the island of Guernsey, as follows:

- Paragraph 2, on and from 1 January 2010.
- Paragraph 3, on and from the date on which the Projet receives States approval.
- Paragraph 4, on and from 1 January 2008.
- Paragraph 5, on and from the date of registration of the Projet.
- Paragraphs 6 and 11, on and from the date of approval of the Projet by the States.
- Paragraph 7, for any year of charge after 2008.
- Paragraph 8, on and from the date of commencement of the Limited Liability Partnership Law.

15. **Recommendations**

The Department recommends the States to agree:

- (a) to revise the Income Tax Law to transfer the benefit of income tax relief in respect of donations to charity from the donor to the recipient (subject

to a de minimis contribution of £500 per annum, per charity, by each donor) and to increase the limit of donations that each individual may make and which would qualify for relief to £5,000 (£10,000 for married couples) (with transitional provisions for donations under deeds of covenant entered into prior to 1 January 2010) as set out in paragraph 2;

- (b) to revise the Income Tax Law to provide that where a company writes off a loan this would not constitute a taxable distribution to the extent that the loan was taxed when it was originally advanced, as set out in paragraph 3;
- (c) to permit the “flow through” of overseas tax suffered by a company, to the beneficial member when the relevant income is distributed or deemed as distributed to the beneficial member, for the purposes of unilateral relief, with effect from 1 January 2008, as set out in paragraph 4;
- (d) to transfer the responsibility for the hearing of income tax appeals from the Treasury and Resources Department to the Guernsey Tax Tribunal, as set out in paragraph 5;
- (e) to give power to the Policy Council to make Regulations, as it sees fit, concerning the formal procedure and administration of income tax appeals (including provisions relating to the costs of an appeal), as set out in paragraph 5;
- (f) to provide for the appointment of a Deputy Clerk to the Guernsey Tax Tribunal and to permit the deferral of notification of a delay appeal, to the Tribunal, until such time as the Director of Income Tax or the appellant so require, as set out in paragraph 5;
- (g) to repeal the taxation provisions relating to certain payments made by the Social Security Department which have become outdated with the passage of time, as set out in paragraph 6;
- (h) to make certain changes to the regime for the taxation of individuals who are resident but not solely or principally resident for income tax purposes, as set out in paragraph 7;
- (i) to extend the definition of “partnership” in the Income Tax Law to include limited liability partnerships (and to introduce a definition of “limited liability partnership” accordingly), as set out in paragraph 8;
- (j) to repeal the present restriction on an exempt body holding shares in a Guernsey company, which itself is not exempt (with appropriate provisions to ensure that such companies having income taxable at 10% or 20% would continue to pay tax, at those rates, on relevant sources of income), as set out in paragraph 9;

- (k) to replace the date of 30 June 2009 with the date 31 December 2009, in respect of an election for 2008 onwards for the purposes of the exemption from the deemed distribution regime, for company profits, and to provide that an election may be treated as revocable where there has been a transfer of control of a company, as set out in paragraph 10;
- (l) to provide for an anti-avoidance provision, in connection with the rules for the limiting of the liability of individuals, as set out in paragraph 11, and to provide that the tax credit which may attach to a distribution made by a company, of its profits which arose prior to 2008, is not repayable;
- (m) to approve, under section 81A(5) of the Law, the Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) (No 2) Regulations, 2009, as set out in paragraph 12 and appended to this Report;
- (n) to direct the consolidation of the Income Tax Law, as set out in paragraph 13;
- (o) to direct the preparation of such legislation as may be necessary to give effect to their above decisions.

Yours faithfully

C N K Parkinson  
Minister

GUERNSEY STATUTORY INSTRUMENT2009 No.

**The Income Tax (Guernsey)  
(Employees Tax Instalment Scheme)  
(Amendment) (No. 2) Regulations, 2009**

<i>Made</i>	<i>14<sup>th</sup> July, 2009</i>
<i>Coming into operation</i>	<i>3<sup>rd</sup> October, 2009</i>
<i>Laid before the States</i>	<i>29<sup>th</sup> September, 2009</i>

**THE TREASURY AND RESOURCES DEPARTMENT**, in exercise of the powers conferred on it by section 81A(4) and (4B) of the Income Tax (Guernsey) Law, 1975<sup>1</sup>, as amended, and all other powers enabling it in that behalf, hereby makes the following regulations:-

**Amendment of 2007 regulations.**

**1.** The Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007<sup>2</sup> are amended as follows.

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<sup>1</sup> Ordres en Conseil Vol. XXV, p. 124; section 81A was inserted by Vol. XXVII, p. 118; and subsection (4B) was inserted by the Income Tax (Miscellaneous Provisions) (Guernsey) (Amendment) Law, 2009. Also amended by the Machinery of Government (Transfer of Functions) (Guernsey) Ordinance, 2003 (No. XXXIII).

<sup>2</sup> G.S.I. 19 of 2007.

2. In regulation 2(2)(c) -
  - (a) for "prior years of charge" substitute "any year of charge",
  - (b) for "£500" substitute "£1,000".
3. In regulation 8(3) for "£500" substitute "£1,000".
4. After regulation 12 insert the following regulation -

**"Fees in respect of ETI exemption certificates."**

**12A.** (1) An application to the Director of Income Tax under regulation 12 for an ETI exemption certificate, or for the renewal of an ETI exemption certificate previously granted, shall be accompanied by -

- (a) in the case of an application for an ETI exemption certificate, a fee of £50,
- (b) in the case of an application for the renewal of an ETI exemption certificate previously granted made after the expiration of that certificate, a fee of £50, and
- (c) in the case of an application for the renewal of an ETI exemption certificate previously granted made before the expiration of that certificate, a fee of £25.

(2) Without prejudice to his powers under regulation 12 to refuse an application referred to in paragraph (1), the Director of Income Tax may refuse any such application which is not accompanied by the appropriate fee."



**Repeal.**

5. The Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) Regulations, 2009<sup>3</sup> are repealed.

**Citation and commencement.**

6. These Regulations may be cited as the Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) (No. 2) Regulations, 2009 and shall come into force on the 3<sup>rd</sup> October, 2009.

Dated this 14th day of July, 2009

DEPUTY C.N.K. PARKINSON

Minister of the Treasury and Resources Department

For and on behalf of the Department

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EXPLANATORY NOTE

*(This note is not part of the regulations)*

These Regulations prescribe the fees payable by employers who make an application to the Director of Income Tax for the grant or renewal of an ETI exemption certificate; and make other minor modifications to the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007.

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<sup>3</sup> G.S.I 2009 No. 22.

**(NB The Policy Council has no comment on the proposals.)**

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 14<sup>th</sup> July, 2009, of the Treasury and Resources Department, they are of the opinion:-

1. To revise the Income Tax Law to transfer the benefit of income tax relief in respect of donations to charity from the donor to the recipient (subject to a de minimis contribution of £500 per annum, per charity, by each donor) and to increase the limit of donations that each individual may make and which would qualify for relief to £5,000 (£10,000 for married couples) (with transitional provisions for donations under deeds of covenant entered into prior to 1 January 2010) as set out in paragraph 2.
2. To revise the Income Tax Law to provide that where a company writes off a loan this would not constitute a taxable distribution to the extent that the loan was taxed when it was originally advanced, as set out in paragraph 3.
3. To permit the “flow through” of overseas tax suffered by a company, to the beneficial member when the relevant income is distributed or deemed as distributed to the beneficial member, for the purposes of unilateral relief, with effect from 1 January 2008, as set out in paragraph 4.
4. To transfer the responsibility for the hearing of income tax appeals from the Treasury and Resources Department to the Guernsey Tax Tribunal, as set out in paragraph 5.
5. To give power to the Policy Council to make Regulations, as it sees fit, concerning the formal procedure and administration of income tax appeals (including provisions relating to the costs of an appeal), as set out in paragraph 5.
6. To provide for the appointment of a Deputy Clerk to the Guernsey Tax Tribunal and to permit the deferral of notification of a delay appeal, to the Tribunal, until such time as the Director of Income Tax or the appellant so require, as set out in paragraph 5.
7. To repeal the taxation provisions relating to certain payments made by the Social Security Department which have become outdated with the passage of time, as set out in paragraph 6.
8. To make certain changes to the regime for the taxation of individuals who are resident but not solely or principally resident for income tax purposes, as set out in paragraph 7.

9. To extend the definition of “partnership” in the Income Tax Law to include limited liability partnerships (and to introduce a definition of “limited liability partnership” accordingly), as set out in paragraph 8.
10. To repeal the present restriction on an exempt body holding shares in a Guernsey company, which itself is not exempt (with appropriate provisions to ensure that such companies having income taxable at 10% or 20% would continue to pay tax, at those rates, on relevant sources of income), as set out in paragraph 9.
11. To replace the date of 30 June 2009 with the date 31 December 2009, in respect of an election for 2008 onwards for the purposes of the exemption from the deemed distribution regime, for company profits, and to provide that an election may be treated as revocable where there has been a transfer of control of a company, as set out in paragraph 10.
12. To provide for an anti-avoidance provision, in connection with the rules for the limiting of the liability of individuals, as set out in paragraph 11, and to provide that the tax credit which may attach to a distribution made by a company, of its profits which arose prior to 2008, is not repayable.
13. To approve, under section 81A(5) of the Law, the Income Tax (Guernsey) (Employees Tax Instalment Scheme) (Amendment) (No 2) Regulations, 2009, as set out in paragraph 12 and appended to that Report.
14. To direct the consolidation of the Income Tax Law, as set out in paragraph 13.
15. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

# TREASURY AND RESOURCES DEPARTMENT

## CORPORATE PROPERTY PLAN

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

7<sup>th</sup> August 2009

Dear Sir

### 1. Executive Summary

The purpose of this States Report is to update Members on the progress that has been made since 2006 with regard to the centralisation and rationalisation of States' property, introduce the framework for the Corporate Property Plan and set out the broad strategy, and specific actions, for States' construction, estate and property management.

The **benefits** that will be gained from the proposals in this Report include:

- Improved property management, including the targeting of liabilities and managing retained properties better.
- Working corporate property assets harder, *i.e.* more intensive management of the States Property portfolio.
- The assessment and setting of standards for the use and improvement of States' property assets to improve efficiency, extend life cycle and decrease the costs of occupation.

The Report sets out the **progress made** against the States Resolutions arising from previous reports in 2006 and 2007 including:

- "States Land and Property – Management and Administration" (Billet d'Etat V, February 2006).
- "Wales Audit Office Investigation into the Award of the Clinical Block Contract" (Billet d'Etat V, February 2007).
- "States Property Rationalisation" (Billet d'Etat XXIV, November 2007).

In addition this Report:

- Introduces and sets out the **Corporate Property Plan's** strategy and framework actions for the next five years (2009-2013).
- Recommends the approval and application of **corporate space and cost standards for all States' accommodation**, including capital refurbishment and new build construction projects. These standards will evolve with developments in construction and property management, and improvements to best practice.
- Highlights the application of property and construction based **Codes of Practice**.

## 2. **Background**

The States of Guernsey uses, and is responsible for, around £1.6 billion (estimated rebuild value) of property assets. These properties comprise a very diverse portfolio, delivering a wide range of public services, including those which are critical to the health, economy, education, safety and security of the Islands.

The corporate property role is carried out through a section of the Treasury and Resources Department, namely States Property Services. This section has a broad role with regard to property. It has both a strategic and corporate remit, and also direct operational responsibilities for some (but not all) of the States property portfolio. Its role encompasses that of Landlord and property advisor to all States Departments, supporting where appropriate in-house property staff employed by other Departments. Property and construction management is, in effect, a cross-cutting role that impacts upon each service delivered by the States of Guernsey.

The true cost of managing and occupying property is not always readily identified or indeed fully appreciated in the public sector. For this reason, decisions in respect of land and property can sometimes be made without a full assessment of the wider, lifetime costs or possible alternatives. Where, for example, the construction of a new building is being proposed, primary capital costs are given considerable attention. However, the cost of occupying a building over many years (life cycle costs) is often hidden from view and yet far greater than the initial construction cost. In addition, Departments might take decisions that involve extra staffing or a change in the way services are delivered – without the lifetime accommodation costs (both capital and revenue) being known, or other property options being taken fully into account.

Although property costs are, in many instances, second only to staff costs, property is sometimes seen as 'free' within the public sector. For this reason, property is not always managed in the most effective and efficient manner. While the public sector is different to the private sector in certain respects, many

would agree that property, as a **very valuable resource**, must be given greater attention. In effect, it must be made to work harder for the people of Guernsey and the benefits maximised.

One way to test performance and assist decision making with regard to property is to measure and highlight the true cost of occupation – this can be achieved through the introduction of benchmark standards and notional rental charges as proposed in this Report. Without an understanding of real accommodation costs there is no way to measure performance or find incentives to improve the way property is used.

The following statements help to highlight the importance of property and its performance:

RICS/Capital Economics: Property in Business – a Waste of Space? (2002)

"Many companies do not have an accurate assessment of their property costs", and, "Tenants tend to monitor their property costs far more than owner-occupiers, who rarely impute rental costs and use their space less efficiently".

National Audit Office  
Getting the Best from Public Sector Office Accommodation (2006)

"Better asset management through more efficient use of property could generate very significant savings each year".

Tribal Helm – Fundamental Spending Review – Phase 1 Report (2009)

"Currently, there is no States-wide corporate strategy for the utilisation, management and maintenance of property", although property is one of those "very areas where material efficiencies can be made".

### **3. Progress Made Against Previous States Resolutions**

(a) Billet d'Etat V, February 2006  
States Land and Property – Management and Administration

Since the recommendations contained within the above-mentioned Report were agreed (see **Appendix 1**), the centralisation of all property transactions and related procedures has streamlined processes, allowed standard documents to be introduced and has led to the preparation of Service Level Agreements and Occupancy Agreements with Departments. These Agreements are being introduced for individual Departments in respect of certain routine and regular services provided by States Property Services (SPS), and for specific properties.

The States approach to delivering property services is being continually developed with refinements to methodology and greater consistency. Other improvements have been carried out including the introduction of inter-departmental training workshops. SPS has been restructured and is focused on delivering a more professional, informed and therefore intelligent client role for both Treasury and Resources and other Departmental construction projects. Agreements with local property and construction consultants have been formalised through a series of framework contracts. These enable savings in administration time, better use of resources, and the standardisation of documentation used in procuring professional property and construction services.

Despite over £200 million being spent since 2000 on construction and refurbishment projects (excluding the Corporate Housing Programme), only four properties have, thus far, been returned to the Treasury and Resources Department as surplus to requirements (Grange House, Longfield Centre, Lyndhurst and Mont Varouf (not wholly States owned)). This could be because the States have previously been suffering a chronic shortage of accommodation, or else that Departments continue to expand into the space provided, which might possibly suggest that self-regulation is not really working.

Nevertheless, plans for the rationalisation of surplus land and property continue to be progressed. Since 2006 Vauquiedor Farm, Belvedere House and Vale Mill have been sold. Nelson Place (former Post Office), and Baubigny Farm (next to St Sampson's High School) are currently for sale.

The disposal of surplus properties generates a capital receipt, and means reduced annual maintenance costs. It might sometimes appear prudent for Departments to spend the minimum on maintenance. However, this is a false economy as a planned maintenance regime would, in some properties, have extended their working life by a significant number of years and provided value for money. Buildings must be maintained on an annual basis to an appropriate standard if we are to prevent the repetition of the situation where, periodically, replacement new build becomes the only remaining cost effective option. A proper maintenance regime demands the prioritising of works, and the allocation of adequate funding to protect States' assets and services. Notwithstanding the above, it is recognised that Departments might have felt that insufficient funding was available to implement suitable maintenance regimes in some instances in the past, or that other services took priority.

Progress with the stock condition surveys continues, and these are reliant on funds being available within the Treasury and Resources Department's budget. By the end of 2009 it is planned that all of the property assets held by the Department (approximately 225 assets

including land parcels, monuments and other structures) will have been surveyed, and by the end of 2012 all States' land and property assets (2,525 assets) will have been assessed, subject to funding commitments continuing. The survey information will be stored on a specialised database developed in conjunction with Digimap to standardise the data collection for both in-house and external property professionals to use.

Property Asset Management Plans are reliant on data from stock condition surveys and individual property surveys. As a priority those properties which are, from experience and through historical knowledge, considered to be candidates for rationalisation are having Property Asset Management Plans prepared so that their long term future can be evaluated (see **Appendix 2** for definitions of terms to be applied in this exercise).

A Validation and Skills Audit of States Property Services has been carried out and the results have been presented to the Treasury and Resources Board by Drivers Jonas. Drivers Jonas noted that "The continuing need for the States to maximise the use of scarce property and financial resources provides an opportunity for Treasury and Resources, through States Property Services, to respond to this new paradigm and embrace Corporate Asset Management with a shift towards strategic activity, Asset Management Planning, and Property Review".

(b) Billet d'Etat V, February 2007  
Wales Audit Office Investigation into the Award of the Clinical Block Contract

Following the withdrawal of the lowest tender for the Princess Elizabeth Hospital Phase V contract in February 2007, the States accepted all fourteen Recommendations proposed by the Public Accounts Committee arising from the Wales Audit Office (WAO) Report of 25 January 2007 (see **Appendix 3**).

Five Recommendations were assigned specifically to the Treasury and Resources Department, and a further three were to be addressed jointly with the Commerce and Employment Department.

A joint Working Group was established by the two Departments to develop appropriate responses to the Recommendations. This work was completed in April 2008. Allied to this work is a revision of the Administrative and Accounting Guidelines which will take into account the existing Codes of Practice for property and construction projects. It is intended that a replacement for the existing Administrative and Accounting Guidelines (i.e. new States Rules for Financial and Resource Management) will be presented to the States for approval in due course.



(c) Billet d'Etat XXIV, November 2007  
States Property Rationalisation

Belvedere House has been sold on the basis that one dwelling – either the whole dwelling or a unit within that dwelling if sub-divided – was eligible for inscription on the Open Market Register. Vauquiedor Farm and Vale Mill have been sold. As mentioned, Nelson Place (former Post Office) and Baubigny Farm are for sale. Further properties will be identified for sale as appropriate, as part of the ongoing monitoring of the States portfolio.

4. **Corporate Property Plan**

Land and property assets require constant management and maintenance in order for them to enable the delivery of services, generate income, avoid unnecessary expenditure and retain their value as capital assets. A high-level plan is required in order that, despite short term diversions, clear direction is given for corporate good practice in construction, estate and property management.

Property management can take many forms. A building can, for example, be:

- Maintained (while recognising a limited lifespan).
- Improved (to allow a calculated extension to its lifespan).
- Altered (to meet new demands).
- Refurbished (to reflect changing standards and expectations).
- Held vacant (for strategic reasons).
- Demolished.
- Replaced.
- Transferred from one Department to another, or to a third party.
- Leased out.
- Gifted.
- Sold.
- Used but not properly maintained (resulting in a deteriorating asset which ultimately becomes a liability).

In order to best manage the States land and property portfolio, short, medium and long term planning is necessary **within an overall strategy**. These plans can only be effective if they are based on reliable condition data, and knowledge of the needs, and approved Business Plans of both individual Departments and the States, through the States Strategic Plan.

The precise number and characteristics of buildings and amount of land held by the States of Guernsey should be based primarily on essential operational requirements and future strategic aims and objectives.

The implementation of the Corporate Property Plan will require appropriate resources and professional expertise which the Treasury and Resources Department has recognised within the present, revised structure for States Property Services. The level of demand for services, and appropriate levels of resourcing (both financial and staffing) are regularly monitored.

Whilst important steps have been taken by the States over the last three years to improve property management, more work still needs to be done. States Property Services is charged with this task and has developed the Corporate Property Plan objectives as set out below.

### **Corporate Property Plan 2009-2013**

The overarching purpose of the plan is:

**to ensure best use of the States' Land and Property Portfolio, and**

**to provide Departments with best value professional services and support in Construction, Estate and Property Management.**

The Plan outlines the corporate property strategy for the States of Guernsey, to include all Departments, for the period 2009-2013. It aims to ensure that the States' focus is on actions that address environmental issues, provide optimal use, and promote best practice management of the States property portfolio, whilst showing value for money, promoting appreciation of the real worth of property, and delivering improved services.

#### **The principal objectives of the Corporate Property Plan are to:**

- Ensure the efficient, effective and sustainable use of States-owned land and property to meet the key objectives of the States Strategic Plan.
- Maximise the contribution of land and property assets to underpin the delivery of States' priorities in the States Strategic Plan.
- Increase the contribution of land and property assets to promote regeneration of the Island infrastructure.
- Set standards and establish benchmarks, monitoring and continuously improving the manner in which States property is managed.
- Provide innovative accommodation solutions which meet the service needs of Departments within defined space and cost parameters.

- Deliver appropriate acquisitions by employing the expertise of States Property Services and external professionals where appropriate.
- Minimise the opportunity cost of holding land and property whilst optimising the value of the States asset base.
- Ensure Departments are aware of the true costs of occupying property, through the introduction of notional rental charges (starting with office accommodation) over a period of time.
- Manage and maintain assets to deliver improved sustainability, reduced carbon emissions and lower energy consumption.
- Identify, adopt and disseminate best practice in construction, estate and property management, ensuring continuous improvement.
- Develop a portfolio which offers quality, flexibility and value for money.
- Establish standards, lead, support and advise Departments in all aspects of the management of property and the delivery of value for money for States construction projects.
- Raise awareness and the profile of property as a valuable resource linked to business plans and service delivery.

The States Corporate Property Plan can only fulfil its intended purpose if appropriate resources are made available to manage property and construction, and if all Departments recognise their crucial role and commit fully to its success throughout the States. This will mean collaboration and team working at every level. Continuous improvement and change should be expected as construction, estate and property management practices evolve. Where good practice already exists within Departments, this should be recognised and shared.

The process for reviewing and updating the Corporate Property Plan, and obtaining approval for revisions will be vested with the Treasury and Resources Department, in consultation with other Departments as appropriate. Major revisions will be brought back to the States.

The Corporate Property Plan provides high level, strategic direction to improve public sector property management. It does not focus on operational detail – that is not its purpose. However, it will be used to plan, execute and measure progress against recognised targets.

The framework of the Plan for the period 2009-2013 is shown below.

	<b>CORPORATE PROPERTY PLAN - 2009 TO 2013 OBJECTIVES</b>
<b>CONTRACTS</b>	<b>CONTRACTS</b>
<b>Framework Contracts</b>	Framework contracts will continue to be established and reviewed for various types of construction, estate management, engineering and property related professional services.
<b>Standardised Form of Contract</b>	These will continue to be reviewed and developed as required to suit the Guernsey context.
<b>Standardised Procedures</b>	These are being introduced and implemented.
<b>CONSTRUCTION PROJECTS</b>	<b>CONSTRUCTION PROJECTS</b>
<b>Codes of Practice for Property and Construction Projects</b>	All States construction projects and property usage must be managed in line with Codes of Practice. The Codes will be updated by Treasury and Resources to reflect evolving best practice.
<b>Corporate Standards for Space and Costs (Benchmarking)</b>	Corporate standards will be introduced for space and costs for States accommodation and various buildings and structures as appropriate (whether owned or rented, and including new build, capital refurbishment, alterations and improvements). These will refer to best practice and will take into account efficiency, effectiveness, value for money, sustainability and affordability. The standards will evolve to reflect best practice.
<b>Life Cycle Costing</b>	These techniques will be developed to ensure best value.
<b>Project Management and Project Sponsor Roles</b>	States Property Services will provide project management/client representative services for States Departments and will support the sponsoring Department in all construction projects, including attendance at Project Boards. The level of support and assistance provided, as well as precise roles and responsibilities, will be assessed on a project by project basis following an assessment of risk, cost, complexity and available in-house resources. This will be agreed at the commencement of a project.
<b>Service Level Agreements (SLAs) - Construction</b>	States Property Services will establish SLAs where appropriate with client Departments in respect of the services it regularly provides.
<b>Value Engineering</b>	This process will be developed to ensure best value.

<b>CORPORATE PROPERTY MANAGEMENT</b>	<b>CORPORATE PROPERTY MANAGEMENT</b>
	Corporate Policies, Codes of Practice, procedures and guidance will be developed and implemented for construction, estate and property management activities.
<b>Validation &amp; Skills Audit – States Property Services (Drivers Jonas)</b>	The findings of the audit will be considered in relation to States Property Services and the States as a whole and, where appropriate, action will be taken to improve the delivery of all property related services including via training and skills development.
<b>DISABILITY ACCESS</b>	<b>DISABILITY ACCESS</b>
<b>Accessibility Audits</b>	Audits will be carried out for States properties on a prioritised basis. Works will be carried out by adopting appropriate best value solutions.
<b>ENERGY AND ENVIRONMENT</b>	<b>ENERGY AND ENVIRONMENT</b>
<b>Energy Audits</b>	These will be carried out on a rolling programme, starting with properties that are expected to generate the greatest savings. Energy conservation measures will be encouraged as appropriate. Low cost, no cost and higher cost initiatives, as well as spend to save proposals, will be considered alongside projected payback periods.
<b>Energy Code</b>	The Energy Code will be developed, identifying best practice for States property management, new build and fit out. Ways of stimulating investment in energy saving will be explored.
<b>Energy Staff</b>	The role of the recently appointed Energy Conservation Officer will continue to be developed.
<b>Environmental Issues</b>	Environmental issues will be taken into account when decisions are taken in respect of design, materials, construction methods, maintenance regimes, acquiring or disposing of property. The emphasis will be on a lighter carbon footprint. Goals will include an increased reliance on sustainable and renewable energy and a greater exploration of environmentally friendly and greener alternatives to fossil fuels. This will apply as much to materials and methods used in construction as to types of fuel for heating.

<p><b>Low Carbon Building Design and Lower Energy Consumption</b></p>	<p>States Property Services will assess, monitor, implement, support and advise on measures to minimise environmental impact through the design, construction, and post-completion (occupation) phases.</p>
<p><b>ESTATE MANAGEMENT</b></p>	<p><b>ESTATE MANAGEMENT</b></p>
<p><b>Asset Management Plans</b></p>	<p>States Property Services will develop a Corporate Property Asset Management Plan to cover the period to 2013.</p> <p>Departments will be requested to prepare and maintain Departmental and individual Property Asset Management Plans for all States land and property that they occupy, on a prioritised basis. States Property Services will provide advice and technical assistance, and the use of a standard format is currently being developed.</p> <p>Properties will be retained if they meet appropriate criteria. They must perform well to meet current and future business needs to required standards, and they must provide an optimal return on investment. Where properties fail to meet appropriate criteria, options for intervention will be considered.</p>
<p><b>Centralisation of Property Transactions</b></p>	<p>All transactions (acquisitions, disposals, leases, licences, concessions etc.) will continue to be handled by States Property Services with certain exceptions as described in Billets d'Etat V, 2006, and XXIV, 2007.</p>
<p><b>Compulsory Purchase Law</b></p>	<p>The States have given approval to amend the existing legislation.</p>
<p><b>Condition Surveys and Database</b></p>	<p>Stock condition surveys of all States land and property will be carried out on a rolling and prioritised basis, commencing with property administered by Treasury and Resources. The information will inform Property Asset Management Plans and will be entered into a database with spatial reference to Digimap. Attention will be focused, initially, on properties that might require intervention.</p>
<p><b>Key Worker Housing</b></p>	<p>States Property Services will work proactively with other Departments to help progress best value property options for Key Workers against the backdrop of the development of a States approved Key Worker Housing Strategy. States Property Services will also encourage resolution of any outstanding issues so that the States can approve, and Departments can implement, the agreed Strategy.</p>

<p><b>Landlord/Property Advisor Role</b></p>	<p>States Property Services will provide Departments with advice, support and direction as appropriate in respect of all property related activities, including those arising from the States Strategic Plan, Departmental capital programmes and individual capital projects.</p> <p>States Property Services will monitor the use of land and property by States Departments, to enable best use and value for money to be demonstrated. Following appropriate consultation and investigation, plans will be made to relocate Departments from unsuitable premises to more cost and energy efficient premises that are fit for purpose and meet business needs. Decisions will take into account the findings of Property Asset Management Plans.</p>
	<p>States Property Services will support, lead, direct, advise and audit construction, estate and property management as appropriate. Departments will need to be able to demonstrate compliance with Codes of Practice, standards and benchmarks applicable to their activities. States Property Services will identify and lead in corporate best practice, but will not manage day to day operations where individual Departments are best placed to do so.</p> <p>Properties will return to Treasury and Resources when Departments can no longer demonstrate a need for their continued occupation or use. T&amp;R will act as the 'holding agent' and will also assess and implement future use, following appropriate consultations (Billet d'Etat V, 2006).</p>
<p><b>Maintenance of Properties</b></p>	<p>Departments will be required to prepare and implement maintenance policies and plans based on condition surveys, Property Asset Management Plans and best practice. Advice and support will be offered to Departments in respect of developing and refining their own maintenance regimes. A balance of factors needs to be considered, including cost, quality, service needs, efficiency, energy and the environment.</p> <p>Asset values must be protected and occupiers' reasonable needs must be met. Maintenance regimes must be cost effective.</p>
<p><b>Rationalisation of Surplus Land and Property</b></p>	<p>Property Asset Management Plans will help to ensure that the States holds only those properties that are needed for current or future strategic use. Properties will be identified for alternative use or disposal.</p> <p>Assets will be retained if they are shown to be required for effective service delivery and strategic objectives. Money generated from the sale of any properties can be used to</p>

	<p>help fund other States' projects as approved under the Capital Prioritisation process.</p> <p>Changes to the Island economy, evolving public needs, and the way in which Department's carry out their business will be taken into account when reviewing the portfolio with Departments. Strategic, social, planning and environmental issues will be amongst those to be considered, not solely financial issues.</p>
<b>Service Level Agreements (SLAs) - Estate Management</b>	States Property Services will establish SLAs where appropriate with client Departments in respect of the services it provides on a regular basis.
<b>INFORMATION MANAGEMENT</b>	<b>INFORMATION MANAGEMENT</b>
	ICT opportunities will be explored for corporate assets, property and estate management, including central electronic maintenance systems – in line with States ICT standards and technical architecture. An Asset Database is already held and regularly updated to support estate management functions.
<b>FINANCE</b>	<b>FINANCE</b>
<b>Accommodation Costs for Departments</b>	Departments will be required to pay all their own accommodation costs, including maintenance, alterations, private rental, utility costs, valuations, outsourced professional support (e.g. preparation of legal documents), and all other rates and charges.
<b>Budget Parameters for Construction Projects</b>	These will be assessed by States Property Services - taking into account appropriate cost and space standards and benchmarks.
<b>Capital Asset Accounting</b>	The capital value of property assets used by Departments will be assessed and detailed in appropriate reports. The information will be used within Property Asset Management Plans.
<b>Occupancy Agreements</b>	Occupancy agreements will be reviewed and prepared for Departments, specifying the responsibilities of the Landlord and Occupier in respect of States owned or occupied properties.
<b>(Proposed) Rules for Financial and Resource Management</b>	States Property Services will work with other T&R sections to replace the current Administrative and Accounting Guidelines in respect of property and construction related content.



<b>Rental Charging (notional)</b>	Notional rental charging will be introduced in respect of properties used by States Departments. This will reflect the floor areas and will take into account other factors that affect rental. The initial focus will be on office accommodation. Real charging is a future possibility, subject to an assessment of the issues.
<b>TRAINING</b>	<b>TRAINING</b>
<b>Training Programme</b>	Property training will continue to be developed, including through the workshops for all States property staff – such that the States presents a consistently professional approach to property, estate and construction management.

## 5. Corporate Property Standards

In addition to the approval and adoption of the Corporate Property Plan, the Treasury and Resources Department asks the States to approve the introduction of corporate property standards for space and costs. This will cover office accommodation, plus other buildings and structures as appropriate.

This would mean that for States' accommodation, a benchmark would be adopted allowing comparison between Departments in respect of, for example, their use of office space and the setting of overall corporate goals for the efficient and effective use of valuable assets. Separate standards would be used, for example, for Education and Health new builds.

It is sometimes the perception that property is "free", and it can be used without proper analysis and appreciation of the full costs and impact on the corporate purse. Consequently when more staff are employed, or services increased, accommodation costs are sometimes unclear. By way of illustration, the States currently spends around £2,000,000 per annum on private rents for various Departments. This does not include the cost of occupying States owned buildings.

The application of standards, together with the introduction of notional rental charging, is designed to encourage Departments to review their current use of space and reduce it where possible, demonstrating efficient usage. The emphasis must be on flexible use of corporate space, rather than on Departmental control over individual buildings and land. Without objective data and professional comparisons, it is impossible for Departments to know, or demonstrate, that the properties they occupy are performing well.

The recording of property cost data can enable standards to be set, comparisons to be made and performance to be measured. Appropriate goals can be adopted for a more cost effective Civil Service estate. The proposed standards are set out in **Appendix 4**. Any deviation from these standards will be by agreement with

the Treasury and Resources Department, with appeal to the Policy Council if no agreement is reached. Standards will be reviewed and amended periodically by the Treasury and Resources Department, following appropriate consultations.

There is currently a lack of an agreed, transparent structure and an absence of benchmarks available for setting budget parameters for major construction projects. This needs to be addressed with Departments as a matter of priority.

The States have embarked on 19 major construction projects within the last eight years with an overall value in excess of £200 million. Those projects include Le Rondin School and Centre; Sixth Form Centre; the College of Further Education Performing Arts Centre; new Royal Court building; Clinical Block at the Princess Elizabeth Hospital; Mignot Memorial Hospital; St Sampson's High School and Le Murier; Airport Terminal Building; St Sampson's Marina; and New Jetty projects. Whilst the above include purpose built accommodation and new facilities there has been a tendency for Departments to seek ever increasing standards of build. Costs per m<sup>2</sup> of build have obviously increased in real terms over the last eight years<sup>1</sup>. The Treasury and Resources Department has recognised that the introduction of space and cost standards requires States' approval so as to ensure a more uniform, standardised approach to project planning, thus ensuring more accountability for the expenditure of public money and avoiding the long, potentially costly disagreements between Departments over appropriate space and cost parameters for building projects.

Currently, there is a risk that a sponsoring Department can reach its own conclusions early on with regard to the suitable scope, quality and budget for a project, which can make subsequent discussion and constructive challenge very difficult. Without any objective, agreed cost allowances to work from there is no pressure on the Client, or the Project Team, to match the design/space/materials *etc* to a budget target. The easier option, to increase the size, complexity or quality, might therefore be pursued.

For a programme of work it means Departments might take as a benchmark their last completed construction project. There is sometimes insufficient reference to affordability or whether or not the previous projects have been over specified in any respect, perhaps incorporating desirable rather than essential elements. This can lead to an upward spiral of costs whereby each new scheme seeks to match or improve on the last in terms of space and quality. However, there are some items that are value engineered out of a project by Departments to release the pressure on rising capital costs on a live scheme, which can, ironically, result in more expensive lifetime running costs for the building.

In the UK, new construction and major refurbishment projects for Central Government and County and District Authorities have to be delivered within

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<sup>1</sup> For illustration purposes, the Building Cost Information Service of the RICS reports the percentage increase of costs nationally as 45.02% between the second quarter of 2001 and the second quarter of 2009.

established cost and space allowances. These in effect set early parameters to determine what represents an affordable budget. Base allowances can be adjusted by a percentage up or down dependent upon the economic and other circumstances prevailing at the time, and allowing for special situations and different areas of the country. The Client then balances their spatial and design aspirations within an overall imposed budget target.

There are a number of recognised information sources available to assist with establishing budget targets for major projects available on-line from the UK Government and professional organisations. These can be used as a baseline and adjusted to take account of specific Guernsey factors. These can then be linked to space allowance and quality benchmarks to develop a baseline budget target. Any significant variance to this would have to be justified by the Sponsoring Department to Treasury and Resources as part of the business case. Departments will be expected to demonstrate that individual projects meet recognised best practice space and cost standards comprising needs, not wants, and must be realistic about affordability. The clear aim is to deliver efficient, effective and value for money buildings and to avoid spiralling costs.

It is therefore proposed that the **Treasury and Resources Department should identify and apply standards which represent acceptable budget targets** that are appropriate and affordable within the Guernsey context.

It is proposed that the standards set out in **Appendix 4** can only be varied in exceptional circumstances if this can be justified by a Sponsoring Department's application and supporting business plan contained within a Gateway Review (Code of Practice 2) or much earlier if possible. It is recognised that it might not be possible to adopt this approach on some of the one-off projects, but it should be widely applicable, especially for programmes of work associated with most of the major areas of service delivery. Where no comparable standards or rates are published an alternative solution shall be submitted to Treasury and Resources for approval at the earliest possible stage in the development of the proposal.

The principal benefit of such an approach would be to ensure that every Department is treated equally and that no single Department could, by inappropriately increasing project scope, space and quality (and therefore budget), utilise more than necessary of the available capital funds. It also provides an objective test of proposals.

Irrespective of the economic climate, the States needs to be continually striving to ensure that taxpayers' money is spent wisely and as effectively as possible. There will always be many conflicting demands on the public purse. Historically, the States have not set target budgets for capital investment projects, choosing instead to rely more on Departments recognising the overall benefits of being corporate and not over specifying their requirements.

Moving from current practice to the proposed process for setting target budgets for major projects will not be easy. It may be necessary to adjust/review any budget target dependent upon the economic conditions prevailing at the time, *i.e.* affordability. In times of economic restraint, projects may have to be scaled down.

## **6. Codes of Practice (COPS)**

These Codes deal with the management of construction projects from initial concept through to disposal of the asset, collectively known as the Construction Project Lifecycle Manual. In particular, specific issues contained within Recommendations 1, 2, 3, 7, and 8 of the WAO Report are dealt with by way of the individual Codes of Practice.

A summary of the existing Codes of Practice to be applied to all capital construction projects over £250,000 is set out below:

### **COP 1 – Strategic Proposal Review**

This is a Senior Officer panel review of a capital construction proposal to determine its merits and priority. The priority is ranked as Priority 1 – of greatest strategic importance, down to 3. The eight scoring criteria deal with the impact of the project on a Department's delivery of its mandate, economic issues, community issues, finance, resource sensitivity, environmental and heritage issues, programme and risk. Priority 1 proposals, if approved by the States, proceed to Code of Practice 2. The process will be continually reviewed and improved, although it must remain reasonable and proportionate.

### **COP 2 – Gateway Review**

This examines the project (no longer a proposal) at critical stages in its lifecycle to provide assurance that the project continues to have merit and that it can be justified on a business need basis with an assessment of the likely costs and potential for success compared to the original brief. These reviews are carried out before key decisions are made in the procurement of a project and are thus, by their very nature, still high level reviews.

### **COP 3 – Management of a Project**

This deals with the construction phase of the project where the management is undertaken via a Project Board appointed using Prince2 methodology. Prince2 is a structured method for effective project management, used extensively both by Government and private organisations. It provides a flexible and adaptable approach to suit all projects with a continued focus on the business case for any project decisions, while providing a standard structure for review and reporting.

### **COP 4 – Post Implementation Review (PIR)**

This is normally carried out in two stages. The PIR assesses how the project

was delivered, the procurement route, effectiveness of the project, management methodology employed, quality of the end product, value for money and the users' views as to fitness for purpose. The Property Services Sub-Committee of the Treasury and Resources Department has met with the Public Accounts Committee and liaised on the details of PIRs. Agreement has been reached on the roles and responsibilities of the respective parties involved in the commissioning and carrying out of these reviews to a standard format.

### **COP 5 – Occupancy and Operation**

This Code focuses on the transition stage between construction and operation. It provides best practice advice for Departments on managing handover activities to facilitate a smooth progression between project delivery and operations and maintenance.

### **COP 6 – Property Appraisal/Disposal Review** (to be carried out by SPS)

This Code details a formal assessment of the residual life of an asset. A red, amber, green scoring system will help determine disposal, retention or alternative use of the asset.

## **7. Enabling Inscription of Certain States Owned Properties in Part A of the Housing Register (the ‘Open Market’)**

In 2006, the States approved the aims and objectives contained within the Department's Report on *"States Land and Property – Management and Administration"* set out in Billet d'Etat V, February 2006. In directing the Treasury and Resources Department to *"commence the implementation of that (Rationalisation) Strategy"* the States agreed that disposal of certain buildings should provide *"an economic solution for the States"*, and that the Rationalisation Strategy would unlock the potential of the property portfolio.

The Department's subsequent Report on States Property Rationalisation (Billet d'Etat XXIV, November 2007) recommended that properties, which were considered surplus to the requirements of the States, be sold. The Report went on to state that in order to maximise the potential of the sale of substantial and prestigious properties the Department considered that the greatest benefit for the community would be obtained by selling them as Open Market properties.

Whilst the States agreed to one property, Belvedere House, being inscribed on the Open Market Register in exchange for the deletion of Longacre from Part A of the Housing Register, they deferred decisions on further inscriptions following an amendment from the Housing Department. The States resolved:

3. *To direct the Housing Department, in conjunction with the Treasury and Resources Department, to review all the issues, advantages and disadvantages of expanding the Open Market by inscribing States-owned properties and to report back to the States with their findings and any*

*recommended policy changes by not later than September 2008.*

and,

*4 (b) To agree that no other proposals to inscribe States-owned properties in Part A of the Housing Register shall be approved by the States until such time as the States have considered the aforementioned Report from the Housing Department.*

The Treasury and Resources and Housing Departments have jointly and carefully considered this matter. At the present time, a review of the Housing Control regime is being carried out by the Policy Council's Population Policy Group and the findings and recommendations will not be known for some time. For this reason, therefore, the Treasury and Resources Department does not currently consider it appropriate to propose that any States owned properties be inscribed in Part A of the Housing Register. However, as and when the results of the review are made known, the Department might consider it appropriate to return to the States with proposals for certain States owned properties to be so inscribed.

#### **8. Capital Receipts for States Owned Land or Property**

In the course of discussions between the Treasury and Resources and Housing Departments, a question has arisen that needs to be resolved in order for both Departments to have clarity in respect of any future transactions. The question is whether or not the Corporate Housing Programme Fund (CHPF) should be used to fund the purchase of States owned land or property that is not already within the Housing Department's portfolio, based on a commercial valuation at the time of transfer. There are various issues both for and against charging the CHPF in this way. However, these need to be explored in detail. It is proposed, therefore, that the question is addressed within the Housing Department's States Report on the Corporate Housing Programme which is due to be considered during the first quarter of 2010, whereupon the States will be asked to decide on the matter. The Treasury and Resources and Housing Departments will work together to ensure that fair consideration is given to all the implications contained within this proposal.

#### **9. Recommendations**

The States are recommended to:

1. Note the progress made against the previous States' Resolutions of 2006 and 2007 regarding land, property and construction practices.
2. Approve the States-wide application of the Corporate Property Plan as set out in this Report.
3. Approve the application of space and cost standards and target budgets

for States' accommodation and facilities including major capital alterations, extensions, refurbishment and new build as set out in this Report and in **Appendix 4** (to be revised and updated by the Treasury and Resources Department as appropriate), and to note that where no agreement can be reached with the sponsoring Department, an appeal shall be decided by the Policy Council.

4. Approve the introduction of notional rental charging for States owned property occupied by Departments.
5. Note that the question of whether or not to charge the Corporate Housing Programme Fund for the transfer of any States owned land or property as outlined in Section 8 of this Report will be contained within the Housing Department's States Report on the Corporate Housing Programme, due to be considered by the States during the first quarter of 2010, together with appropriate recommendations.

Yours faithfully

C N K Parkinson  
Minister

**APPENDIX 1**

**IN THE STATES OF THE ISLAND OF GUERNSEY**

**ON THE 22<sup>nd</sup> DAY OF FEBRUARY 2006**

The States resolved as follows concerning Billet d'État No V  
dated 27<sup>th</sup> January, 2006

**TREASURY AND RESOURCES DEPARTMENT**

STATES' LAND AND PROPERTY – MANAGEMENT AND ADMINISTRATION

After consideration of the Report dated 22<sup>nd</sup> December, 2005, of the Treasury and Resources Department: -

1. To approve the processes, procedures and authorisations for property transactions (as set out in Appendix I to that Report).
2. To direct the Treasury and Resources Department to undertake all property negotiations, save those relating to tenancy agreements (undertaken by the Housing Department in respect to its social landlord role) or those relating to concession agreements for small premises within a property primarily used for States' purposes and which remain within the control of a States' Department (which exceptions are outlined in Paragraph 4.15 of that Report).
3. To direct the Treasury and Resources Department to review the Compulsory Purchase Law.
4. To approve the Rationalisation Strategy as set out in section 5 of that Report, but subject to the modification that the States of Deliberation, rather than the Policy Council, shall be the final arbiter in the case of a dispute between the Treasury and Resources Department and another States Department, and to direct the Treasury and Resources Department to commence the implementation of that Strategy.
5. To direct all States' bodies that there will be no exceptions to the implementation of the Rationalisation Strategy, unless specifically approved by the Treasury and Resources Department for reasons which exceed the requirements of the Strategy.
6. To authorise the Treasury and Resources Department to assume responsibility for any States' property when it deems that a justifiable case has not been made by a Department for its retention.



7. To direct the Treasury and Resources Department to act as a holding agent for properties on behalf of the States of Guernsey (as outlined in Paragraphs 5.14 and 6.20 of that Report).
8. To direct the Treasury and Resources Department to undertake the project management or project sponsor role in regard to major property projects, such that it facilitates the delivery of that property project for the benefit of the employing Department.
9. To direct the Treasury and Resources Department to undertake a full review of property workload and skills currently available within the States and to agree with the Departments concerned the reallocation of staffing to enable the approved recommendations to be carried out and, if agreement cannot be reached, to refer proposals in respect of the Departments concerned together with the Departments' views to the Policy Council for a final decision.
10. To note and confirm that the recommendations concerning property management policies will apply only in respect of property assets that are wholly beneficially owned by the States.

K. H. TOUGH  
HER MAJESTY'S GREFFIER

## **APPENDIX 2**

### **STOCK CONDITION SURVEYS AND PROPERTY ASSET MANAGEMENT PLANS - DEFINITIONS**

Description: Stock condition and individual property surveys will inform Property Asset Management Plans to be prepared by Departments. Definitions of terms follow:

#### **STOCK CONDITION SURVEYS (SCS)**

##### **Level - Detailed**

Carried out on individual built structures, land parcels, monuments *etc* identified by a unique property reference number and unique building identifier (UPRN and UBI). The survey is undertaken via a brief visual inspection only using a series of standard questions with standardised responses. This identifies the overall build, components and sub-components of the referenced structure/area and catalogues and assigns a level of repair (condition). It further identifies an anticipated replacement year at sub-component level (with the estimated lifespan, assuming that the installation and subsequent maintenance is in accordance with recognised industry Guidelines and Codes of Practice as well as the manufacturer's recommendations) and assigns an associated cost (assuming that components are replaced on a like-for-like basis notwithstanding that at the time of replacement new or upgraded components may be available) from a schedule of rates of standard components.

The data from these surveys will be held within a database to provide strategic information to assist the preparation of maintenance programmes and can be used to identify the need for further detailed (Property) Condition Surveys.

#### **PROPERTY CONDITION SURVEYS**

##### **Level – Detailed**

Carried out on an individual built structure, detailing the construction and condition of the structure. The need for this survey will generally be identified from an SCS output indicating works are required, or from another proposal to undertake works.

The inspection will generally be a low level survey of the building to detail the construction and condition of internal and external fabric, mechanical and electrical installations with associated replacement / refurbishment costs. The brief can however be extended to include specifics such as:-

- Defects diagnosis
- Improvement proposals
- Health and Safety inspection, Control of Substances Hazardous to Health (COSSH) audits and reporting
- Access audit
- Fire audit
- Asbestos survey
- Energy efficiency

The output from such surveys will generally be a written report specific to the structure, with supportive information which allows the preparation of detailed works specifications and maintenance programmes.

### **CORPORATE PROPERTY ASSET MANAGEMENT PLAN**

**Level – General** Considers the public sector estate at the very highest level, and delivers a holistic overview of property held by the States.

### **DEPARTMENTAL PROPERTY ASSET MANAGEMENT PLAN**

**Level – General** Considers the estate at a Departmental level, linked to Departmental objectives and service needs. This can include issues such as possible areas for development or improvement, potential savings, or dealing with known risks or inefficiencies.

### **INDIVIDUAL PROPERTY ASSET MANAGEMENT PLAN**

**Level – Detailed** Addresses issues such as running costs and fitness for purpose. Considers the individual characteristics of a building, and current and future use.

**APPENDIX 3****BILLET D'ETAT V, FEBRUARY 2007 – WALES AUDIT OFFICE  
INVESTIGATION INTO THE AWARD OF THE CLINICAL BLOCK  
CONTRACT**

Description: Following the withdrawal of the lowest tender for the Princess Elizabeth Hospital Phase V contract, the States accepted all fourteen Recommendations proposed by the Public Accounts Committee (PAC) stemming from the Wales Audit Office (WAO) Report of 25 January 2007. Specific issues contained within Recommendations 1, 2, 3, 7 and 8 of the WAO Report are dealt with by way of individual Codes of Practice for capital construction projects.

The PAC Recommendations are shown below.

- 4.2 The WAO has made fourteen recommendations and the Committee is of the opinion that these should be considered by the Policy Council. It is then for the Council to determine, as soon as practicable, which Department or Committee of the States should be charged with implementing the recommendations as listed below:
1. There is a need to determine whether the total funding requirements for capital schemes should be approved prior to undertaking detailed design work and inviting tenders.
  2. The processes and procedures for letting, managing and scrutinising capital contracts needs to be reviewed and updated to take into account the Machinery of Government changes and public sector good practice.
  3. Guidance for contract letting arrangements to clearly define roles and responsibilities.
  4. There is a need to decide whether limits should be introduced on the amount of work that the States would be prepared to award to a single contractor, and what those limits would be.
  5. There is a need to review current policy of not mandating the requirement for performance bonds, insurance cover and to review parent company guarantees to establish if these practices should be made mandatory.
  6. There is a need to evaluate whether the construction industry Economic Model is fit for purpose. If it is considered to be fit for purpose, the roles and responsibilities for its management need to be clearly defined and executed.

7. There is a need to ensure that the timing of major capital schemes is effectively managed to avoid, wherever possible, 'peaks and troughs' within the construction industry as a result of the confluence of major schemes.
8. There is a need to develop a robust methodology for prioritising capital expenditure which sets out the criteria to be used and the frequency of prioritisation exercises.
9. There is a need to clarify the procedure and formalise the methodology used to undertake financial evaluations of contractors. This needs to cover responsibilities, timing, documentation and the criteria to be applied.
10. To minimise the risk of misinterpretation, the issuing of guidance to officers on the compilation and retention of notes used to support briefings given to States Members needs to be considered.
11. Guidance should be developed for politicians on meetings or discussions with external parties. This guidance should cover appropriateness of meetings, procedures, recording, timing and whether officer support is needed.
12. Consideration should be given to whether notes of key meetings used to prepare minutes are kept for a defined period in case of dispute. An option to make audio recordings of proceedings would achieve a similar objective.
13. Consideration needs to be given as to whether the States should debate the general issues of member interests, in particular the compatibility of political and business and other outside interests.
14. A procedure should be put in place for the handling of minutes or agenda papers setting out whether such documentation should be distributed to individuals who have declared their interest in an item under discussion.

## APPENDIX 4

### CORPORATE PROPERTY STANDARDS AND BENCHMARKS

Description: These standards and benchmarks will apply to the development, use and maintenance of all States property, including major capital alterations, extensions, refurbishments and new build. These references will be reviewed periodically with a view to continuous improvement and evolving best practice. They should only be varied in exceptional circumstances if this can be justified to the satisfaction of Treasury and Resources, for example by a sponsoring Department's application and supporting business plan contained within a Gateway Review (Code of Practice 2) or much earlier where possible.

It is recognised that States Departments have a wide variety of requirements based upon specific activities. It is, however, important that standards are transparent, objective, reasonable, justifiable and that they can demonstrate best value. It is not good practice to 're-invent the wheel' each time a new construction project is put forward, or to dilute corporate standards with too many exceptions, exemptions and qualifications.

<b>TYPE OF BUILDING</b>	<b>USE</b>	<b>REFERENCE STANDARD</b>
<b>States Accommodation</b>	Office and other administrative	Efficiency Standards for Office Space, November 2007 (Office of Government Commerce, Investment Properties Databank Ltd).
		British Council for Offices Guide 2005, Best Practice in the Specification of Offices.
<b>Home</b>		Home Office Standards for Custody, Facilities and Police Stations.
<b>Housing</b>		Scheme Development Standards (SDS) 5 <sup>th</sup> Edition, 2003, produced by the Housing Corporation.
		Joseph Rowntree Lifetimes Homes Principles.
		Secured by Design Principles.
<b>Hospitals, Health and Social Care</b>		Relevant UK Health Building Notes (HBN) and Health Technical Memoranda (HTM).

		Guernsey Standards for Care Homes.
		Standards for Health and Social Care Facilities.
<b>Education</b>	Primaries (Nurseries)	Building Bulletin 99 produced by The Department for Children, Schools and Families (DCSF) + percentage variation.
	Secondary	Building Bulletin 98 + percentage variation.
	Special Needs	Building Bulletin 77 DCSF + percentage variation. Revised and updated 2005.
	Further Education	Learning Skills Council:  1. Capital Handbook, Nov 2006.  2. Guidance for FE Colleges on the Management of Floor Space, May 2007. + percentage variation.
	Other	Standards Applicable to Nursery Schools, Pre-schools and Crèches. Regulated by HSSD.
	Miscellaneous	Building Bulletins for Acoustics, Environment, Ventilation <i>etc.</i>

Numerous other Education Bulletins and standard Specifications exist which amplify and/or clarify the guidance in the relevant Bulletins referenced above.

### **Others**

For any buildings and structures not covered above the designs should be to the current UK standards, with allowance for the Guernsey context. Details to be agreed with the Treasury and Resources Department at the earliest opportunity.

### **Costs**

Cost parameters will, unless other evidence is put forward in a Business Case by the Sponsoring Department to be approved by Treasury and Resources, be based on Building Cost Information Service (BCIS) current rates adjusted for Guernsey. Cost information will need to be regularly updated and consequent adjustment for inflation (or deflation) if the proposal proceeds within the Capital Programme.

**Environmental Issues**

All new build and major refurbishment projects (cost threshold to be determined) will be required as a matter of good practice to be subject to the Building Research Establishment Environmental Assessment Method (BREEAM) or equivalent with an expectation of achieving at least 'good' as a minimum rating.

Treasury and Resources will continue to engage in specific dialogue with Departments so as to develop, refine, test and improve the above list of referenced standards.



**(NB The Policy Council welcomes the approach taken by the Treasury and Resources Department to ensure that best use is made of the States' property portfolio. It therefore supports the recommendations set out in this States Report)**

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 7<sup>th</sup> August, 2009, of the Treasury and Resources Department, they are of the opinion:-

1. To note the progress made against the previous States' Resolutions of 2006 and 2007 regarding land, property and construction practices.
2. To approve the States-wide application of the Corporate Property Plan as set out in that Report.
3. To approve the application of space and cost standards and target budgets for States' accommodation and facilities including major capital alterations, extensions, refurbishment and new build as set out in that Report and in Appendix 4 (to be revised and updated by the Treasury and Resources Department as appropriate), and to note that where no agreement can be reached with the sponsoring Department, an appeal shall be decided by the Policy Council.
4. To approve the introduction of notional rental charging for States owned property occupied by Departments.
5. To note that the question of whether or not to charge the Corporate Housing Programme Fund for the transfer of any States owned land or property as outlined in Section 8 of that Report will be contained within the Housing Department's States Report on the Corporate Housing Programme, due to be considered by the States during the first quarter of 2010, together with appropriate recommendations.

## TREASURY AND RESOURCES DEPARTMENT

### CAPITAL PRIORITISATION

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

14<sup>th</sup> August 2009

Dear Sir

#### 1. Executive Summary

In June 2009 the Treasury and Resources Department presented a report to the States with its proposals for capital prioritisation including a capital programme and recommended funding. One of the resolutions at that meeting was *“To approve the recommended programme for capital projects totalling £301million as set out in Programme C of Section 6 of that Report, subject to the proviso that the timetable for undertaking the projects shall be determined by availability of funding”*.

The purpose of this report is to consider the options available for the programming of the projects having regard to the cash flows which are likely to be available.

The modelling of the budget and cash flow information contained within Billet d'État IX 2009 to construct a base case demonstrated that the Capital Reserve would become overdrawn by the end of 2011 and remain in a deficit position until the end of 2013. The maximum level of overdraft was shown to be £18.5million. The Treasury and Resources Department has therefore re-examined all of the projects in the approved capital programme and considered, together with the individual Departments, changes to the likely project budgets, updated timelines and cash flows and any likely costs of delay on a case by case basis. In addition, latest estimates of capital receipts and interest have been calculated and inflation assumptions and allowances reviewed.

The refreshed information was used to construct an updated base case, with all projects going ahead as planned, which showed a £10m overdrawn position in the Capital Reserve at the worst point. By delaying the £6million project to recapitalise Cabernet Limited until 2014, the cash flow model shows that the capital programme, as planned (i.e. without moving any other projects), works with a small overdraft (£4million) likely to occur at the end of 2012. **The Department is therefore of the view that the remainder of the capital programme planning should continue unchanged but would emphasise that any further changes to individual project costs or timelines**

**would have a significant impact on the ability to proceed with all projects as planned.**

In the Department's view, the recommended programme timings allow the most appropriate and balanced progression of projects given the resource constraints. There are, of course, risks in advising this approach which arise largely due to the lack of any contingency element to the programme but which are explained in Section 7 of this Report.

## **2. Introduction**

This Report considers the following main areas:

- An update on the project costs and optimal timelines of the 18 priority one projects<sup>1</sup> to be funded from the Capital Reserve and included in the States capital programme.
- Refreshed projections for income to the Capital Reserve over the six year programme period.
- A revised capital programme "base case" derived from the above and now totalling £216million (compared to the previous total of £218million).
- The recommended programme.
- Next steps.

## **3. Background**

The Treasury and Resources Department presented its Report on Capital Prioritisation to the States in June 2009 (Billet d'État IX 2009). Following debate, the States resolved:

- 1) To approve the recommended programme for capital projects totalling £301million as set out in Programme C of Section 6 of that Report, subject to the proviso that the timetable for undertaking the projects shall be determined by availability of funding.
- 2) To note that each project that is included within the capital programme will be the subject of a separate Report before the project can commence unless the Treasury and Resources Department has delegated authority to approve a capital vote; and to agree that the States will not be asked to approve the replacement of the Sarnia Work-Boat, either directly or through the Treasury and Resources Department acting under its

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<sup>1</sup> The Solid Waste Solution project has been excluded from the analysis undertaken in this States Report since funding has been agreed as an internal loan to be drawn down against the payments due.

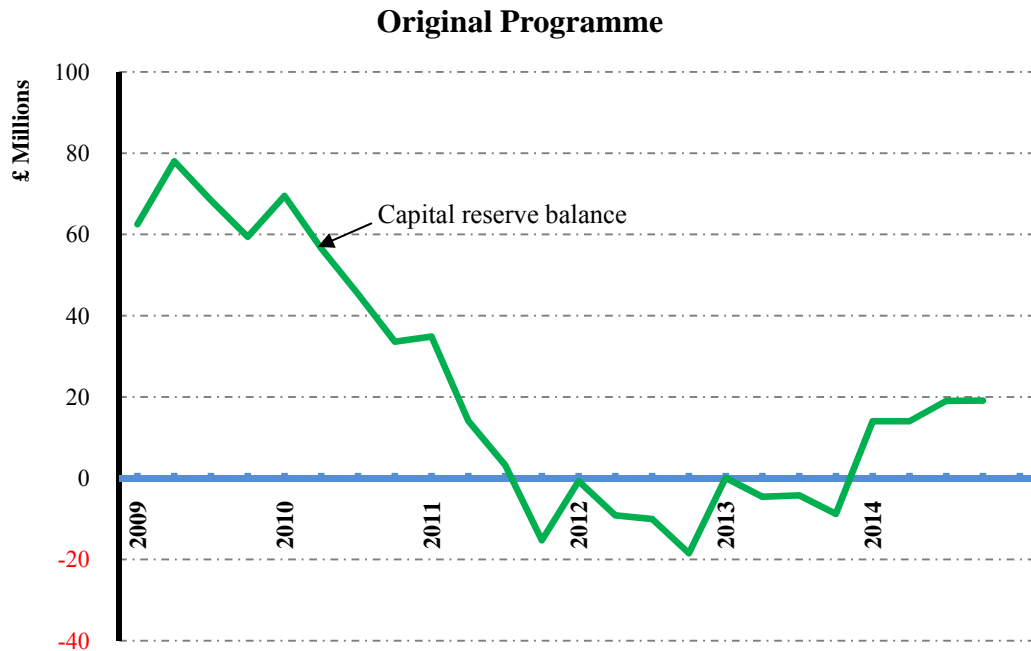
delegated powers, unless an independent vessel survey has indicated that the vessel has reached the end of its safe working life or is likely to do so within four years.

- 3) To authorise the Treasury and Resources Department to approve capital votes for expenditure on progressing to tender stage those projects that have been included in the capital programme, funded by transfers from the Capital Reserve.
- 4) To authorise the Treasury and Resources Department to transfer from the Capital Reserve such sums that are necessary to fund approved capital votes.
- 5) That the Ports Holding Account shall not be collapsed in advance of consideration by the States of a report from the Public Services Department in December 2009 on the options for moving the trading entities of Guernsey Harbours and Guernsey Airport into a different business environment, BUT THAT, in any event, the operating surplus before depreciation shall be transferred to the Capital Reserve from the Ports Holding Account from 2010 until such time as the Ports Holding Account may be discontinued.
- 6) That the Treasury and Resources Department shall loan to the capital reserve, from the General Revenue cash pool and/or the Contingency Reserve, up to £83million, accruing interest at the States Treasury interest rate (subject to proposition 9), and to be allocated strictly against the solid waste solution.
- 7) That the internal borrowing referred to in proposition 6 shall be repayable over a 20 year period from income generated by the solid waste solution.
- 8) That all other capital expenditure as may be agreed by the States as part of this approved programme of capital projects shall be financed from the funds available to the Capital Reserve, including:
  - a) Appropriations from General Revenue in the years 2009, 2010, 2011, 2012, 2013 and 2014.
  - b) An additional surplus from the Ports Holding Account from 2011 of £1.775million per annum at 2009 values (adjusted and maintained in real terms).
  - c) The additional operating surplus for 2008 of £22million, which shall be transferred immediately.
- 9) To direct the Treasury and Resources Department to investigate the feasibility of arranging an interest rate swap to substitute a fixed rate

interest rate for the variable States Treasury interest rate in respect of the internal borrowing referred to in proposition 6, and authorise that Department to enter into such an arrangement if thought appropriate.

- 10) To re-affirm the principle that States borrowing (whether internal or external) should be approved only for capital projects with a secure, associated income stream.

The Treasury and Resources Department modelled the impact of the funding available versus the planned programme (as directed in resolution 1 above) which revealed that this would mean that the Capital Reserve would become overdrawn during 2011 and remain in a negative position until the end of 2013, with a maximum overdraft of £18.5million at the end of 2012. This is represented in the chart below:



Due to this cash-flow problem, the Department undertook to update all programme income and expenditure assumptions and to contact Departments in order to gather the most up to date project plans and assess the options for delaying projects.

#### **4. The Available Funding**

The Government Business Plan (Priority 3) included a requirement to “Invest £20m per year in capital expenditure”. This requirement was re-affirmed in the 2009 Budget Report and therefore this amount, maintained in real terms<sup>2</sup> at 2009 values (ie increasing annually in line with RPI), will be transferred to the Capital Reserve.

<sup>2</sup> Throughout this report, the same inflation assumptions have been used as in Billet D’État IX 2009, namely 2009 at 3.03%, 2010 at 3.53% and 2011 onwards at 4.03%

At the June 2009 meeting, the States resolved that additional income would be transferred to the Capital Reserve as laid out in the resolutions in Section 3 above to fund the approved capital programme and specifically:

- Appropriations from General Revenue in the years 2009 to 2014 inclusive;
- The operating surplus before depreciation from the Ports Holding Account from 2010 which is assumed to be at least £3million per annum (maintained in real terms);
- An additional surplus from the Ports Holding Account from 2011 of £1.775million per annum at 2009 values (maintained in real terms); and
- The additional operating surplus achieved in 2008 and totalling £22million (which was transferred on 26 June 2009).

Therefore, the **anticipated** total amount available from the Capital Reserve for the period is shown in the table below:

	£m
Balance at 31 December 2008	42
2009-2014 Appropriations	134
Additional 2008 Surplus	22
2010-2014 PHA Operating Surpluses	16
PHA Additional surpluses (2011-2014)	8
Other Income (including receipts from property sales and interest)	15
<b>Total estimated funding available up to 31 December 2014</b>	<b>237</b>

## **5. Project Updates**

During July, all Departments with projects included within the capital programme were invited to update their project submissions. The Treasury and Resources Department specifically sought to obtain:

1. Updated estimated project costs. It was felt that this was vital since Departments submitted proposals for strategic review in the summer/autumn of 2008 and circumstances might have changed in the interim.
2. Any revisions to the likely start date of the projects, their projected length and the associated cash flows.
3. Costs which might arise as a result of delay.
4. Any risks of delay.

The table below illustrates the original and revised budgets of each of the 18 projects included in the programme. The cost of the nineteenth project – the solid waste solution - has been omitted from the modelling work undertaken since the full cost of the project is being covered by an internal loan and therefore there is no impact on the Capital Reserve. The original outline budget for that project was £80million plus a £3million inflation allowance which accounts for the difference between the original £301million capital programme and the table below which totals £218million.

Proposal	Original Estimate £'000	Revised Estimate £'000	Difference £'000
Education – College of Further Education Phase 2b	2,700	2,700	-
Education – Les Beaucamps School	38,150	38,100	(50)
Environment - Cobo Bay Bunker/Sea Wall Repair	350	290	(60)
HSSD – Adult Acute Mental Health Facilities	25,400	25,420	20
HSSD – Homes for Adults with a Learning Disability	5,300	5,600	300
Home – eBorders, eCustoms and Passport IT system	1,000	1,000	-
Home – Police core IT system	1,200	1,200	-
Home – Tetra Radio	1,800	1,800	-
PSD – Belle Greve Wastewater Disposal Facility	15,500	15,500	-
Ports – Airport Pavements	84,500	81,000	(3,500)
Ports – Airport Radar	2,400	3,500	1,100
Ports – St Peter Port Harbour Crane Strategy	10,000	10,000	-
Ports – St Peter Port Harbour pontoons	1,000	1,000	-
Ports – Sarnia Work Boat	1,000	1,000	-
Social Security/Income Tax IT System	5,500	5,730	230
T&R - Cabernet Limited Recapitalisation	6,000	6,000	-
T&R – Corporate Asset Management IT System	600	600	-
T&R – IT Wide Area Network	3,600	3,600	-
<b>Sub Total (before inflation allowance)</b>	<b>206,000</b>	<b>204,040</b>	<b>(1,960)</b>
Inflation Allowance <sup>3</sup>	12,000	12,000	-
<b>Total</b>	<b>218,000</b>	<b>216,040</b>	<b>(1,960)</b>

The net overall reduction in the estimated project budgets for the 18 projects is therefore just under £2million since the original proposals were submitted for Strategic Review in the autumn of 2008.

In addition, some projects have seen some significant changes to project timelines. In summary:

<sup>3</sup> The inflation allowance has been adjusted from the £15m shown in the original programme to reflect the inflation allowance applicable to the solid waste solution.

Project	Original Start Date	Revised Start Date	Original End Date	Revised End Date
Airport Pavements	2009	2010	2011	2012
Belle Greve Wastewater	2010	2010	2012	2013
SPP Harbour Crane Strategy	2009	2010	2011	2011
SSD/Income Tax IT System	2009	2009	2014	2012
IT Wide Area Network	2009	2010	2012	2012
Tetra Radio	2009	2010	2011	2012
E Borders IT System	2009	2010	2013	2012

These changes also have material impacts on the cash flow profile of the programme and therefore on the balance of the Capital Reserve. The most significant change is the delay to the likely start date of the airport pavements project which, with £40million of expenditure likely in the first year, has relieved much of the pressure on the Capital Reserve balance.

It should also be noted that although there have not been any significant changes to any other project timelines, even relatively minor changes to the programming of high cost projects (such as Les Beaucamps and the HSSD Mental Health Facilities) could have a significant impact on the cash flow and that any acceleration of these projects would not be possible within the current model.

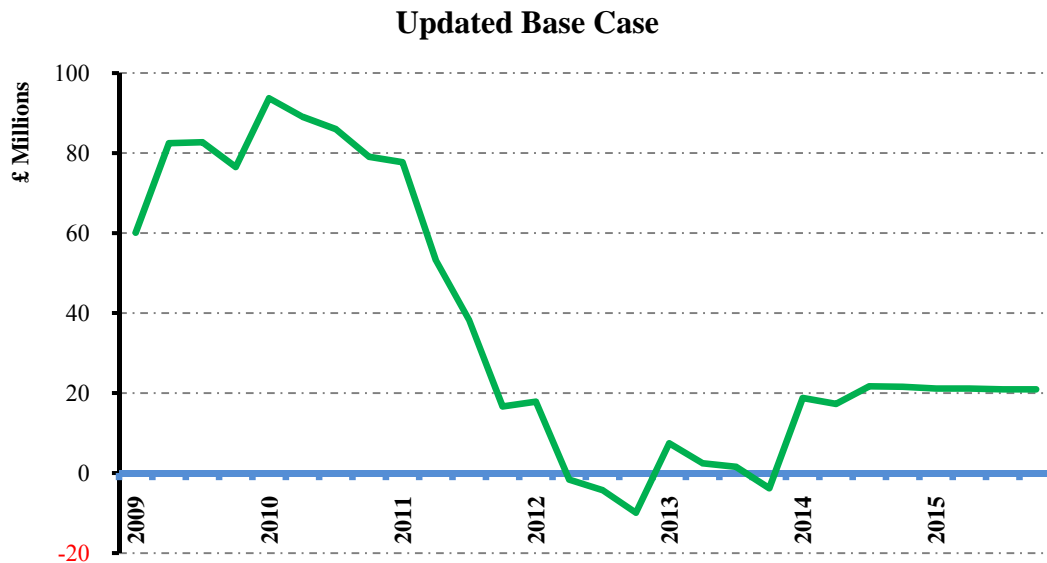
## **6. Modelling the Programme**

The historic policy of the States, as laid out in Policy and Resources Planning Reports prior to 2006 was that *“funds for capital expenditure are allocated on the basis of a three year rolling programme. The magnitude of the new allocation made to top up remaining allocations each year is determined by the funds available and a review of capital requirements over the coming three year period”*. That is, that capital investment plans were used as a basis for determining the required level of appropriations. In practice, this meant that the funding for each entire project was allocated up front and therefore available at contract signing.

This policy was not included in the 2006 Policy and Resource Plan but was not replaced by any subsequent guidance. The Treasury and Resource Department believes that the best practice approach to managing capital budgets is to have the entire budget available for allocation before contracts are entered into. The Department considered the options of modelling the programme both on the basis of having all project costs available to be committed at the point of opening a capital vote and on a cash flow basis. The modelling of the contract signing method would have led to the need to delay the majority of projects in the programme due to the requirement to allocate more than £80million to the airport pavements project. Alternatively, it would have meant a significant delay to the airport project itself which would have incurred substantial additional capital and economic costs. Therefore, the Department decided to take an approach to the management of the programme in line with the direction of the States. That is, to timetable the projects according to the availability of funding.



The next chart models the impact of the updated programme on a cash flow basis on the balance of the Capital Reserve:



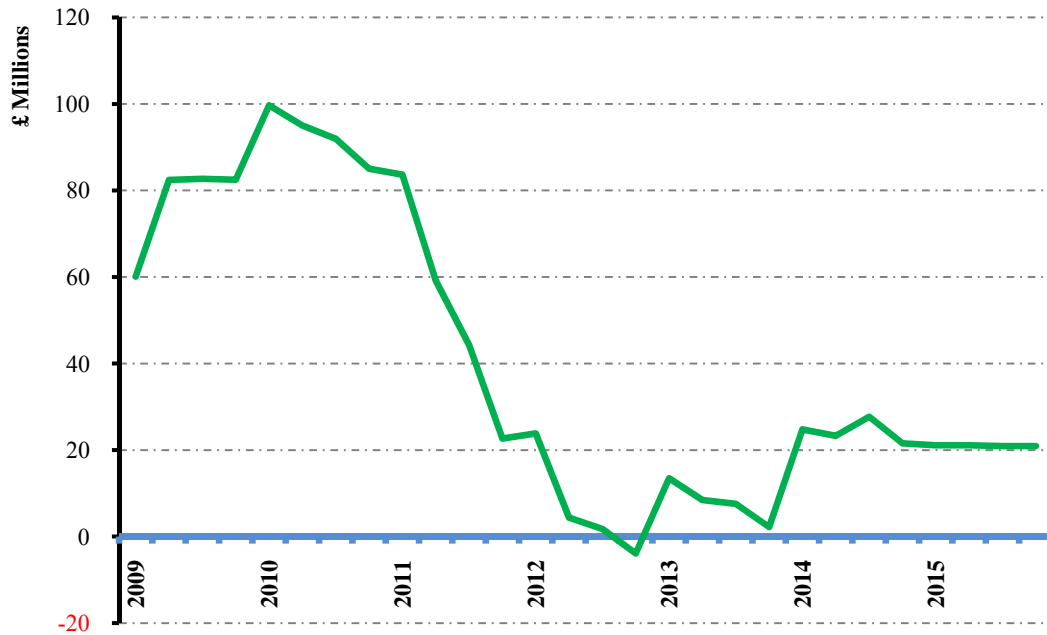
The budget and timing changes referred to in Section 5 above have some significant impact on the profile of the capital reserve and in particular the maximum overdrawn position, which would be in the final quarter of 2012. The original programme indicated an overdraft position of £18.5million at this point. The changes to estimated budget requirements since have improved this by some £2million and the timing adjustments translate into a further £6.6million cash flow benefit. This results in the maximum modelled cash deficit becoming £9.9million in the updated base case and the overdrawn period shortening from nine consecutive quarters to a total of four quarters.

## **7. Recommended Solution**

The Treasury and Resources Department has reviewed the options for programme delays in order to bring it into a cash positive position. In order to achieve a workable solution within the spirit of the resolutions from the June 2009 States meeting, the Department is recommending that the recapitalisation of Cabernet Limited is delayed into the first quarter of 2014. There are, of course, consequences of delaying this project which are not without costs. The company will continue to operate through debt financing and will need to increase the size of the facilities available to it, and bear the costs of this. The delay also means that the States will need to continue to guarantee Cabernet Limited's borrowings through longer term facilities.

Nevertheless, if this change is made, the cash flow position of the Capital Reserve will be as per the chart below and shows that the Reserve becomes overdrawn by approximately £4million, assuming all other considerations remain as currently modelled, for one quarter only at the end of 2012.

### Recommended Programme - Cabernet Delayed



The Department believes that this overdraft position is sustainable for such a short period from the balances held in the General Revenue cash pool and therefore recommends this as the programme that should be followed. **However, there are some significant risks to taking this approach which the States needs to be mindful of before making a decision.** These risks are:

- There is no flexibility in the programme and no scope for any project to commence any earlier than the timescales indicated in this report.
- Any significant adverse cash flow variations within a project could lead to a longer period of overdraft occurring.
- The majority of projects in the programme are at the early planning stages and there is no scope within this model for any adverse budget variations.
- Should any project timelines shorten or budget values increase in the earlier projects then there may be a need at a future date to delay one or more subsequent projects.
- The modelling undertaken is based on income assumptions including the size of future annual appropriations to the Capital Reserve, the magnitude of the PHA surpluses, receipts from the sale of surplus properties and interest. If, for some reason, it were to prove impossible to realise all of this income, then some capital projects will need to be delayed.

- There is no scope within this cash flow for any new projects (for example urgent works) to be added to the programme. Should this happen, then at least one of the current projects would need to be delayed.

**The Department will closely monitor the balance of the Capital Reserve and will update the modelling included within this States Report each time one of the projects is brought forward for a capital vote be opened. The Department will append the updated model to its letter of comment on the Report and this may result in a recommendation to the States to delay the project should the balance in the Reserve prove to be insufficient.**

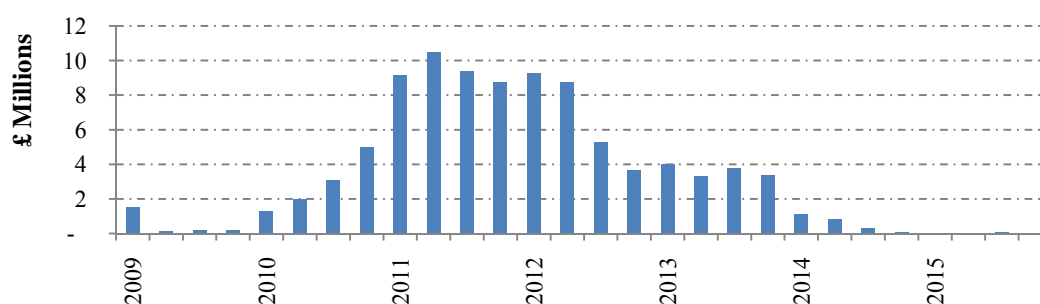


## 8. Impact on the Local Construction Industry

The Department has examined the impact on the local construction industry of the recommended solution. This is now showing that the work is likely to build during 2010 and reach an average value of £8million per quarter during 2011 and 2012. However, expenditure is likely to slow to approximately £14.5million in 2013 and further to under £2.5million in 2014 before the beginning of the next programme which is scheduled to commence in 2015.

This profile still avoids the peaks and troughs as requested by the industry. The increased spend in the short term in 2011 and 2012 will ease the impact of the recession over this period. The industry should then be well placed to respond to improvements expected in the private sector from 2013 onwards, which will augment the lower levels of public expenditure planned.

**Local Construction Expenditure**



## 9. Other Matters

At the June States meeting, resolution number six read: *“That the Treasury and Resources Department shall loan to the Capital Reserve, from the General Revenue cash pool and/or the contingency reserve, up to £83million, accruing interest at the States Treasury interest rate, and to be allocated strictly against the solid waste solution”*

Since that resolution was made, the States have approved the recommendations in Billet D’État XX 2009 – Residual Waste Treatment – Selection of Preferred Bidder. Resolution 2 of that report updated the £83million to a maximum loan of £93.5million.

The Department has reviewed the options for borrowing from the cash pool in consultation with its investment advisors, and has concluded that the cash pool will be used to fund the early draw-downs of the loan up to a maximum value of £50million. This cap on the cash pool exposure takes account of the likely future balances in the pool and the risks highlighted in the Treasury and Resources Department’s addendum to the June States Report. The balance of the loan (up to £43.5million) will be drawn from the Contingency Reserve.

The Treasury and Resources Department is also under instruction from the States to investigate the feasibility of arranging an interest rate swap. The aim of such a swap would be to give certainty that the inflation linked income stream from the solid waste plant would be sufficient to pay the interest on the loan. That interest will be payable at the States Treasury rate, which is a floating rate calculated according to the prevailing market rates. The Department is currently taking advice on this option and will enter into such an arrangement if it reduces the financial risks and offers good value for money.

#### **10. Recommendations**

The Treasury and Resources Department recommends the States to:

1. Approve the timing of the recommended programme for capital projects within the approved Capital Programme (as per the Gantt chart in Section 7 above).
2. Note that the Treasury and Resources Department will closely monitor the balance in the Capital Reserve and that any variations from the recommended programme could result in a recommendation to delay future projects.
3. Note that the delay in the recapitalisation of Cabernet Limited will lead to a requirement to extend guarantees currently given by the States and authorise the Treasury and Resources Department to enter into such arrangements as necessary.

Yours faithfully

C N K Parkinson  
Minister

**(NB The Policy Council supports the Treasury and Resources Department's proposals for the financing of the agreed capital programme but acknowledges that to be consistent with a 3% of GDP States capital expenditure policy objective, as contained in the Fiscal and Economic Plan, an increased transfer of funds from General Revenue to the capital reserve will be required in the long run.)**

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 14<sup>th</sup> August, 2009, of the Treasury and Resources Department, they are of the opinion:-

1. To approve the timing of the recommended programme for capital projects within the approved Capital Programme (as per the Gantt chart in Section 7 of that Report).
2. To note that the Treasury and Resources Department will closely monitor the balance in the Capital Reserve and that any variations from the recommended programme could result in a recommendation to delay future projects.
3. To note that the delay in the recapitalisation of Cabernet Limited will lead to a requirement to extend guarantees currently given by the States and authorise the Treasury and Resources Department to enter into such arrangements as necessary.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### PUBLIC HOLIDAYS

The Chief Minister  
Policy Council  
Sir Charles Frossard House  
La Charroterie  
St Peter Port

17<sup>th</sup> August 2009

Dear Sir

#### **Executive Summary**

The Department recommends that when Christmas Day, Boxing Day or New Year's Day falls on a Saturday, a day in the following week should be designated as a public holiday.

The Department also recommends that Monday 10<sup>th</sup> May 2010 be a public holiday given that Liberation Day in that year is a significant anniversary of the liberation of the Island and that it will fall on a Sunday.

#### **Public Holidays over Christmas and New Year**

The Public Holidays Ordinance, 1994 specifies certain days which are public holidays in any year. It also specifies an alternative day as a public holiday in any year in which Christmas Day, Boxing Day or New Year's Day falls on a Sunday.

There is, however, no similar provision when any of these days falls on a Saturday; and for each year when this has occurred in the past it has been customary to introduce legislation to specify, in the case of:

- Christmas Day or Boxing Day falling on a Saturday, that 28<sup>th</sup> December is a public holiday; and
- New Year's Day falling on a Saturday, that 3<sup>rd</sup> January is a public holiday.

To avoid the future need for specific legislation in relevant years, the Department proposes that the Public Holidays Ordinance be amended to "automatically" specify an alternate day as a public holiday when Christmas Day, Boxing Day or New Year's Day falls on a Saturday as set out above.



## **Liberation Day**

There are occasions when 9<sup>th</sup> May occurs on a Saturday or a Sunday and the view has been expressed that when this happens, the Monday next following Liberation Day should be specified as a public holiday.

The Department has consulted employer and employee representative groups regarding this proposal and has received a wide range of views, some of which highlight potential issues that have implications for employment law.

The Department is reluctant to recommend the amendment of the Public Holidays Ordinance to automatically specify an alternative day when Liberation Day falls on a Saturday or Sunday without carrying out a full review of the wider implications of such action.

It recognises, however, that in 2010, Liberation Day will celebrate the 65<sup>th</sup> anniversary of Liberation and the 70<sup>th</sup> anniversary of the evacuation of Islanders. It will also fall on a Sunday. Given the significance of the 2010 celebrations, the Department recommends that the States provide by Ordinance that Monday 10<sup>th</sup> May 2010 is a Public Holiday.

## **Consultation.**

HM Procureur has been consulted on the contents of this States Report.

## **Recommendations**

The Department recommends the States to:

- (a) Approve the proposal that the Public Holidays Ordinance, 1994 be amended such that when:
  - (i) Christmas Day or Boxing Day falls on a Saturday, the 28<sup>th</sup> December shall be a public holiday; and
  - (ii) New Year's Day falls on a Saturday, the 3<sup>rd</sup> January shall be a public holiday.
- (b) Approve the proposal that Monday 10<sup>th</sup> May 2010 shall be a public holiday.
- (c) Direct the preparation of the legislative changes necessary to give effect to that proposal.

Yours faithfully

C S McNulty Bauer  
Minister

**(NB The Policy Council has no comment on the proposals.)**

**(NB The Treasury and Resources Department has no comment on the proposals.)**

The States are asked decide:-

X.- Whether, after consideration of the Report dated 17<sup>th</sup> August, 2009, of the Commerce and Employment Department, they are of the opinion:-

1. That the Public Holidays Ordinance, 1994 be amended such that when:
  - a) Christmas Day or Boxing Day falls on a Saturday, the 28<sup>th</sup> December shall be a public holiday; and
  - b) New Year's Day falls on a Saturday, the 3<sup>rd</sup> January shall be a public holiday.
2. That Monday 10<sup>th</sup> May 2010 shall be a public holiday.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.