



BILLET D'ÉTAT

WEDNESDAY, 29th JANUARY, 2014

I
2014

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BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **29th JANUARY, 2014** at **9.30 a.m.**, to consider the items contained in this Billet d'État which have been submitted for debate.

R. J. COLLAS
Bailiff and Presiding Officer

The Royal Court House
Guernsey

20th December 2013

THE COMPETITION (GUERNSEY) (AMENDMENT) ORDINANCE, 2014

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Competition (Guernsey) (Amendment) Ordinance, 2014”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Competition (Guernsey) Ordinance, 2012 ("the 2012 Ordinance") to enable the Guernsey Competition and Regulatory Authority (upon request of the Commerce and Employment Department) to use investigatory powers to request and obtain information in order to undertake market studies. Under the 2012 Ordinance as currently in force, investigatory powers are only available where there are reasonable grounds for suspecting a contravention or intended contravention of the Ordinance. This change will align the position in Guernsey with the legal position in Jersey (the competition legislation in that Island also of course being administered by the Authority).

THE INCOME TAX (GUERNSEY) (APPROVAL OF AGREEMENTS WITH BERMUDA, GIBRALTAR, HUNGARY, SLOVAKIA, SWAZILAND AND SWITZERLAND) ORDINANCE, 2014

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Income Tax (Guernsey) (Approval of Agreements with Bermuda, Gibraltar, Hungary, Slovakia, Swaziland and Switzerland) Ordinance, 2014”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance specifies certain agreements, providing for the obtaining and exchanging of information in relation to tax, made for the purposes of the Income Tax (Guernsey) Law, 1975.

The agreements specified were made between the States of Guernsey and the Governments of Bermuda, Gibraltar, Hungary, the Slovak Republic, the Kingdom of Swaziland and the Swiss Confederation, and were signed during the period from July to October 2013.

ORDINANCES LAID BEFORE THE STATES

**THE INCOME TAX (APPROVED INTERNATIONAL AGREEMENTS)
(IMPLEMENTATION) (GUERNSEY) ORDINANCE, 2013**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Income Tax (Approved International Agreements) (Implementation) (Guernsey) Ordinance, 2013, made by the Legislation Select Committee on the 25th November, 2013, is laid before the States.

EXPLANATORY NOTE

This Ordinance specifies the inter-governmental agreement made between Guernsey and the UK in London on the 22nd October, 2013 on the automatic exchange, between the taxation authorities of Guernsey and the UK, of information held by financial services providers in respect of income accruing to their respective residents, for the purposes of the Income Tax (Guernsey) Law, 1975 as amended by the Ordinance. In particular, the amendments to the Income Tax (Guernsey) Law, 1975 empower the Treasury and Resources Department to implement, by way of regulation, agreements with other jurisdictions from time to time approved by Ordinance of the States.

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 1st January, 2014. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

**THE SYRIA (RESTRICTIVE MEASURES) (GUERNSEY) (AMENDMENT)
ORDINANCE, 2013**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Syria (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2013, made by the Legislation Select Committee on the 25th November, 2013, is laid before the States.

EXPLANATORY NOTE

This Ordinance amends the Syria (Restrictive Measures) (Guernsey) Ordinance, 2012 that implements EU Council Regulation 36/2012 ("the 2012 Regulation") concerning restrictive measures in view of the situation in Syria. The amendments made by the Ordinance are intended to give effect to recent amendments to the 2012 Regulation (made by EU Regulation 697/2013 of the 22nd July, 2013) and are necessary to ensure that Guernsey's sanctions regime remains up to date and is consistent with relevant UN and EU regimes.

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 25th November, 2013. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

**THE NORTH KOREA (RESTRICTIVE MEASURES) (GUERNSEY)
(AMENDMENT) (NO. 2) ORDINANCE, 2013**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The North Korea (Restrictive Measures) (Guernsey) (Amendment) (No. 2) Ordinance, 2013, made by the Legislation Select Committee on the 25th November, 2013, is laid before the States.

EXPLANATORY NOTE

This Ordinance amends the North Korea (Restrictive Measures) (Guernsey) Ordinance, 2007 that implements EC Regulation 329/2007 ("the 2007 Regulation") of the 27th March, 2007 concerning restrictive measures against the Democratic People's Republic of Korea. The amendments made by the Ordinance are intended to give effect to recent amendments to the 2007 Regulation (made by EU Regulation 696/2013 of the 22nd July, 2013) and are necessary to ensure that Guernsey's sanctions regime remains up to date and is consistent with relevant UN and EU regimes.

The Ordinance was made by the Legislation Select Committee in exercise of its powers under Article 66(3) of the Reform (Guernsey) Law, 1948, and came into force on the 25th November, 2013. Under the proviso to Article 66(3) of the Reform (Guernsey) Law, 1948, the States of Deliberation have the power to annul the Ordinance.

STATUTORY INSTRUMENTS LAID BEFORE THE STATES

THE IMMIGRATION (BAILIWICK OF GUERNSEY) (AMENDMENT) RULES, 2013

In pursuance of the provisions of section 3(2) of the Immigration Act 1971 as extended to the Bailiwick of Guernsey by the Immigration (Guernsey) Order 1993, the Immigration (Bailiwick of Guernsey) (Amendment) Rules, 2013, made by the Home Department on 1st July, 2013, are laid before the States.

EXPLANATORY NOTE

These Rules amend the Immigration (Bailiwick of Guernsey) Rules 2008, as amended by the Immigration (Bailiwick of Guernsey) (Amendment) Rules 2011.

The purpose of these Rules is to clarify the definition of a family member of a European Economic Area national; amend the current and introduce a new Business visitor category; introduce new provisions for visitors carrying out certain permitted paid engagements; reduce the minimum age at which a person may be granted entry clearance, leave to enter or remain, or variation of leave, as the spouse, fiancé(e) or unmarried partner of a sponsor and the minimum age at which a person may sponsor such an application, from 21 to 18 years; introduce a criminality threshold to settlement applications, requiring applicants to have no convictions other than spent convictions; reduce the period of the re-entry ban for those who leave the Bailiwick promptly upon service of a removal direction; make minor, technical changes to the Rules relating to English language requirements for spouses and unmarried partners; clarify requirements for indefinite leave to enter or remain and limited leave to enter or remain in the Bailiwick as a parent, grandparent or other dependent relative of a person present and settled in the Bailiwick.

These Rules also correct several typographical errors.

These Rules came into force on the 1st day of July, 2013

THE PRISON (GUERNSEY) REGULATIONS, 2013

In pursuance of section 51(3) of the Prison (Guernsey) Ordinance, 2013, the Prison (Guernsey) Regulations, 2013, made by the Home Department on 28th October, 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations are made under the Prison (Guernsey) Ordinance, 2013.

Part I sets out a list of things which are prohibited in the prison and prescribes matters which are required to be disclosed to prisoners.

Part II provides for admission of a person into custody in the prison and outlines duties of authorised officers upon such admission.

Part III specifies minimum entitlements of prisoners, in relation to admission, classification, accommodation and bedding, clothing, food and drink, hygiene, faith, information and media.

Part IV deals with communications and visits of prisoners, including minimum entitlements to correspondence, telephone calls and visits. This Part also provides for Prison Orders to be made to restrict or impose conditions on correspondence, telephone calls and visits, as long as there is no interference with Convention rights under the Human Rights (Bailiwick of Guernsey) Law, 2000 or any interference is justifiable on certain grounds and proportionate.

Part V deals with medical facilities and medical care to be provided to prisoners, including provision for operations, the keeping of medical records and an annual report on general health conditions in the prison.

Part VI requires custody and sentence planning for prisoners, and the provision of courses, treatment, counselling and education to prisoners, as far as reasonably practicable. Convicted prisoners are required to work and unconvicted prisoners are allowed to work if suitable work is available.

Part VII deals with exercise, recreation and the general management of the prison.

Part VIII sets out restrictions and procedures concerning the property and money of prisoners.

Part IX requires the Governor to prescribe a system of privileges and incentives for prisoners, and provides for review of privileges decisions.

Part X deals with the transfer and discharge of prisoners.

Part XI sets out procedures for prisoners to make requests for visits by a Panel member, make formal complaints, or seek review of certain decisions made by the Governor. A prisoner may make a complaint about the conduct of the Governor, a Governor grade or any authorised person. The Governor (and in certain cases the Home Department) is required to deal with complaints and requests for reviews within a specified time.

Part XII deals with prisoner discipline, including awards and appeals.

Part XIII sets out measures for security and supervision of the prison. It deals with admission of visitors, searches (of visitors, authorised persons and prisoners), control and supervision of prisoners, power to measure and take photographs of prisoners, taking of mandatory urine samples and non-intimate samples from prisoners and the use of force and restraints on prisoners. It also gives the Governor special powers in relation to prisoners, such as the use of CCTV or removal from association or temporary confinement of prisoners, subject to a number of safeguards.

Part XIV contains general and administrative provisions, such as the procedure for the Governor to issue written directions and provisions concerning the destruction, retention or release of personal data. This Part also contains provisions for the interpretation, citation and commencement of these Regulations.

These Regulations came into force on the 4th November, 2013.

WASTE DISPOSAL CHARGES REGULATIONS, 2013

In pursuance of section 32(2)(c) of Environmental Pollution (Guernsey) Law, 2004, the Waste Disposal Charges Regulations, 2013, made by the Public Services Department on 7th November 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations, made by the Public Services Department in its capacity as Waste Disposal Authority under the Environmental Pollution (Guernsey) Law, 2004, prescribe the charges payable in order to dispose of waste at the Authority's waste disposal sites as from 1st January, 2014.

THE TEMPORARY PROHIBITION OF THE IMPORTATION OF ANIMALS FROM ALDERNEY ORDER, 2013

In pursuance of section 13 of the Animals and Animal Products (Import and Export) Ordinance, 1952, as amended, the Temporary Prohibition of the Importation of Animals from Alderney Order, 2013, made by the Commerce and Employment Department on 1st October, 2013, is laid before the States.

EXPLANATORY NOTE

This Order prohibits the importation of cattle, sheep, goats and pigs from Alderney until the end of November, 2013. This is a precautionary measure to protect the health of animals in Guernsey whilst investigations are carried out in relation to the risk of tuberculosis being spread by such movements and the appropriate animal health investigations are put in place.

THE SEAFARER RECRUITMENT AND PLACEMENT SERVICES (MARITIME LABOUR CONVENTION 2006) (GUERNSEY AND ALDERNEY) REGULATIONS, 2013

In pursuance of section 29(1)(c) of the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013, the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Regulations, 2013, made by the Commerce and Employment Department on 1st November 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations prescribe the fees for registration, and to renew registration, under the Seafarer Recruitment and Placement Services (Maritime Labour Convention 2006) (Guernsey and Alderney) Ordinance, 2013. They also prescribe how an application for registration under that Ordinance is to be made. They came into force on the day they were made, 1st November 2013, which is also the date on which the Ordinance came into force.

THE NOTIFIABLE ANIMAL DISEASES ORDER, 2013

In pursuance of section 33(1)(c) of the Animal Health Ordinance, 1996, the Notifiable Animal Diseases Order, 2013, made by the Commerce and Employment Department on 5th November 2013, is laid before the States.

EXPLANATORY NOTE

This Order updates the list of animal diseases which must be notified to the Department if it occurs or is suspected in an animal. The revised list reflects the list of diseases currently published by the Office International des Epizooties (OIE) as significant in terms of animal health or important in terms of economic impact. The order came into force on 1st December 2013.

THE INCOME TAX (LOANS TO PARTICIPATORS) (EXEMPTIONS) (NO. 3) (AMENDMENT) REGULATIONS, 2013

In pursuance of section 203 of the Income Tax (Guernsey) Law, 1975, as amended, The Income Tax (Loans to Participators) (Exemptions) (No. 3) (Amendment) Regulations, 2013, made by the Treasury and Resources Department on 19th November 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations repeal regulation 1 of the Income Tax (Loans to Participators) (Exemptions) (No. 3) Regulations, 2008 and thereby remove the exemption from the loans to participators regime of Chapter XII of Part IV of the Income Tax (Guernsey) Law, 1975 for loans advanced at a "commercial rate of interest" as defined in that regulation. The effect is that such loans will be qualifying loans for the purposes of section 66A of the Law and tax is deductible at source therefrom and payable by the company in accordance with section 66C. These Regulations come into operation on 1st January 2014.

**THE SOCIAL INSURANCE (BENEFITS) (AMENDMENT NO. 2)
REGULATIONS, 2013**

In pursuance of section 117 of The Social Insurance (Guernsey) Law, 1978, The Social Insurance (Benefits) (Amendment No. 2) Regulations, 2013 made by the Social Security Department on 26th November 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations amend the schedules to the Social Insurance (Benefits) Regulations, 2003 and prescribe the reduced rates of benefit payable from 6th January 2014 to claimants who do not satisfy the conditions for entitlement to payment of the maximum rate of benefit. These Regulations came into operation on 6th January 2014.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL
BENEFIT) (AMENDMENT) (No. 5) REGULATIONS, 2013**

In pursuance of section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) (No. 5) Regulations, 2013 made by the Social Security Department on 28th October 2013, are laid before the States.

EXPLANATORY NOTE

These Regulations add to the limited list of drugs and medicines available as pharmaceutical benefit which may be ordered to be supplied by medical prescriptions issued by medical practitioners. These Regulations came into operation on 28th October 2013.

HEALTH AND SOCIAL SERVICES DEPARTMENT**NEW MEMBER**

The States are asked:-

III.- To elect a sitting Member of the States as a member of the Health and Social Services Department to complete the unexpired portion of the term of office of Deputy S. A. James M.B.E, who has resigned as a member of that Department, namely to serve until May 2016, in accordance with Rule 7 of the Rules relating to the Constitution and Operation of States Departments and Committees.

POLICY COUNCIL

ELECTION OF CHAIRMAN AND APPOINTMENT OF ONE ORDINARY MEMBER OF THE GUERNSEY FINANCIAL SERVICES COMMISSION

Executive Summary

This Report proposes the election of Mr Alex Ferguson Rodger as an ordinary member and the election of Drs. Cees Antonius Carolus Maria Schrauwens as Chairman of the Guernsey Financial Services Commission.

Report

1. The Guernsey Financial Services Commission is currently comprised of the following ordinary members: Drs. Cees Schrauwens; Mrs Sally Ann Farnon; Lord Howard Flight; Mr Alex Rodger; Mr Richard Hobbs; Mr Robert Moore; and Advocate Simon Howitt. Pursuant to paragraph 1 of Schedule 1 to the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 the Commission shall consist of a minimum of five members and a maximum of seven members.
2. Mr Alex Rodger has been an ordinary member of the Commission since February 2008 and his current term of office ends on 1 February 2014.
3. Mr Rodger is a Guernsey resident and has spent over 40 years with the Royal Bank of Scotland (“RBS”) Group where he occupied senior posts in London, New York and Guernsey. He was executive director of RBS International from its formation in 1996 and was appointed Managing Director of RBS International Securities Services Group in April 2002. Later that year his responsibilities were increased to that of Managing Director of RBS International Corporate Banking Division with responsibility for corporate banking operations in each of Jersey, Guernsey, the Isle of Man and Gibraltar. He was also Chairman of RBS International Employees Pension Trust. Mr Rodger is the non-executive Chairman of advocates Collas Crill.
4. The Policy Council is pleased to re-nominate Mr Rodger as an ordinary member of the Commission for a three year period to run from 2 February 2014 until 1 February 2017.
5. The Chairman of the Commission must be elected annually by the States, from amongst the ordinary members having been nominated by the Policy Council. Drs. Cees Schrauwens’s current term of office as an ordinary member ends on 1 February 2015, he has been a member of the Commission since 2008.
6. Drs. Schrauwens is a Dutch citizen and has more than 35 years' financial services experience. He has served as Managing Director of Aviva International, CGU Insurance and Commercial Union covering both the general insurance and life sectors. He was instrumental in the mergers with General Accident and Norwich Union which resulted in the creation of Aviva PLC. Following the mergers he

was appointed Managing Director of Aviva International, gaining valuable experience in dealing with regulators across the globe, including North America. In addition he has been a Partner with Coopers & Lybrand in charge of insurance consultancy and has served as Chairman of Drive Assist Holdings Limited, Senior Non-executive Director of Brit Insurance Holdings PLC. and Brit Syndicates Limited, Non-Executive Director of Canopus Holdings UK Limited and Canopus Managing Agents Limited and as a Director of Munich Re (UK) PLC. Drs Schrauwers has been the Senior Non-Executive Director of Record Plc since November 2007. In May 2012 he was appointed as an Independent Director at Scottish Widows Group PLC.

7. The Policy Council is pleased to re-nominate Drs. Schrauwers as Chairman of the Commission for a year from 2 February 2014 until 1 February 2015.
8. The Policy Council recognises that the Commission is challenged to both continue to uphold Guernsey's international reputation as a finance centre whilst regulating and protecting consumers in a challenging economic environment. It believes both Drs Schrauwers's and Mr Rodger's prior experience and work as Commissioners to date have shown them to be well equipped to continue to contribute to the Commission and its future development.
9. The Chief Minister, given his previous role in the Commission, did not participate in the Policy Council discussions relating to this report.

Recommendation

The Policy Council recommends the States:

- (a) elect Mr Alex Ferguson Rodger as an ordinary member of the Guernsey Financial Services Commission for three years with effect from 2 February 2014.
- (b) elect Drs. Cees Antonius Carolus Maria Schrauwers as Chairman of the Guernsey Financial Services Commission for one year with effect from 2 February 2014.

J P Le Tocq
Deputy Chief Minister

25th November 2013

Chief Minister	A H Langlois	D B Jones	K A Stewart	M H Dorey
PA Harwood				
R W Sillars	M G O'Hara	P A Luxon	G A St Pier	R Domaille

(NB As there are no resource implications in this Report, the Treasury and Resources Department has no comments to make.)

The States are asked to decide:-

IV.- Whether, after consideration of the Report dated 25th November, 2013, of the Policy Council, they are of the opinion:-

1. To elect Mr Alex Ferguson Rodger as an ordinary member of the Guernsey Financial Services Commission for three years with effect from 2 February 2014.
2. To elect Drs. Cees Antonius Carolus Maria Schrauwers as Chairman of the Guernsey Financial Services Commission for one year with effect from 2 February 2014.

POLICY COUNCIL

ESTABLISHING THE CONSTITUTIONAL INVESTIGATION COMMITTEE

1. Introduction

1.1. The purpose of this report is to ask the Assembly to elect four sitting members of the States and two non-voting persons who are not sitting members of the States to form the Constitutional Investigation Committee ('the CIC').

1.2. On 26 September 2013 the States of Deliberation resolved to ('the States Resolution'):

1... direct that at their January 2014 meeting, and in accordance with Rule 18 of the Rules relating to the Constitution and Operation of States Departments and Committees, the States shall form the Constitutional Investigation Committee as a Special States Committee, the membership of which shall be:-

- a. The Chief Minister (as chairman);*
- b. Four sitting members of the States elected by the States (one of whom the Committee shall elect as vice-chairman); and*
- c. Two non-voting persons who are not sitting members of the States, elected by the States.*

and

3. To direct the Policy Council to report to the States with a request for approval for funding the expenditure that will be incurred by the Constitutional Investigation Committee in discharging its role.

1.3. Both of these matters are discussed in this report.

2. Selection of States Members of the Committee

2.1. The Policy Council contacted all States Members to seek expressions of interest. Eligible candidates will be nominated in accordance with Rule 20(6) of the Rules of Procedure.

3. Selection of Non-States Members of the Committee

3.1. During October 2013 the Policy Council invited expressions of interest in membership of the committee with a closing date of 4 November 2013, and publicised its search in the local media and through the States of Guernsey website and Twitter account.

3.2. The Policy Council was looking for candidates who would have the requisite skills and experience in constitutional matters.

3.3. In accordance with Section II, article 1 (a) of the Rules for Payments to States Members, Former States Members and Non-States Members of States

Departments and Committees, any member of a States Committee who is not a member of the States shall be entitled upon application to the Minister of the States Treasury and Resources Department to be awarded an allowance in respect of his attendance at meetings. The Policy Council made it expressly clear in the invitation for expressions of interest that “*No specific remuneration package is proposed to be available for the Members of the Committee.*” Therefore, the States are asked to resolve that no payment or attendance allowance will be available for Non-States Members.

3.4. In total, the Policy Council received nine expressions of interest. The Policy Council would like to thank those that expressed an interest in membership.

3.5. The Policy Council formally puts forward the names of Dr Elina Steinerte and Colonel Richard Graham for the positions of independent member.

a. Dr Elina Steinerte LLB, LLM, PhD has a PhD degree from the Robert Gordon University (Aberdeen) in political sciences; an LLM in International Human Rights Law from Nottingham University; and obtained Lawyer’s Diploma and LLB from the University of Latvia. Dr Steinerte is a researcher and lecturer in international law at a number of UK universities, including Bristol University as well as the Jersey Institute of Law. She has authored a number of peer reviewed articles in matters relation to Human Rights obligations and contributed to publication in international law and international conventions. Dr Steinerte is Guernsey resident.

b. Colonel Richard Graham LVO, MBE was Secretary and Aide-de-Camp to the Lieutenant Governor in Guernsey between 1998 and 2012. Colonel Graham has a sound working knowledge of the constitutional relationship between the entire Bailiwick of Guernsey and the Crown and the role of the Privy Council in respect of Guernsey. Colonel Graham has a MA degree in modern languages and MPhil in international relations from Jesus College, Cambridge. Colonel Graham served in the British forces between 1965 and 1992; he held positions including Chief of Staff in the 1st Armoured Division in West Germany and was Commandant of the British Army’s Junior Staff College.

3.6. In accordance with Rule 20(6), eligible candidates can be proposed by Members of the States of Deliberation.

4. Funding the Review

4.1. At this stage, it is the Policy Council’s view that no additional resources will be required in order for the CIC to carry out its mandated functions in its early stages, namely the “*investigation as to whether or not greater autonomy in legislative affairs and international representation should be sought*” and the scoping work of the extent of the review.

- 4.2. The Policy Council is of the view that the work of the CIC will be predominantly undertaken by its Members, supported by existing officers with the necessary expertise in the subject matter and with advice from the Law Officers and within St James Chambers. At this stage, the Policy Council does not anticipate the CIC requiring the use of consultants or counsel to assist with the early stage of the review.
- 4.3. However, given the complexity of the subject matter and the specific legal and constitutional issues that might be raised the Policy Council is mindful that it is inevitable that the CIC will, once it has commenced initial work, find that reasonable additional resources and a modest bespoke budget are required to fund this important Review. Given the limited time available to prepare this report for inclusion in this Billet D'État as directed by the States, the Policy Council has not been able to properly assess the likelihood of additional resources being required.
- 4.4. The Policy Council proposes to return, when the initial work funded from existing budgets is complete, with a more detailed assessment as to the costs having constituted, and consulted with, the CIC in accordance with paragraph 3 of the States Resolution in order to meet the requirement of Rule 15(2) of the Rules of Procedure.

5. Recommendations

- 5.1. The States of Deliberation are asked to:
- a. note that the Policy Council will report to the States with a request for approval for funding the expenditure that will be incurred by the Constitutional Investigation Committee in discharging its role in due course;
 - b. elect four sitting Members of the States as members of that Committee;
 - c. elect two members of that Committee who are independent of the States; and
(NB the Chief Minister will be proposing Dr Elina Steinerte LLB, LLM, PhD and Colonel Richard Graham LVO, MBE as members of the Committee)
 - d. to resolve that the members of the Committee who are not sitting members of the States will not be remunerated for attendance at meetings.

P. A. Harwood
Chief Minister

2nd December 2013

J P Le Tocq
Deputy Chief Minister

R Domaille	A H Langlois	D B Jones	K A Stewart	M H Dorey
R W Sillars	M G O'Hara	P A Luxon	G A St Pier	

(NB The Treasury and Resources Department recognises that it has not been possible to identify the resource requirements associated with the operation of the Constitutional Investigation Committee at this stage but that the Policy Council is mindful that it is inevitable that reasonable additional resources will be required. The Treasury and Resources Department also acknowledges that, even if no additional budgetary allocation is required for this Committee, it will inevitably lead to resources being diverted from other work which has the potential to impact on the progression and completion of further initiatives. Should an additional budgetary allocation be required then the Department believes this should be funded from the Budget Reserve although it should be noted that there are likely to be significant pressures on this Reserve in 2014.)

The States are asked to decide:-

V. Whether, after consideration of the Report dated 2nd December, 2013, of the Policy Council, they are of the opinion:-

1. To note that the Policy Council will report to the States with a request for approval for funding the expenditure that will be incurred by the Constitutional Investigation Committee in discharging its role in due course.
2. To elect four sitting Members of the States as members of the Constitutional Investigation Committee.
3. To elect two members of the Constitutional Investigation Committee who are independent of the States.
4. To resolve that the members of the Constitutional Investigation Committee who are not sitting members of the States will not be remunerated for attendance at meetings.

TREASURY & RESOURCES DEPARTMENT

DOUBLE TAXATION ARRANGEMENTS WITH THE REPUBLIC OF POLAND

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

23rd October, 2013

Dear Sir,

1. Executive Summary

This Report proposes that the States declare, by Resolution, that double taxation arrangements entered into with the Republic of Poland, on 8th October, 2013, should have effect, with the consequence that the arrangements shall also have effect in relation to income tax, notwithstanding anything contained in the Income Tax (Guernsey) Law, 1975, as amended (“the Income Tax Law”).

2. Report

- 2.1. The principal purpose of a double taxation arrangement is for two governments to agree procedures for the prevention of double taxation – that is, taxation under the laws of both territories in respect of the same income.
- 2.2. Since 2001, Guernsey has been negotiating with a number of countries in relation to Tax Information Exchange Agreements (“TIEAs”). Part of the negotiation process is to discuss, with the country concerned, ways of preventing certain types of double taxation and related issues.
- 2.3. Prior to 2012, Guernsey had only two comprehensive double taxation arrangements – one with the United Kingdom (which came into force in 1952) and one with Jersey (which came into force in 1955). Since 2008, a number of restricted arrangements have been signed with countries such as the Netherlands, Ireland, Japan, New Zealand and several Nordic countries, as well as several comprehensive arrangements, with Malta, Hong Kong, the Isle of Man, Jersey (a revision to the agreement dating from the 1950s), Luxembourg, Qatar and Singapore.
- 2.4. On 6th December, 2011, Guernsey signed a TIEA with Poland, following which Poland agreed to negotiate two restricted double taxation agreements with Guernsey, similar to those referred to in paragraph 2.3.

- 2.5. As a consequence, on 8th October 2013, Guernsey signed an Agreement between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with Respect to Certain Income of Individuals and an Agreement Between the States of Guernsey and the Republic of Poland for the Avoidance of Double Taxation with Respect to Enterprises Operating Ships or Aircraft in International Traffic.

Copies of the agreements are appended to this Report.

- 2.6. Section 172(1) of the Income Tax Law provides: “If the States by Resolution declare that arrangements specified in the Resolution have been made with the government of any other territory with a view to affording relief from double taxation in relation to income tax and any tax of a similar character imposed by the laws of that territory, and that it is expedient that those arrangements should have effect, the arrangements shall have effect in relation to income tax notwithstanding anything in any enactment.”

3. Principles of Good Governance

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance defined by the UK Independent Commission on Good Governance in Public Services (Billet IV of 2011). The Department believes that the proposal in this Report complies with those principles.

4. Resource Implications

Whilst the agreement with the Republic of Poland sets out measures for the avoidance of double taxation, as those obligations extend to both parties to the agreement, and taking into account the extent of the trading and other financial relationships between Guernsey and Poland, it is not anticipated that the agreement will give rise to any significant loss of, or increase to, the revenues of the States.

5. Recommendation

The Treasury and Resources Department recommends that the States should ratify the agreement made with Poland, as appended to this Report, as required by section 172(1) of the Income Tax Law.

Yours faithfully

G A St Pier
Minister

J Kuttelwascher
(Deputy Minister)

A H Adam

R A Perrot

A Spruce

Mr J Hollis
(Non-States Member)

AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE REPUBLIC OF POLAND
FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO CERTAIN INCOME OF INDIVIDUALS

The States of Guernsey and the Republic of Poland,

Desiring to conclude an Agreement for the avoidance of double
taxation with respect to certain income of individuals,

Have agreed as follows:

Article 1

Persons covered

This Agreement shall apply to individuals who are residents of one or both of the Contracting Parties.

Article 2

Taxes covered

1. The taxes which are the subject of this Agreement are:
 - a) in Guernsey, income tax;
 - b) in Poland, personal income tax.
2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

Definitions

1. For the purposes of this Agreement, unless otherwise defined:
 - a) the term "a Contracting Party" means Guernsey or Poland, as the context requires; the term "Contracting Parties" means Guernsey and Poland;
 - b) the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - c) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its subsoil may be exercised;
 - d) the term "competent authority" means:
 - (i) in the case of Guernsey, the Director of Income Tax, or his delegate, and

- (ii) in the case of Poland, the Minister of Finance or his authorised representative;
- e) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in the territory of a Contracting Party, except when the ship or aircraft is operated solely between places in the territory of the other Contracting Party;
- f) the term "national", in relation to a Contracting Party, means any individual possessing the nationality or citizenship of that Contracting Party;
- g) the term "person" includes an individual, a company and any other body of persons.

2. As regards the application of this Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party, for the purposes of the taxes to which this Agreement applies, with any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 4 Resident

1. For the purposes of this Agreement, the term "resident of a Contracting Party" means any person who, under the laws of that Contracting Party, is liable to tax therein by reason of his domicile, residence, place of management or any other criterion of a similar nature, and also includes that Contracting Party and any political subdivision or local authority thereof. This term, however, does not include any person who is liable to tax in that Contracting Party in respect only of income from sources in that Contracting Party.

2. Where by reason of the provisions of paragraph 1 an individual is a resident of both Contracting Parties, then his status shall be determined as follows:

- a) he shall be deemed to be a resident only of the Contracting Party in which he has a permanent home available to him; if he has a permanent home available to him in both Contracting Parties, he shall be deemed to be a resident only of the Contracting Party with which his personal and economic relations are closer (centre of vital interests);
- b) if the Contracting Party in which he has his centre of vital interests cannot be determined, or if he has not a permanent home available to him in either Contracting Party, he shall be deemed to be a resident only of the Contracting Party in which he has an habitual abode;

- c) if he has an habitual abode in both Contracting Parties or in neither of them, he shall be deemed to be a resident only of the Contracting Party of which he is a national;
- d) if he is a national of both Contracting Parties or of neither of them, the competent authorities of the Contracting Parties shall endeavour to resolve the question by mutual agreement.

3. Where by reason of the provisions of paragraph 1 a person other than an individual is a resident of both Contracting Parties, then it shall be deemed to be a resident only of the Contracting Party in which its place of effective management is situated.

Article 5 **Income from employment**

1. Subject to the provisions of Articles 6, 8 and 9, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment shall be taxable only in that Contracting Party unless the employment is exercised in the territory of the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Contracting Party.

2. Notwithstanding the provisions of paragraph 1, salaries, wages and other similar remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the territory of the other Contracting Party shall be taxable only in the first-mentioned Contracting Party if:

- a) the recipient is present in the territory of the other Contracting Party for a period or periods not exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned; and
- b) the remuneration is paid by, or on behalf of, an employer who is not a resident of the other Contracting Party; and
- c) the remuneration is not borne by a fixed place of business which the employer has in the territory of the other Contracting Party; and
- d) the employment does not consist, solely or mainly, of the hiring out of the employee's labour.

3. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic, may be taxed in the Contracting Party in which the place of effective management of the enterprise is situated.

Article 6

Directors' fees

Fees and other similar payments derived by an individual who is a resident of a Contracting Party in his capacity as a member of the management board, the supervisory board, or of a similar body of a company which is a resident of the other Contracting Party shall be taxed only in the first-mentioned Contracting Party.

Article 7

Artistes and sportsmen

1. Notwithstanding the provisions of Article 5, income derived by an individual who is a resident of a Contracting Party as an entertainer, such as a theatre, motion picture, radio or television artiste, or a musician, or as a sportsman, from his personal activities as such exercised in the territory of the other Contracting Party, may be taxed in that other Contracting Party.

2. Where income in respect of personal activities exercised by an entertainer or a sportsman in his capacity as such accrues not to the entertainer or sportsman himself but to another person, that income may, notwithstanding the provisions of Article 5, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

Article 8

Pensions

Subject to the provisions of paragraph 2 of Article 9, pensions and other similar remuneration (including lump sums) arising in a Contracting Party and paid to a resident of the other Contracting Party in consideration of past employment or self-employment and social security pensions may be taxed in the first-mentioned Contracting Party.

Article 9

Government service

1.
 - a) Salaries, wages and other similar remuneration paid by a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
 - b) However, such salaries, wages and other similar remuneration shall be taxable only in the other Contracting Party if the services are rendered in the territory of that Contracting Party and the individual is a resident of

that Contracting Party who:

- (i) is a national of that Contracting Party; or
 - (ii) did not become a resident of that Contracting Party solely for the purpose of rendering the services.
2. a) Notwithstanding the provisions of paragraph 1, pensions and other similar remuneration paid by, or out of funds created by, a Contracting Party or a political subdivision or a local authority thereof to an individual in respect of services rendered to that Contracting Party or subdivision or authority shall be taxable only in that Contracting Party.
- b) However, such pensions and similar remuneration shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Contracting Party.
3. The provisions of Articles 5, 6, 7 and 8 shall apply to salaries, wages, pensions and other similar remuneration in respect of services rendered in connection with a business carried on by a Contracting Party or a political subdivision or a local authority thereof.

Article 10

Students

Payments which a student, pupil or business apprentice who is or was immediately before visiting a Contracting Party a resident of the other Contracting Party and who is present in the territory of the first-mentioned Contracting Party solely for the purpose of his education or training receives for the purpose of his maintenance, education or training shall not be taxed in that Contracting Party, provided that such payments arise from sources outside the territory of that Contracting Party.

Article 11

Elimination of double taxation

Double taxation shall be avoided as follows:

- a) Where a resident of a Contracting Party derives income which, in accordance with the provisions of this Agreement may be taxed in the other Contracting Party, the first mentioned Contracting Party shall allow as a deduction from the tax on income of that resident an amount equal to the tax paid in the other Contracting Party. Such deduction shall not, however, exceed that part of the tax, as computed before the deduction is given, which is attributable to such income derived from the other Contracting Party.

- b) Where in accordance with any provision of this Agreement, income derived by a resident of a Contracting Party is exempt from tax therein that Contracting Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

Article 12

Non – discrimination

1. Nationals of a Contracting Party shall not be subjected in the other Contracting Party to any taxation or any requirement connected therewith, which is other or more burdensome than the taxation and connected requirements to which nationals of that other Contracting Party in the same circumstances, in particular with respect to residence, are or may be subjected. This provision shall, notwithstanding the provisions of Article 1, also apply to persons who are not residents of one or both of the Contracting Parties.
2. Nothing contained in this Article shall be construed as obliging either Contracting Party to grant to individuals not resident in that Contracting Party any of the personal allowances, reliefs and reductions for tax purposes which are granted to individuals who are resident in that Contracting Party.
3. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

Article 13

Mutual agreement procedure

1. Where an individual considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.
3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation

or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of applying this Agreement.

Article 14

Members of diplomatic missions and consular posts

Nothing in this Agreement shall affect the fiscal privileges of members of diplomatic missions and consular posts under the general rules of international law or under the provisions of special agreements.

Article 15

Entry into force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the law of each of the Contracting Parties. Each Contracting Party shall notify the other in writing of the completion of its necessary internal procedures for entry into force. This Agreement shall enter into force on the first day of the third month following the receipt of the later of these notifications.

2. Upon the date of entry into force this Agreement shall have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.:

3. Notwithstanding the provisions of paragraph 2, this Agreement shall only have effect when the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters shall have effect.

Article 16

Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiry of two years from the date of entry into force of this Agreement.

2. In such event, this Agreement shall cease to have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given.

3. Notwithstanding the provisions of paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at London this 8 day of October, 2013, in two originals in the English and Polish languages, both texts being equally authentic.



**FOR
THE STATES OF GUERNSEY**



**FOR
THE REPUBLIC OF POLAND**



AGREEMENT BETWEEN
THE STATES OF GUERNSEY
AND
THE REPUBLIC OF POLAND

**FOR THE AVOIDANCE OF DOUBLE TAXATION WITH
RESPECT TO ENTERPRISES OPERATING SHIPS OR
AIRCRAFT IN INTERNATIONAL TRAFFIC**

THE STATES OF GUERNSEY
and
THE REPUBLIC OF POLAND

Desiring to conclude an agreement for the avoidance of double taxation with respect to enterprises operating ships or aircraft in international traffic,

Have agreed as follows:

Article 1

Scope of the agreement

This Agreement shall apply to enterprises operating ships or aircraft in international traffic which are residents of one or both of the Contracting Parties.

Article 2

Taxes covered

1. This Agreement shall apply to the following taxes imposed by the Contracting Parties:

- a) in Guernsey:
income tax;
- b) in Poland:
 - (i) personal income tax, and
 - (ii) corporate income tax.

2. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of this Agreement in addition to, or in place of, the existing taxes. The competent authorities of the Contracting Parties shall notify each other of any significant changes that have been made in their taxation laws.

Article 3

Definitions

1. For the purposes of this Agreement, unless the context otherwise requires:
- a) the term "a Contracting Party" means Guernsey or Poland, as the context requires; the term "Contracting Parties" means Guernsey and Poland;
 - b) the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means Guernsey, Alderney and Herm, including the territorial sea adjacent to those islands, in accordance with international law;
 - c) the term "Poland" means the Republic of Poland and, when used in a geographical sense, means the territory of the Republic of Poland, and any area adjacent to the territorial waters of the Republic of Poland within which, under the laws of Poland and in accordance with international law, the rights of Poland with respect to the exploration and exploitation of the natural resources of the seabed and its sub-soil may be exercised;
 - d) the term "company" means any body corporate or any entity that is treated as a body corporate for tax purposes;

- e) the term "competent authority" means:
 - (i) in the case of Guernsey, the Director of Income Tax, or his delegate;
 - (ii) in the case of Poland, the Minister of Finance or his authorised representative;
- f) the term "enterprise of a Contracting Party" means an enterprise, carried on by a resident of a Contracting Party;
- g) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in the territory of a Contracting Party, except when the ship or aircraft is operated solely between places in the territory of the other Contracting Party;
- h) the term "person" includes an individual, a company and any other body of persons;
- i) the term "resident of a Contracting Party" means any person, who under the law of that Contracting Party is liable to taxation therein by reason of his domicile, residence, place of effective management or any other criterion of a similar nature.

2. As regards the application of the Agreement at any time by a Contracting Party, any term not defined therein shall, unless the context otherwise requires, have the meaning that it has at that time under the law of that Contracting Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Contracting Party prevailing over a meaning given to the term under other laws of that Contracting Party.

Article 4

Shipping and air transport profits and gains

1. Profits derived by an enterprise of a Contracting Party from the operation of ships or aircraft in international traffic shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.
2. Gains derived by an enterprise of a Contracting Party from the alienation of ships or aircraft operated in international traffic or from movable property pertaining to the operation of such ships or aircraft shall be taxable only in the Contracting Party in which the place of effective management of the enterprise is situated.
3. The provisions of paragraphs 1 and 2 shall also apply to profits and gains derived by an enterprise of a Contracting Party from the participation in a pool, a joint business or an international operating agency.
4. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the territory of the Contracting Party in which

the home harbour of the ship is situated, or, if there is no such home harbour, in the territory of the Contracting Party of which the operator of the ship is a resident.

Article 5

Mutual agreement procedure

1. Where a person considers that the actions of one or both of the Contracting Parties result or will result for him in taxation not in accordance with the provisions of this Agreement, he may, irrespective of the remedies provided by the domestic law of those Contracting Parties, present his case to the competent authority of the Contracting Party of which he is a resident. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of this Agreement.
2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at a satisfactory solution, to resolve the case by mutual agreement with the competent authority of the other Contracting Party, with a view to the avoidance of taxation which is not in accordance with this Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the Contracting Parties.
3. The competent authorities of the Contracting Parties shall endeavour to resolve by mutual agreement any difficulties or doubts arising as to the interpretation or application of this Agreement. They may also consult together for the elimination of double taxation in cases not provided for in this Agreement.
4. The competent authorities of the Contracting Parties may communicate with each other directly for the purpose of applying this Agreement.

Article 6

Entry into force

1. This Agreement is subject to ratification, acceptance or approval in accordance with the law of each of the Contracting Parties. Each Contracting Party shall notify the other in writing of the completion of its necessary internal procedures for entry into force. This Agreement shall enter into force on the first day of the third month following the receipt of the later of these notifications.
2. Upon the date of entry into force this Agreement shall have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the Agreement enters into force.
3. Notwithstanding the provisions of paragraph 2, this Agreement shall only have effect when the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters shall have effect.

Article 7 Termination

1. This Agreement shall remain in force until terminated by a Contracting Party. Either Contracting Party may terminate this Agreement by giving written notice of termination at least six months before the end of any calendar year beginning on or after the expiry of two years from the date of entry into force of this Agreement.
2. In such event, this Agreement shall cease to have effect in respect of taxes chargeable for any tax year beginning on or after 1 January in the calendar year next following the year in which the notice is given.:
3. Notwithstanding the provisions of paragraph 1, this Agreement will be terminated, without giving notice of termination, on the date of termination of the Agreement signed on 6 December 2011 between the Republic of Poland and the States of Guernsey for the exchange of information relating to tax matters.

IN WITNESS WHEREOF the undersigned, being duly authorised thereto, have signed this Agreement.

DONE in duplicate at London this 8 day of October, 2013, in two originals in the English and Polish languages, both texts being equally authentic.



FOR
THE STATES OF GUERNSEY



FOR
THE REPUBLIC OF POLAND



(NB The Policy Council supports the Report.)

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 23rd October, 2013, of the Treasury and Resources Department, they are of the opinion to ratify the agreement made with the Republic of Poland, as appended to that Report, as required by Section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended.

PUBLIC SERVICES DEPARTMENT

WASTEWATER CHARGES

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

11th November 2013

Dear Sir

Executive Summary

1. On the 1st April 2011 the Wastewater Charge (Guernsey) Law, 2009 (the Law) came into effect. The Law introduced a new charge payable by water consumers covering the wastewater element of the water cycle, and is in line with the 'user pays' principle.
2. The introduction of the Law has, in large part, been successful. However, it has become apparent that some water consumers with private supplies¹ are benefiting from use of the public sewerage network without paying an appropriate charge for that use, as other consumers now do. To that limited extent, the Law is unfair and, moreover, revenue is being lost.
3. It is therefore desirable to amend it to ensure that *all* consumers who discharge water into the public sewerage network, directly or indirectly (i.e. through a cess pit) contribute fairly to its cost. However, the number of domestic properties that would be affected by any change and the associated water consumption, means that to seek to collect from this category would entail disproportionate cost for the limited revenue that would be gained. Therefore, the proposed changes are directed at non-domestic or commercial consumers.
4. The Law provides for an amendment of the type required to be made by Ordinance.

Background

5. The purpose of waste water charges is to impose a charge on customers, proportionate to their water use, to reflect the cost of maintaining and developing the island's sewerage network. In developing the Law, the Department sought to keep the process of imposing and collecting the new charges fair, simple and cost-effective to administer. This has largely been achieved; no extra resources

¹ For the avoidance of doubt private water supplies means a water supply other than that supplied by the Department and includes *inter alia* rainwater harvesting and bore holes.

have had to be employed, and the Law has been successfully introduced and administered with only a negligible increase in Guernsey Water's costs.

6. However, in order to achieve this aim the Law is fairly broad in its approach, and several anomalies in its application to certain properties with a private supply have been identified, some of which the Department wishes to address.
7. Domestic and non-domestic properties with both a private supply and a metered supply from Guernsey Water currently pay a variable charge that is based solely on the volume of the metered supply (in addition to standing charges), even if some or all of the water consumed comes from the private supply, and is discharged into the public sewerage network.
8. Non-domestic properties which have a private supply but no supply from Guernsey Water currently pay no waste water charges at all, even if some or all of the water from that private supply is discharged into the public sewerage network.

Proposed Change in the Law

9. It can be seen that the Law does not make adequate provision for properties falling into these categories, and the resulting revenue loss is estimated to be approximately £50,000 per annum.
10. If the private supply to such properties were to be measured, it would then be possible to estimate the amount of water from such supplies entering the public sewerage network, and to impose appropriate charges. The Department recognises that changes of this nature need to be proportionate and lead to beneficial outcomes for the community. In deciding to propose the change in the Law, the Department reviewed the usage and numbers of properties with private water supplies and is firmly of the view that the cost of targeting domestic properties exceeds the benefits at this stage. The Department will review domestic properties regularly to check whether there is a significant shift to private water supplies which would change the cost-benefit equation.
11. At this stage, the Department therefore proposes to target non-domestic properties with private water supplies. The Department proposes to adjust the wastewater charges in such a way as to incentivise such properties to install a meter to measure the volume of water supplied in its private water supply, so that these volumes can be taken into account in calculating variable charges. Properties that met the following criteria would be targeted:
 - The property has a private water supply (whether or not it is also supplied with water by Guernsey Water);
 - The property is a non-domestic property; and
 - The private water supply is so connected as to enter the public sewerage network.

12. In addition, in the case of non-domestic properties of the type set out in paragraph 8, where some or all of the water from the private supply is discharged into the public sewerage network, the Department proposes that these properties should be liable to pay quarterly standing charges. This is consistent with the treatment of other properties.
13. In respect of all properties that meet the criteria in paragraph 11, the Department proposes to set a default flat charge as Charge C under the Law. At this stage, the Department is proposing an annual flat charge of £2,000 as the default charge. This charging methodology is designed to ensure that the person liable to pay wastewater charges in respect of the property has sufficient incentive to advise the Department of the existence of a private water supply and to request the Department to install a meter at the earliest opportunity to measure the private supply.
14. Once the meter is installed, the variable charge to the property (Charge C under the Law) would be calculated in the same manner as the variable charge for a property supplied by a metered supply provided by Guernsey Water. That is, the variable charge would be calculated on the basis of a rate applicable to the total volume of water supplied to the property (adding the volume of private water supply to the volume of any water supplied by Guernsey Water).
15. An abatement may be applied for, in respect of non-domestic properties with a private water supply, should the supply and usage meet the criteria currently described in section 5(2) of the Law. That provision allows a non-domestic property to apply for a reduction in the amount of the variable wastewater charge if the customer can demonstrate and subsequently prove that less than 85% of the water supplied enters the public sewerage network.
16. The Department proposes to allow 3 months grace before the new charges come into force, which would be supported by a publicity campaign. The intention is that the first two months would allow time for customers to notify the Department, with the third month being set aside for inspections and meter installation. Nevertheless, the legislation would be drafted so that if a customer were to duly notify the Department anytime within the 3 months grace period, but the Department was (through no fault of the customer) unable to inspect and install a meter before the commencement of the new charges, the customer would not be disadvantaged and would only have to pay the existing standing and variable charges until such time as the meter for the private supply was installed by the Department.
17. After the end of the grace period, if the Department discovers or is notified of the existence of a private water supply in a property meeting the criteria in paragraph 11 (that has not previously been notified to the Department within the grace period), the Department would invoice the persons responsible for paying the waste water charges and collect the new charges (including variable charges) based on the flat rate charge from those persons. These charges would include back-dated charges as appropriate, dating back to the commencement of the new

charges, or the date when the private water supply was first installed, whichever occurred later.

18. The Law will need to be amended to address these issues. Section 15 of the Law provides for such amendments to be made by Ordinance.
19. Appendix 1 details various scenarios and the proposed changes.
20. As is the case currently, decisions by the Department will be subject to appeal to the Royal Court, whilst accounts issued by the Department will be subject to both internal review and appeal to the Royal Court.

Consultation

21. The Commerce and Employment Department has been consulted on the proposals in this report and has raised no objections. A letter from Commerce and Employment is attached as Appendix 2.
22. The Law Officers have been consulted and are content with these proposals.

Funding Implications

23. Funding required to implement these proposals will be sourced from Guernsey Water's trading activities, which includes a funding allowance for metering for both new customers and its meter replacement programme. No new expenditure is required. No additional charges beyond those discussed in this report are required.

Legislative Drafting Time

24. After consulting the Law Officers it is estimated that the amendment Ordinance can be drafted within 2 to 3 months, assuming no unforeseen difficulties emerge during the drafting process.

Compliance with the Principles of Good Governance

25. From a government perspective the amendment could be considered to comply with the following Principles of Good Governance:

"Focusing on the organisation's purpose and on outcomes for citizens and service users"

and

"Performing effectively in clearly defined functions and roles".
26. Further, the Department considers that the amendment supports the following States of Guernsey objectives:
 - Wise long-term management of Island resources
 - Co-ordinated and cost-effective delivery of public services

Recommendations

27. The Public Services Department recommends that the States agree:
1. That any property with a private water supply (i.e. water supplied by any other source other than Guernsey Water) whether or not it is also provided with water supplied by Guernsey Water, should as a matter of principle be liable to pay the standing charges and the variable charge, under the Wastewater Charges (Guernsey) Law, 2009, if that private water supply is so connected as to enter the public sewerage network, either directly through a drain or indirectly through a cesspit.
 2. That standing charges and a variable charge should be imposed on non-domestic properties with a private water supply, even if it is not supplied with water by Guernsey Water.
 3. That the variable charge imposed on non-domestic properties with both a private water supply and a metered supply by Guernsey Water should no longer be calculated solely on the volume of metered water supplied by Guernsey Water.
 4. That a default flat quarterly charge should be imposed on the properties referred to in paragraph 2 or 3 of these Recommendations, with the rate set at such a level as to provide a strong incentive to the person paying the charge to request Guernsey Water to install a meter to measure the volume of the private water supply.
 5. That following installation of such a meter, the variable charge imposed on the property should be calculated in the same manner as for properties supplied with water solely through a metered supply by Guernsey Water. That is, a rate will be applied to the aggregate volume of water supplied to the property from all sources.
 6. That a non-domestic property with a metered private water supply would be eligible for an abatement of the new variable charge based on the amount of water estimated to be discharged into the public sewerage network, in the same manner as a non-domestic property supplied with water solely through a metered supply by Guernsey Water.
 7. That a grace period should be provided for, as described in paragraph 16 of this report, before the new charges are brought into force.
 8. To direct the preparation of such legislation as may be necessary to give effect to the above recommendations.

Yours faithfully

P Luxon
Minister

S J Ogier, Deputy Minister

Y Burford

D J Duquemin

R A Jones

Appendix 1

Summary of Current and Proposed Wastewater (WW) Charges

Type of property	Private supply?	Guernsey Water supply metered/ unmetered	Current WW charges	Proposal
Non-Domestic	Yes	Metered	Standing charges; variable charge based on volume of metered supply; no variable charge for private supply.	Standing charges to continue. Variable charge would be based on total volume of water supply.*
Non-Domestic	Yes	Unmetered	This situation does not exist, as Guernsey Water would not provide an unmetered supply to non-domestic properties.	
Non-Domestic	Yes	Neither	None.	Standing charges and variable charge based on total volume of water supply.*
Domestic	Yes	Metered	Standing charges; variable charge based on volume of metered supply; no variable charge for private supply.	No change.
Domestic	Yes	Unmetered	Standing charges; variable charge based on TRP of property.	No change.

* Upon installation of a meter to calculate the volume of private water supply, Charge C would be calculated on the aggregate of the volume of water supplied through the private water supply and the supply provided by Guernsey Water. **Alternatively**, a high flat charge would be imposed in default of installation of such a meter.

Domestic	Yes	Neither	Standing charges; variable charge based on TRP of property.	No change.
Non-Domestic	No	Metered	Standing charges; variable charge based on volume of metered supply.	No change.
Non-Domestic	No	Unmetered	This situation does not exist, as Guernsey Water would not provide an unmetered supply to non-domestic properties.	
Non-Domestic	No	Neither	No charge.	No change.
Domestic	No	Metered	Standing charges; variable charge based on volume of metered supply.	No change.
Domestic	No	Unmetered	Standing charges; variable charge based on TRP of property.	No change.
Domestic	No	Neither	This situation should not exist. (Technically, it would attract the standing charges and a variable charge based on TRP of property).	No change.

Appendix 2



COMMERCE AND EMPLOYMENT

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

Our Ref:
Your Ref:

The Minister
Public Services Department
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

Commerce and Employment

Raymond Falla House
PO Box 459, Longue Rue
St Martin's, Guernsey
GY1 6AF
Tel +44 (0) 1481 234567
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www.gov.gg

7 November 2013

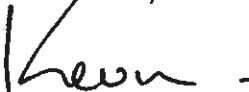

Dear Deputy Luxon

Waste Water charging

Following the Commerce and Employment Board Meeting held on the 15th October 2013, the draft States Report was circulated and members subsequently agreed that they raised no objections to the proposed change in your report. Deputy Brouard contacted the PSD at officer level to seek clarification on some issues but has declared that he is satisfied with explanations given.

I appreciate you consulting with Commerce and Employment with regard to this matter.

Yours sincerely



Kevin A Stewart
Minister

(NB As there are no resource implications in this report, the Treasury and Resources Department has no comments to make.)

(NB The Policy Council supports the Report.)

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 11th November, 2013, of the Public Services Department, they are of the opinion to agree:-

1. That any property with a private water supply (i.e. water supplied by any other source other than Guernsey Water) whether or not it is also provided with water supplied by Guernsey Water, as a matter of principle be liable to pay the standing charges and the variable charge, under the Wastewater Charges (Guernsey) Law, 2009, if that private water supply is so connected as to enter the public sewerage network, either directly through a drain or indirectly through a cesspit.
2. That standing charges and a variable charge be imposed on non-domestic properties with a private water supply, even if it is not supplied with water by Guernsey Water.
3. That the variable charge imposed on non-domestic properties with both a private water supply and a metered supply by Guernsey Water no longer be calculated solely on the volume of metered water supplied by Guernsey Water.
4. That a default flat quarterly charge be imposed on the properties referred to in paragraph 2 or 3 of these Propositions, with the rate set at such a level as to provide a strong incentive to the person paying the charge to request Guernsey Water to install a meter to measure the volume of the private water supply.
5. That following installation of such a meter, the variable charge imposed on the property be calculated in the same manner as for properties supplied with water solely through a metered supply by Guernsey Water. That is, a rate be applied to the aggregate volume of water supplied to the property from all sources.
6. That a non-domestic property with a metered private water supply be eligible for an abatement of the new variable charge based on the amount of water estimated to be discharged into the public sewerage network, in the same manner as a non-domestic property supplied with water solely through a metered supply by Guernsey Water.
7. That a grace period be provided for, as described in paragraph 16 of that report, before the new charges are brought into force.
8. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

HOME DEPARTMENT

INTRODUCTION OF A HIGH RISK DRINK DRIVER SCHEME IN GUERNSEY

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

11th November 2013

Dear Sir

1. EXECUTIVE SUMMARY

- 1.1 This report outlines the UK's High Risk Drink Driver Scheme and makes recommendations for the establishment of a comparable scheme in Guernsey.
- 1.2 The recommendations presented in this report respond to the Bailiwick of Guernsey's Drug and Alcohol Strategy, Pillar 4: Criminal Justice, Law Enforcement and Supply Reduction, which proposes the development of a High Risk Drink Driver Scheme. It is also aligned to the Criminal Justice Strategy's 'Prevent' and 'Challenge' strategic commitments.
- 1.3 The High Risk Drink Driver Scheme ("HRDD Scheme") is intended to deal with drivers whose apparent dependency on alcohol presents a risk to road safety. Under the scheme, those identified as high risk drink drivers are expected to undergo a medical assessment before consideration can be given by the Driver and Vehicle Licensing (DVL) section of the Environment Department to the reissue of their driving licence.
- 1.4 It is suggested that the introduction of such a Scheme will deliver significant benefits; in particular, it will enable the DVL section to assess those who have been identified as presenting a "high risk" of drink driving, before completing a driving licence application. The value of such a scheme at a local level is supported by the Independent Medical Advisor to the Environment Department, who has expressed concern that little consideration is presently given to the possibility that an individual may have an ongoing alcohol problem and therefore be at a higher risk of re-offending.
- 1.5 The Home Department and the Environment Department are of the view that the implementation of a HRDD Scheme will be of significant value to the local community and is entirely aligned to the Social Policy Plan objectives as contained in the States Strategic Plan 2010 - 2015, to:

Maintain a healthy society [...] and;

Maintain the Bailiwick as a safe and secure place to live;

1.6 The purpose of this Report is therefore to:

- (a) Provide the States of Deliberation with further information on the proposed Scheme;
- (b) Provide the States of Deliberation with information on the numbers of high risk drink drivers in Guernsey.

1.7 The Report concludes with the recommendations that the States of Deliberation:

- (a) *Approve the introduction of a High Risk Drink Driver Scheme in Guernsey;*
- (b) *Direct the preparation of such legislation as may be necessary to give effect to the foregoing.*

2. BACKGROUND

2.1 Alcohol is a drug, the main acute effect of which is on the central nervous system. The effects of alcohol are first apparent in the brain centres involved in highly integrated functions, such as skilled performance. The analysis of sensory information, the control of intricate movement patterns and short-term memory are especially sensitive to alcohol. The effects on human skills and performance commence at the lowest measurable blood alcohol concentration (BAC) and the impairment increases as the BAC increases.

2.2 Both individual studies and reviews report that many, if not most, persistent drink drivers have problems associated with alcohol. Simpson et al (1996¹) concluded that “almost half of repeat offenders meet the criteria for a diagnosis of alcohol dependence”.

2.3 There is also evidence for various anti-social behaviours among persistent drink drivers. Repeat drink driving offenders have been found to have worse driving records, and a greater number of previous road accidents than other drink drivers or non-drink drivers. Moreover, persistent drink drivers are less likely to have a valid licence (Simpson et al 1991²).

¹ Simpson, H.M., Mayhew, D.R., and Beirness, D.J. (1996). Dealing with the hardcore drinking driver. Traffic Injury Research Foundation.

² Simpson, H.M., and Mayhew, D.R. (1991). The hard core drinking driver. Traffic Injury Research Foundation.

- 2.4 Research on drink driving (Home Office 2002³) found that the majority of drivers who admitted to driving whilst over the legal limit did so once or twice in the previous year. However, nearly one in five admitted regularly driving whilst over the limit, that is once a month or more.
- 2.5 Guernsey's drink driving legislation is very similar to that of the UK. The current legal limit is 35 micrograms per 100ml of breath, or 80 mgs per 100ml of blood, or 107 milligrams per 100ml of urine; unlike the UK, there is no High Risk Drink Driver Scheme. Convicted drink drivers are obliged, however, to retake their driving tests following a period of disqualification.
- 2.6 Penalties for drink drivers in Guernsey can include a fine, community service order or a custodial sentence. Disqualification from driving for a prescribed period will accompany the penalty imposed. The Guernsey courts have had established guidelines on sentencing for drink drivers since 1994. The proposals within this report would be in addition to the current sentencing guidelines.
- 2.7 Although a HRDD Scheme does not currently exist in Guernsey, Guernsey Police do record the number of drink drivers that would be classified as high risk under the UK legislation. Figures show that from January to August 2013, of the 68 individuals charged with drink driving, 27 (40%) were high risk drink drivers.
- 2.8 Appendix 1 shows a breakdown of the number of individuals arrested, and subsequently charged, with drink driving, and the number of those who fell within the UK's "High Risk" criteria, from 2008 to August 2013.

3. HIGH RISK DRINK DRIVER SCHEME

UK

- 3.1 The HRDD Scheme is intended to deal with drivers whose apparent dependency on alcohol presents a risk to road safety.
- 3.2 When the disqualification meets the "High Risk" criteria, the individual will be required to satisfy the Medical Advisor at the Driver and Vehicle Licensing Agency ("DVLA") that they do not have an alcohol misuse problem and are fit to drive before consideration can be given to the reissue of their driving licence. The offender will be notified by the DVLA of what they need to do to apply for the return of their licence. There is a charge for applying for the restoration of the licence and a fee must also be paid for the necessary medical examination.
- 3.3 The scheme covers people in the following categories:
 - Those disqualified twice within a ten year period for a drink drive offence.

³ Home Office (2002) Drink-driving: prevalence and attitudes in England and Wales 2002

- Those disqualified for having a proportion of alcohol in the body two and a half, or more, times the legal limit, which therefore equalled or exceeded:
 - (i) 87.5 microgrammes per 100 millilitres of breath, or
 - (ii) 200 milligrammes per 100 millilitres of blood, or
 - (iii) 267.5 milligrammes per 100 millilitres of urine.
 - Those disqualified for failing without reasonable cause to provide a specimen for analysis.
 - Those disqualified for failing without reasonable cause to give permission for a laboratory test of a specimen of blood to be analysed.
- 3.4 Whilst it does not automatically follow that a person who refuses to comply with the requirement to provide a specimen for analysis has an alcohol problem, it is necessary to include such offenders in the HRDD Scheme in order to prevent offenders who have very high levels of alcohol in their system avoiding the more severe penalties by refusing to be tested.
- 3.5 The UK DVLA guidance is underpinned by statutory provision for high risk drink drivers, namely section 94(4) of the Road Traffic Act 1988 and regulation 74 of the Motor Vehicles (Driving Licences) Regulations 1999. Equivalent legislation to that in the UK will be necessary to introduce a HRDD Scheme in Guernsey.
- 3.6 Under the Road Traffic Act 1988, the Scheme only covers drivers who have been disqualified by a court order from the date that the scheme was introduced (1st June 1990).

JERSEY

- 3.7 In Jersey, a persistent misuse of alcohol, whether or not amounting to dependency, is a prescribed condition that can disqualify a person from being granted a licence, or result in a licence being revoked. The Driving and Vehicle Licensing Authority can base its decision on either a declaration made in the application, or as a result of an enquiry (normally a request for a medical examination/certificate).
- 3.8 Appendix 2 provides a brief overview of schemes for drink drivers in other jurisdictions.

4. DRINK DRIVE REHABILITATION COURSES

- 4.1 The introduction of Drink Drive Rehabilitation Courses in Guernsey has been supported by the Social Policy Steering Group and will be included in the new Drug and Alcohol Strategy 2015-2020.
- 4.2 The information and experience provided by these courses is intended to encourage individuals to develop future non-offending behaviour.

- 4.3 The Drug and Alcohol Strategy will continue to research the viability and cost implications of introducing such courses in Guernsey.

5. PROPOSALS LOCALLY

- 5.1 It is recommended that a HRDD Scheme is introduced in Guernsey. This will mean that all high risk drink drivers will have to undergo a medical assessment, by a General Practitioner (nominated by the DVL section of the Environment Department), to satisfy the DVL section that they do not have an alcohol misuse problem and are fit to drive before a driving licence will be considered for reissue.
- 5.2 It is proposed that the cost of all medical tests and examinations, as well as the fee for the restoration of the driving licence, will be covered by the applicant. If the required fees are not paid, a driving licence will not be issued.
- 5.3 It is also recommended that the HRDD Scheme will only affect those individuals who have been disqualified from driving since the date that the Ordinance takes effect.

6. LEGISLATION

- 6.1 In order to establish an equivalent HRDD Scheme in Guernsey, amendments will be required to the Driving Licences (Guernsey) Ordinance, 1995 and it therefore is proposed:
- to add "persistent misuse of drugs or alcohol, whether or not such misuse amounts to dependency" to the conditions in relation to which the Environment Department may revoke or refuse to grant a driving licence;
 - to introduce the "high risk" criteria set out in paragraph 3.3. above which allow the Environment Department to request further information or to require the driver to undergo a medical examination; and
 - to make any consequential amendments to the Ordinance as a result of the above changes.

7. RESOURCE IMPLICATIONS

- 7.1 If the Department's recommendations are approved, it is anticipated that there will be very minimal resource implications for the Environment Department.
- 7.2 The Driver and Vehicle Licensing (DVL) section has agreed that it will absorb any of the associated costs; however these should be minimal because, if agreed, the cost of all medical tests and examinations, as well as the fee for the restoration of the driving licence, will be covered by the applicant.

8. CONCLUSION

- 8.1 This report recommends the introduction of an effective method of reducing the number of high risk drink drivers on the roads in Guernsey. It will provide another way, when used in conjunction with the current tools available, to protect members of the community from drink drivers and to underline the seriousness with which this issue is treated.
- 8.2 The Environment Department has supported the local development of a HRDD scheme. The Independent Medical Advisor to the Environment Department has expressed concern that little consideration is currently given to the possibility that an individual may have an ongoing alcohol problem and therefore be at higher risk of re-offending. This measure would address that issue.

9. CONSULTATION

- 9.1 Consultation has been undertaken with the Guernsey Probation Service, Guernsey Police, the Royal Court, Guernsey Prison, the Driver and Vehicle Licensing (DVL) section of the Environment Department, the Law Officers of the Crown, the Medical Advisor to the Police, the Health and Social Services Health Promotion Unit, the Guernsey Alcohol and Drug Abuse Council and the Bailiwick Drug and Alcohol Strategy Group. All of the local organisations consulted are supportive of the recommendations made in this report.
- 9.2 Consultation has also been undertaken with a number of non-local services, including the Isle of Man Probation Service, the UK Driver and Vehicle Licensing Agency, the UK Department for Transport and Jersey Police.

10. PRINCIPLES OF GOOD GOVERNANCE

- 10.1 The Department considers that its proposals satisfy the principles of good governance as follows: *Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users.*

11. RECOMMENDATIONS

- 11.1 The Home Department recommends that the States:
- (a) *Approve the introduction of a High Risk Drink Driver Scheme in Guernsey;*
 - (b) *Direct the preparation of such legislation as may be necessary to give effect to the foregoing.*

Yours faithfully

J P Le Tocq
Minister

F W Quin
(Deputy Minister)

M K Le Clerc M M Lowe

A M Wilkie Mr A L Ozanne
(non States Member)

Appendix 1: Drink Drive Statistics in Guernsey

2008	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	11	14	10	4	13	14	15	17	8	12	13	12	143
Charged	10	14	8	3	12	12	12	12	5	11	11	9	119
High Risk	6	5	3	0	5	1	5	7	3	4	0	-	39

2009	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	13	13	8	4	17	14	11	10	15	12	11	7	135
Charged	10	11	8	3	16	10	11	8	12	9	8	7	113
High Risk	3	3	4	3	8	3	3	5	7	3	4	2	48

2010	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	8	11	16	18	18	14	13	11	6	12	9	13	149
Charged	7	9	13	16	15	8	10	9	6	11	9	6	119
High Risk	4	1	6	7	9	3	2	4	3	5	6	4	54

2011	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	5	17	15	10	11	7	15	8	13	14	8	13	136
Charged	5	14	11	8	11	6	13	7	10	11	7	10	113
High Risk	3	6	7	3	6	1	7	3	3	4	4	5	52

2012	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	3	13	7	7	10	11	7	9	11	5	7	11	101
Charged	3	11	6	5	9	9	7	7	9	4	7	10	87
High Risk	1	3	2	2	3	2	1	3	2	1	3	5	28

2013	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sept	Oct	Nov	Dec	Total
Arrested	11	12	14	4	6	19	10	8					84
Charged	10	12	12	2	3	11	10	8					68
High Risk	3	4	2	0	2	9	5	2					27

Appendix 2: High Risk Drink Driver Schemes in other jurisdictions

There are few schemes similar to the HRDD Scheme operating in other jurisdictions.

Sweden- Offenders with a BAC above 100mg/100ml are required to undertake a relicensing assessment for alcohol dependency involving a series of consultations over three to six months with a specialist physician or psychiatrist. If the results of the consultations are acceptable, then the driver will be given a conditional licence valid for 18 months during which further consultations must take place to ensure that no relapse has occurred.

Germany- Under the German system of Medical-Psychological Assessment, offenders with a BAC at or above 160mg/100ml or offenders who commit two drink drive offences with BACs above 80mg/100ml within 10 years are required to undergo an assessment prior to reapplying for their licence. The assessment, which lasts three to four hours, is undertaken jointly by a doctor and a psychologist. It costs the offender approximately £200-250 and the offender decides whether or not to submit the report of the assessment to the authorities and reapply for his/her licence.

Canada- A High Risk Offender is known in Canada as a Hard Core Drinking Driver. Canada favours a tiered BAC system of sanctions with increased penalties for higher level of offences. The Traffic Injury Research Foundation in Canada advocates a detailed assessment to identify the hard core drivers, and the nature of their alcohol and psychosocial problems. Assessment in the early part of licence suspension allows rehabilitation programmes to be completed before licence renewal. The main focus of Canada's measures for hard core drivers is on identification, prevention and rehabilitation.

Identification- More emphasis is placed on high blood alcohol levels than in the UK.

Prevention- With punishment; measures include administrative licence suspension, incarceration, intensive supervision, alcohol ignition interlock and vehicle impoundment.

Rehabilitation- Courses have been given high priority as it is felt that "treatment must be a cornerstone for dealing with the hard core".

USA- The term "Persistent Drinking Drivers" is used to describe those drinkers who regularly and repeatedly drink and drive. Persistent drinking drivers are those who are unlikely to be detected unless involved in a serious road accident. As a response to this, a law came into effect in 1998 to "*increase the certainty and severity of punishment in the high risk group, and reduce procedural loopholes*".

(NB As there are no resource implications in this report, the Treasury and Resources Department has no comments to make.)

(NB By majority, the Policy Council supports the Report.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 11th November, 2013, of the Home Department, they are of the opinion:-

1. To approve the introduction of a High Risk Drink Driver Scheme in Guernsey.
2. To direct the preparation of such legislation as may be necessary to give effect to their above decision.

REQUÊTE

THE AIRFIELD IN ALDERNEY

THE HUMBLE PETITION of the undersigned members of the States of Deliberation SHEWETH THAT:

1. Your Petitioners believe that there is considerable risk of a spiral of decline in Alderney. The Census in April confirmed that the number of children in Alderney has reduced by 50% in the past 12 years and that the number of residents aged of 55 and over has now reached 50% of the total population. By comparison 30% of the population in Guernsey is aged 55 and over.

This exodus of economically-active, child-rearing families has combined with a deep and prolonged recession to create a potentially self-fulfilling spiral of decline.

It is evident to your Petitioners that Alderney is close to the point at which the demographics of the community become permanently distorted: how close no one can say. There is also an economic 'tipping point' beyond which revenue collapses while expenditure soars.

2. We are two Islands with one economy: one taxman and shared national and local expenditure. Like all Islands without mineral wealth the economy depends upon service industries, of various types, all of which depend in turn upon connectivity.

No business or employee is immune from the loss of morale which accompanies a spiral of decline and this is evidenced by the changing demographics in the census results. Take for example the Alderney Gambling Control Commission: what would happen when, as would inevitably happen if the decline continues, connectivity and staff recruitment become issues which are no longer acceptable to them? They would not change islands, not least because the laws do not exist in Guernsey for the AGCC. They would go to a competitor jurisdiction and the single Guernsey-Alderney economy would lose more than £50m of GDP from the servers presently located in Guernsey. Worse this loss would be more than sufficient to destabilize the important 'techno data' sector to which the islands are increasingly looking for their future.

Your Petitioners are aware, from figures provided by the Income Tax Office, that tax collected from Alderney alone (resident individuals and companies, and non residents with taxable sources of income arising in Alderney) were about £1.3m less in 2012 than they were in 2008.

3. The case for Alderney airfield 2040 is identical to the case for Guernsey airport 2040, which is now nearing completion; in a word 'connectivity'. Like Guernsey airport 2040 there is no crystal ball: no guarantee how much lost revenue will be recovered

and how quickly, as a result of Alderney airfield 2040. However, your Petitioners submit that there can be no doubt that without this infrastructure investment the great risk of a spiral of decline will become a certainty.

Rightly the upgrade in Guernsey was done proactively: in Alderney it is now urgent but happily a fraction of the cost. An investment of say £8m out of the Contingency Reserve to reverse a £1.3 m decline in tax receipts represents a return vastly in excess of anything currently being earned by the Contingency Reserve.

4. The work required to make the runways, taxiways and apron fit for purpose in Alderney for the next 25 years is not complex. Alderney is closed for business more by reason of crosswinds than fog and the size and the type of aircraft which can be accommodated on the main runway are too limited in this day and age. Your Petitioners are inclined to believe that a crosswind grass runway needs to be tarmaced and lit for use in wet weather and in darkness while the main runway needs to be enlarged and strengthened to accommodate and attract a greater variety of aircraft; including some aircraft with a greater capacity than 19 seats.

Like Guernsey airport 2040, Alderney airfield 2040 also has the advantage of reducing or 'pulling forward' future maintenance costs. Conversely the approx £1m of 'patch up' at the airfield already approved for category A expenditure in the Capital Prioritization Program could be saved and help toward the cost of the 'catch up' Alderney 2040 project.

The expression 'airfield' is used in order to exclude the terminal and other 'nice to have' facilities.

5. Your Petitioners hardly need advise that there is no idea, initiative or proposal for reversing the spiral of decline in Alderney which is not entirely dependent upon up to date transport links. For passenger traffic, Alderney's transport links are by air and they have been since the war. This has been due largely to Alderney's geographical location and now has everything to do with the sheer size of vessel required to meet today's expectations of travel. The necessary investment has been made at the quay and freight links are fit for the 21 century. The same job at the airfield is now paramount and urgent.

There is no shortage of enquiries from people and businesses interested in what is on offer in Alderney but the airfield is unable to meet their expectations in terms of seat availability and cost of travel and the airfield does not give them any confidence that passenger links can improve in the future. The main runway is only open for business to a very limited category of aircraft and this is stultifying: the world has moved on. There are for example aircraft with much higher crosswind limits but they cannot use the main runway in Alderney. Other commercial aircraft, with lower limits, would be

able to use the prevailing wind runway if it was tarmaced for use in wet weather and lit for use after dark.

6. Your Petitioners note two recent precedents for essential investment in Alderney: the rebuilding of the Mignot Hospital commissioned by the States of Guernsey in 2005 at a cost of £6.2m (say £7.5 in today's money) and the quay commissioned in 2007 at a cost of £9.5m of which the States of Guernsey contributed £6m. Both are fit for purpose for the foreseeable future and neither is expected to generate a profit. The difference between the two projects is that unlike the hospital (and the airfield) the quay is not a transferred service.

The hospital and the quay convey confidence in the future to those who might bring their businesses and/or families to Alderney while the airfield has the opposite effect.

7. Your Petitioners consider that the risk of a spiral of decline in Alderney is the type of emergency for which the Contingency Reserve exists. One consequence of utilising this reserve would be that Alderney airfield 2040 would not consume money available for other projects in the Capital Prioritisation Programme, but nevertheless your Petitioners would envisage that any such project in Alderney should still be subject to proper scrutiny and due process from the States of Guernsey.
8. The prayer of this requete engages rule 15(2) of the Rules of Procedure of the States of Deliberation. There is an estimated additional sum of expenditure to the States of less than £100,000 in preparing and estimating the likely cost of proposals for upgrading the airfield in order to address the economic decline in Alderney, which expenditure could be made from the Budget reserve without any detrimental effect to the Fiscal and Economic Policy Plan of the States.

THESE PREMISES CONSIDERED, YOUR PETITIONERS humbly pray that the States may be pleased to resolve:

9. To direct that by no later than October 2014 the Public Services Department shall lay before the States a report setting out the measures which they consider necessary for Alderney airfield to accommodate aircraft with capacity of up to forty seats and to upgrade a crosswind runway so that it is suitable for use by twenty seater aircraft in wet weather and in darkness together with any other measures they consider necessary to ensure the suitability of the airfield for the next 25 years; and to direct that such report shall include proposals outlining how such measures should be implemented and an estimate of the likely costs; and to which report shall be appended a letter of comment from the Treasury and Resources Department which shall include advice regarding the most appropriate means of funding the measures considered necessary by the Public Services Department; and to direct the Treasury & Resources Department to transfer to the revenue budget of the Public Services

Department a sum not exceeding £100,000 in order to undertake the investigation work necessary for them to report to the States as directed

AND YOUR PETITIONERS WILL EVER PRAY

GUERNSEY

This 31st day of October 2013

Alderney Representative Paul Arditti
Alderney Representative Louis Jean
Deputy Lyndon Trott
Deputy Matt Fallaize
Deputy Richard Conder
Deputy Sandra James MBE
Deputy Andy Le Lievre

(NB In pursuance of Rule 17(2) of the Rules of Procedure of the States of Deliberation, the views received from Departments consulted by the Policy Council as appearing to have a particular interest in the subject matter of the Requête are set out below)

COMMERCE AND EMPLOYMENT

Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port
GY1 1FH

21st November 2013

Dear Sir

In accordance with Rule 17(2) of the Rules of Procedure of the States of Deliberation, the Chief Minister has requested any views of Commerce and Employment Department, on the subject matter of this Requête.

The members of the Board have reserved the right to reply on an individual basis and have opted not to take a Commerce and Employment view with regard to this matter.

Yours sincerely

Deputy Heidi Soulsby
Board Member

PUBLIC SERVICES DEPARTMENT

21 November 2013

Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port
Guernsey
GY1 1FH

Dear Deputy Harwood

REQUÊTE: THE AIRFIELD IN ALDERNEY

In reference to your letter dated 12 November 2013, the Public Services Department has now considered the Requête regarding the Alderney Airfield submitted by Alderney Representative Arditti, and its subsequent drafts. The Department's position on this matter is outlined below.

The Department accepts that the petitioners have highlighted real economic and social challenges facing Alderney, and by association Guernsey. However, as the controlling body for Alderney Airport, the Department must advise that it has no evidence to suggest that the current configuration at the airport is not fit for purpose, or that the reduction in passenger movements experienced is related to the existing runway size or configuration. A noticeable change in the past 5 years has been reduced numbers of flights to Alderney and higher prices. This implies that market forces have been the main determining factor in the falling passenger numbers and not the airfield infrastructure. The Department does acknowledge that a larger airfield and a longer runway would increase the types of aircraft that were able to operate into Alderney.

The Department is grateful for the way the petitioners have adjusted the prayer, following consultation with the Department, to enable Public Services to have sufficiently clear direction on what it will have to do if the States is minded to approve the Requête following debate. In helping to address the challenges of Alderney, the Department will play its part in returning to the States Assembly with whatever it is instructed to do.

However, to be in a position to return to the States by October 2014 it will be necessary that the Treasury & Resources Department is able and willing to adopt a light touch approach to this particular capital project. If it is necessary for the Department to follow the Capital Investment Portfolio regime and the gateways review process, it is envisaged that more

time would be needed before the Department would be in a position to deliver definitive advice to the States.

Although this letter outlines the Department's position following discussions, the Members of the Board will speak as individuals in the States when the Requête is debated.

Yours sincerely

P A Luxon
Minister

TREASURY AND RESOURCES DEPARTMENT

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St Peter Port
GUERNSEY
GY1 1FH

25th November, 2013

Dear Deputy Harwood

Requete – The Airfield in Alderney

Thank you for your letter of 12th November, 2013, inviting the Department's comments on the Requete proposing that the Public Services Department be directed to report back to the States setting out measures which it considers necessary to make Alderney Airfield suitable for the next 25 years.

The Treasury and Resources Board has now had an opportunity to consider the matter and members have confirmed their firm support for ensuring that Alderney has appropriate transport links, recognising the importance that they play in supporting and sustaining the local economy, both there and throughout the wider Bailiwick.

Nevertheless, the Board has concerns that, in identifying a need to surface and light the crosswind runway and strengthen and enlarge the existing main runway, the Requete is pre-empting what the optimum solution will be ahead of a strategic assessment of the different options that will best serve Alderney's interests. Accordingly, the Board believes that a full strategic options appraisal should be carried out that looks at the costs and benefits of a range of different options for Alderney Airport.

In considering the matter, the Board has been conscious that the States has already agreed that the Public Services Department's project for the Alderney Airport Runway Rehabilitation should be classified as a Category A pipeline project as part of the States capital investment portfolio. As a pipeline project, further work will be needed to develop the project specification and its costs in more detail following a rigorous options appraisal. The Board believes that it would be appropriate for the Public Services Department to carry out the options appraisal suggested above for Alderney Airport as part of the work it will have to undertake in any event for progressing the runway rehabilitation process. The costs for this work could be charged to the Capital Reserve under the existing delegated authority of the Treasury and Resources Department.

Finally, I should advise that the Department does not support the Requete's suggestion that the Contingency Reserve should be used to fund any capital investment at Alderney Airport. The States has, through the introduction of its Capital Investment Portfolio, established a clear process for the allocation of funds for capital investments. The Board firmly believes that, if this project is to be progressed, then funding for it should be prioritised as part of the Portfolio and managed within any overall allocation for the Portfolio from the Capital Reserve.

Yours sincerely

Gavin St Pier
Minister

(NB The Policy Council comments as follows:

In accordance with the States Rules of Procedure, the Policy Council has sought the views of the Commerce & Employment Department (C&E), Public Services Department (PSD) and Treasury & Resources Department (T&R) on the above Requête. C&E informed the Policy Council that it does not have a collective view on the Requête, but that its Members will talk as individual States Members when the matter is debated in the Assembly. The comments of PSD and T&R are set out in letters dated 21 and 25 November 2013 respectively and set out above .

As the Requête makes clear, several sets of key statistics (including population, economic and fiscal) are indicating that Alderney is currently facing a number of significant linked challenges. Since the 1948 Guernsey/Alderney Agreement the future of both islands has been inextricably linked. Despite there being separate Parliaments in each Island, there is in effect fiscal union between Guernsey and Alderney. Recognising the growing nature of the challenges of a declining economy twinned with a falling and ageing population, the Policy Council established an Alderney Liaison Group early in 2013. This Group has

met with representatives of the States of Alderney's Policy Committee through the year to discuss what may be done to help stimulate Alderney's economy and reverse current depopulation and ageing trends. These discussions in ALG are ongoing.

Separate from these meetings, the two Alderney representatives (along with five States' Deputies) have submitted this Requête seeking to resolve the economic, population and demographic issues through a major upgrade of the airfield in Alderney.

While this Requête provides clarity on the work PSD would be asked to undertake should the Requête be approved, it is (as T&R notes in its attached letter of comment) pre-empting what the optimum solution may be without any strategic assessment of the various options that may be available. To move headlong into this carries risks and falls short of good governance. There is no evidential basis for example on the implication in the Requête that such works as envisaged may cost in the region of £8 million.

Equally there is currently no hard evidence that a major investment in Alderney Airport to accommodate aircraft with a capacity up to 40 seats will reverse the recent fall in tax revenues etc, and if so on what scale. As PSD comments in its appended letter "it has no evidence to suggest that the current configuration at the airport is not fit for purpose, or that reduction in passenger movements experienced is related to the existing runway size or configuration. A noticeable change in the past 5 years has been reduced numbers of flights to Alderney and higher prices. This implies that market forces have been the main determining factor in the falling passenger numbers and not airfield infrastructure..."

The Policy Council is also concerned that there may well be associated costs involved with any airfield development resulting in 40 seat aircraft using the airfield. For example the Requête states that "The expression "airfield" is used in order to exclude the terminal and other "nice to have" facilities." However, it is hard to envisage how 40 passengers, and their luggage, could pass efficiently through Alderney Airport's current terminal building, with necessary security screening etc. There may also be other revenue implications for example in the configuration of fire cover for larger aircraft. All such costs should be known before the States commit to a project of this scale (even in principle).

While recommending the States to reject the Requête for the above reasons, the Policy Council endorses the approach being recommended by T&R, whereby PSD should as part of the States capital pipeline project requirements for the existing Alderney Airport capital project undertake a strategic options appraisal of the costs and benefits of the various strategic options for the future of Alderney Airfield. Such options would include PSD's current proposals (which

have already been prioritised within the Capital Allocations Programme) at one end of the spectrum (minimum), and the solution proffered by the Requête at the other (maximum), but could also include any sensible middle ground options that may be available. Such an options appraisal would be consistent with PSD's mandate in terms of its responsibilities for Alderney Airfield. It is not, however, for the PSD to have regard to the wider considerations that will need be brought into play in regard to socio-economic development, as such considerations lie outside of its mandate.

Prior to the January States debate on this issue, the Policy Council is seeking to convene a meeting of the Alderney Liaison Group to take stock of the current economic situation in Alderney. The Policy Council is supportive of all sensible measures that may be taken to seek to reverse the decline in Alderney's economy. The Council will therefore consider whether any further actions might be justified and whether such actions may justify the placing of an amendment to this item at the January States meeting.

For these reasons the Policy Council believes that it should take an overall responsibility to receive PSD's strategic options appraisals for the airport development and then place them in the wider socio-economic context, in consultation with C&E, T&R and the States of Alderney. The strategic options appraisals for the airport would be financed as part of the Alderney Airport capital project through the Capital Reserve, under the existing delegated authority of T&R (as set out in T&R's letter).

Finally, the Policy Council agrees strongly with T&R that whatever development is progressed at Alderney Airport, it should be not be financed through the Contingency Reserve, but through the Capital Investments Portfolio, which has established a process for the allocation of funds for capital investments through the Capital Reserve.

Conclusion

While recognising the serious economic, population and demographic challenges that Alderney and therefore indirectly Guernsey are facing, and while recommending that the necessary research is undertaken to identify the best strategic option for Alderney Airport as set out above, the Policy Council recommends the States to follow good corporate governance and reject the Requête.)

The States are asked to decide:-

IX:- Whether, after consideration of the Requête dated 31st October, 2013, signed by Alderney Representative E P Arditti and six other Members of the States, they are of the opinion to direct that by no later than October 2014 the Public Services Department shall lay before the States a report setting out the measures which they consider necessary for Alderney airfield to accommodate aircraft with capacity of up to forty seats and to upgrade a crosswind runway so that it is suitable for use by twenty seater aircraft in wet weather and in darkness together with any other measures they consider necessary to ensure the suitability of the airfield for the next 25 years; and to direct that such report shall include proposals outlining how such measures should be implemented and an estimate of the likely costs; and to which report shall be appended a letter of comment from the Treasury and Resources Department which shall include advice regarding the most appropriate means of funding the measures considered necessary by the Public Services Department; and to direct the Treasury & Resources Department to transfer to the revenue budget of the Public Services Department a sum not exceeding £100,000 in order to undertake the investigation work necessary for them to report to the States as directed.

APPENDIX 1**POLICY COUNCIL****ANNUAL INDEPENDENT FISCAL REVIEW**

The Policy Council has received the attached letter from Professor Geoffrey Wood together with the Annual Independent Fiscal Policy Review for 2013. The Review is published separately as an appendix to the Billet d'Etat.

P.A. Harwood
Chief Minister

2nd December 2013

J. P Le Tocq
Deputy Chief Minister

G. A St Pier	K. A. Stewart	M. G. O'Hara	R. W. Sillars	R. Domaille
M. H. Dorey	D. B Jones	P. A. Luxon	A. H. Langlois	

The Chief Minister
Policy Council
Sir Charles Frossard House
La Charroterie
St. Peter Port
GY1 1FH

15th November 2013

Dear Deputy Harwood,

Annual Independent Fiscal Review

It is with much pleasure that I enclose the Annual Independent Fiscal Policy Review for 2013. This year's Review is the fourth in the series and the third which I have authored.

The 2013 Review highlights, once again, the States' success in controlling General Revenue expenditure. On that they should be congratulated. That said, the States' General Revenue Budget remains in deficit and questions of sustainable funding of capital investment in the short term and pension and care provision in the long-term remain unresolved. It is my opinion that it would be imprudent for the States to defer decisions on these issues much longer.

Should you see fit I would be happy for the Review to be published as an Appendix to a forthcoming Billet d'État.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Wood', with a long horizontal flourish extending to the right.

Prof. Geoffrey Wood

Enc.

NB. The Annual Independent Fiscal Policy Review 2013 is published separately.