



# BILLET D'ÉTAT

WEDNESDAY, 28th MAY, 2014

X  
2014

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# BILLET D'ÉTAT

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

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I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **28th MAY, 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

17<sup>th</sup> April 2014

## **PROJET DE LOI**

entitled

### **THE MERCHANT SHIPPING (BAILIWICK OF GUERNSEY) (AMENDMENT) LAW, 2014**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Projet de Loi entitled “The Merchant Shipping (Bailiwick of Guernsey) (Amendment) Law, 2014”, and to authorise the Bailiff to present a most humble petition to Her Majesty in Council praying for Her Royal Sanction thereto.

### **EXPLANATORY MEMORANDUM**

Section 267 of the Merchant Shipping (Bailiwick of Guernsey) Law, 2002 ("the 2002 Law") makes provision relating to the jurisdiction of a court to try an offence under the 2002 Law committed on board a ship, in certain circumstances and if committed by certain persons, where the court might not otherwise have jurisdiction to try that offence.

This Law amends section 267 in 2 specific respects –

- (a) it repeals the limitation to offences under the 2002 Law, with the result that the section will apply to all offences, whether charged under the 2002 Law or not, and
- (b) it extends the jurisdiction of a court in the case of an individual, who is not a British Citizen, charged with an offence alleged to have been committed on board any Guernsey registered ship in any foreign port or harbour. That extended jurisdiction engages where the individual is found in Guernsey, in which case, any court which would have had jurisdiction in relation to the offence had it been committed on board a Guernsey ship within the limits of the court's ordinary jurisdiction, shall have jurisdiction to try the offence as if it had been committed within that ordinary jurisdiction.

The extended jurisdiction described in paragraph (b) already applies under section 267 in relation to individuals who are British citizens in similar circumstances.

**THE DISCLOSURE (BAILIWICK OF GUERNSEY) (AMENDMENT)  
ORDINANCE, 2014**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Disclosure (Bailiwick of 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 Disclosure (Bailiwick of Guernsey) Law, 2007 ("the 2007 Law"). In particular, it replaces sections 1 to 3 of the 2007 Law with new provisions placing revised obligations on certain persons and officers in financial services businesses, and non-financial services businesses, to make disclosures of information to the persons and in the manner set out in the new sections. The obligations arise where a person knows or suspects, or has reasonable grounds for knowing or suspecting, that another person is engaged in money laundering or that property is, or is derived from, the proceeds of criminal conduct. It is a further condition of the obligations arising that the relevant knowledge, suspicion etc. came to that person in the course of a business (either financial services or non-financial services).

Other amendments made by the Ordinance provide a further defence to, or exemption from, the offence of "Tipping-off" created by section 4 of the 2007 Law, enable more effective opportunities for information sharing between relevant authorities and for specific purposes (including the conduct of civil forfeiture investigations and proceedings and implementation of international sanctions measures) and broaden the powers of the Home Department to make regulations enabling the obtaining of additional information by persons, such as Guernsey's Financial Intelligence Service, to whom disclosures are made under the Law.

The amendments are intended to enhance Bailiwick compliance with anti-money laundering and counter terrorist financing standards as issued by the Financial Action Task Force ("FATF").

**THE TERRORISM AND CRIME (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2014**

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Terrorism and Crime (Bailiwick of 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 Terrorism and Crime (Bailiwick of Guernsey) Law, 2002 ("the Law of 2002").

Clauses 1 and 2 of the Ordinance insert into the Law of 2002 a revised definition of "terrorism" and a new definition relating to the "purposes of terrorism". The revised and new definitions widen the existing definition of terrorism, in particular, to include the use or threat of action made for the purpose of advancing a racial cause. The definitions will ensure that the key definition of terrorism for the purposes of the Law of 2002 encompasses the full range of terrorist activity, continues to comply with the relevant FATF standard and remains consistent with the approach taken in the United Kingdom, Jersey and the Isle of Man.

Clause 3 of the Ordinance amends section 12 of the Law of 2002 by substituting new provisions. The new section places revised obligations on certain persons in non-financial services businesses, to make disclosures of information to the persons and in the manner set out in the new section. The disclosure obligations are consistent with those that will arise under the amendments made to the Disclosure (Bailiwick of Guernsey) Law, 2007 described above.

Clauses 5 and 6 of the Ordinance make amendments to sections 14, 15 and 15A of the Law of 2002. In particular, the amendments place revised obligations on certain persons in financial services businesses, to make disclosures of information to the persons and in the manner set out in the new sections. These disclosure obligations are also consistent with those that will arise under the amendments made to the Disclosure (Bailiwick of Guernsey) Law, 2007 described above.

The amendments made to sections 12, 14, 15 and 15A, as described above, also extend the disclosure obligations so that they relate not only to knowledge or suspicion about terrorist financing, but also to knowledge or suspicion that certain property is, or is derived from, terrorist property.

Clause 7 amends section 15C of the Law of 2002 in order to broaden the powers of the Home Department to make regulations enabling the obtaining of additional information by persons and bodies, such as Guernsey's Financial Intelligence Service, to whom disclosures are made under the Law.

Clause 8 amends section 40 of the Law of 2002. Section 40 creates offences which may be committed where a person knows or suspects that a police officer is conducting a terrorist investigation or that a disclosure has been or will be made under certain sections of the Law. In those circumstances it is an offence for that person to make disclosures to others about certain matters relating to the investigation or the fact that such disclosures have been made. Various defences and exemptions to the offences apply under section 40 and Clause 8 inserts an additional subsection into section 40 to provide a defence, or exemption, for disclosures made by a lawyer's client to his professional legal adviser for the purpose of seeking legal advice or to any person in contemplation of legal proceedings and for the purposes of those proceedings.

Clause 9 amends the definition of "terrorist financing" that appears in section 79 of the Law of 2002.

The amendments are intended to enhance Bailiwick compliance with anti-money laundering and counter terrorist financing standards as issued by the Financial Action Task Force.

**THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2014**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Criminal Justice (Proceeds of Crime) (Bailiwick of 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 Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999 ("the Law of 1999").

Section 41 of the Law of 1999 creates an offence of tipping off. The offence is committed where a person knows or suspects that a police officer is investigating, or proposing to investigate, money laundering and that person then discloses to any other person information relating to that knowledge or suspicion. Various defences and exemptions to a tipping off offence apply under section 41. Clause 1 of the Ordinance inserts an additional subsection into section 41 to provide a defence, or exemption, for disclosures made by a lawyer's client to his professional legal adviser for the purpose of seeking legal advice or to any person in contemplation of legal proceedings and for the purposes of those proceedings.

Clauses 2 and 3 of the Ordinance amend sections 49 and 49A of the Law of 1999 by amending the definitions of "money laundering" that appear in both sections. The amended definitions will broaden the powers of the Policy Council under those sections to make regulations in respect of the duties and requirements to be complied with by financial services businesses, and certain other relevant businesses, for the purposes of forestalling and preventing money laundering.

The amendments are intended to enhance Bailiwick compliance with anti-money laundering and counter terrorist financing standards as issued by the Financial Action Task Force.

**THE DRUG TRAFFICKING (BAILIWICK OF GUERNSEY) (AMENDMENT)  
ORDINANCE, 2014**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Drug Trafficking (Bailiwick of 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 Drug Trafficking (Bailiwick of Guernsey) Law, 2000 ("the Law of 2000").

Section 61 of the Law of 2000 creates an offence of tipping off. The offence is committed where a person knows or suspects that a police officer is investigating, or proposing to investigate, drug money laundering and that person then discloses to any other person information relating to that knowledge or suspicion. Various defences and exemptions to a tipping off offence apply under section 61. The Ordinance inserts an additional subsection into section 61 to provide a defence, or exemption, for disclosures made by a lawyer's client to his professional legal adviser for the purpose of seeking legal advice or to any person in contemplation of legal proceedings and for the purposes of those proceedings.

**THE EUROPEAN COMMUNITIES (BAILIWICK OF GUERNSEY)  
(AMENDMENT) ORDINANCE, 2014**

The States are asked to decide:-

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

**EXPLANATORY MEMORANDUM**

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and amends the definition of ""the Treaties" or "the Communities Treaties"" in the European Communities (Bailiwick of Guernsey) Law, 1973. The amendments will, in particular, add the Lisbon Treaty and the treaty concerning the accession of the Republic of Croatia to the definition.



## TREASURY AND RESOURCES DEPARTMENT

### INCOME TAX: RESTRICTION ON TAX RELIEF FOR INTEREST PAID

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

21<sup>st</sup> March 2014

Dear Sir

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

- 1.1. At the meeting on 29<sup>th</sup> October 2013, following an amendment proposed by Deputy Bebb, the States resolved to impose a cap on the amount of tax relief given for interest paid on money borrowed in connection with land or a building in the circumstances set out in section 1 or section 2 of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007 (“the 2007 Ordinance”) of no more than £25,000 per person, with effect from the Year of Charge 2014.
- 1.2. This would impose a cap on the tax relief available on the amount of interest paid by an individual in respect of a principal private residence (section 1 of the 2007 Ordinance) and on the amount of interest paid by a person in respect of let property, in Guernsey and elsewhere (section 2 of the 2007 Ordinance).
- 1.3. Following representations from various organisations and the Guernsey Society of Chartered and Certified Accountants, the Department has reviewed the impact of this resolution on introducing a cap on tax relief in respect of the amount of interest paid on let property, before it enters into effect. This is relevant because, up to, and including, the Year of Charge 2013, interest paid relating to a let property could be deducted from the rental income received in order to calculate the amount to be charged to tax (income from the rental of Guernsey property is taxable at 20%, irrespective of whether the person letting the property is an individual or a company).
- 1.4. Following this review the Department believes that such a cap would discourage investors from buying, developing and renting property in Guernsey, particularly for individuals and companies with a property portfolio where borrowing and income levels could be significant, compared to an interest cap of £25,000. It is anticipated that this would have a particularly adverse impact on the commercial

property market, decreasing investment yields as a consequence of the additional tax that would be payable and making investment not viable.

- 1.5. This report therefore proposes that resolution 13A of Billet d'Etat No XXI, 2013 is modified so that the amendment only applies to section 1 of 2007 Ordinance, not section 2.
- 1.6. This would mean that a cap on tax relief of £25,000 per individual borrower (£50,000 for a married couple where both spouses are borrowers) is only introduced in respect of interest paid on money borrowed for a principal private residence. It is intended that this would be given effect by the draft Ordinance entitled The Income Tax (Tax Relief on Interest Payments) (Guernsey) (Amendment) Ordinance, 2014 ("the 2014 Ordinance"), which is being submitted to the States with this report (and the Department thanks the Presiding Officer for his agreement to this course of action).
- 1.7. The 2014 Ordinance has been drafted on the basis that the cap on the amount of tax relief allowed for interest paid in respect of money borrowed for a principal private residence will be introduced in addition to the existing cap of £400,000 on the value of the money borrowed in respect of that residence.
- 1.8. The Housing Department was consulted on these proposals and their response, confirming full support, is appended to this report.

## **2. Cap on Interest Relief in respect of property**

- 2.1. At the meeting on 29<sup>th</sup> October 2013, the States resolved to impose a cap on the amount of tax relief given for interest paid on money borrowed in connection with land or a building in the circumstances set out in section 1 or section 2 of the 2007 Ordinance of no more than £25,000 per person, with effect from the Year of Charge 2014.
- 2.2. A review of Hansard confirms that debate focused on the impact of introducing a cap on the amount of tax relief in respect of interest paid on money borrowed in respect of principal private residences, rather than let property.
- 2.3. Hansard also confirms the Department's understanding that the proposition was based on the fact that the cap on the amount of tax relief allowed for interest paid in respect of money borrowed for a principal private residence, would be introduced in addition to the existing cap of £400,000 on the value of the money borrowed in respect of that residence.
- 2.4. The £25,000 cap on tax relief for interest paid will apply to each relevant individual (and the cap will be £50,000 for a married couple where both parties are borrowers), subject to compliance on their part with the other qualifications for tax relief specified in the 2007 Ordinance.

- 2.5. Income from the letting of Guernsey property is taxable at 20%, irrespective of whether the person letting the property is an individual or a company. For Years of Charge up to and including 2013, interest paid relating to a let property could be deducted from the rental income received in order to calculate the amount to be charged to tax (a similar concept to allowing a deduction for interest paid on capital borrowed for the purposes of a business, in order to calculate the taxable business profits). Following representations from various industry representative groups, the Department is mindful of the potential adverse impact such a cap on tax relief may have, if it is extended to interest paid in respect of let property, on the property market, particularly as the cap would be introduced in respect of property held within Guernsey and elsewhere.
- 2.6. The Department therefore consulted with the GSCCA and undertook a review to ensure the implications of extending the cap on the amount of tax relief to let property were considered. This review included the impact on the local housing market, the local commercial property market and the attractiveness of Guernsey as a location for structuring the holding of property investments.
- 2.7. The main concerns identified through the review, of extending the cap on the amount of interest paid by a person in respect of let property, are as follows:
- The cap would apply to interest paid by individual investors and also companies, borrowing for either residential or commercial properties and therefore may discourage investors from buying, developing and renting property in Guernsey, as it would be considered as tax inefficient.
  - Whilst £25,000 could be considered reasonable in the context of an individual borrowing in respect of a residential property, for individuals and companies with a property portfolio, where borrowing levels could be significant, a cap of £25,000 would affect investment yields, as a consequence of the additional tax that would be payable, and potentially could make commercial investments unviable. It is anticipated that this would have a particularly adverse impact on the commercial property market. . This could in turn reduce income tax revenues (directly, from a reduction in the taxable income of persons deciding not to invest in, or not to remain in, rental property, and indirectly, from reduced profits in the supporting sectors, such as profits from property sales, conveyancing, management, maintenance etc) and also a reduction in document duty.
  - The cap would also apply to overseas let property, and this could lead to adverse tax implications for Guernsey shareholders of companies owning certain overseas property as it could increase the undistributed income of the company by not allowing the interest as a deduction for Guernsey tax purposes.

- 2.8. The Department also consulted the Housing Department, who expressed the view that the States should be encouraging, not discouraging, investment in the private rental sector, as a healthy private rented sector reduces the number of people who would otherwise be seeking social rental or partial ownership accommodation. As set out in their response, appended to this report, their view was that any measure that could lead to people withdrawing properties from the private rental sector will not be in the interests of the housing market and will lead to even greater demand for the remaining properties and hence higher rents. The Housing Board are therefore fully supportive of these proposals.
- 2.9. The proposals are intended to have effect from the year of charge 2014 and the 2014 Ordinance has been worded accordingly.
- 2.10. It is therefore proposed that the States approve the draft 2014 Ordinance, accompanying this report, to give effect to the introduction of a cap on the amount of tax relief on interest paid in respect of a principal private residence and direct that the same shall have effect as an Ordinance of the States.

### **3. Principles of Good Governance**

- 3.1 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 all of the proposals in this Report comply with those principles.

### **4. Legislation**

- 4.1. Following Royal Assent to the Income Tax (Zero 10) (Guernsey) Law 2007, the Income Tax Law was amended to introduce section 208C, which permits the States to amend the Income Tax Law by Ordinance. This is the process which will be used to effect the amendments proposed in this Report.
- 4.2. The Law Officers have been consulted about these proposals and the 2014 Ordinance introducing a cap on the amount of tax relief on interest paid in respect of a principal private residence, in addition to the existing cap of £400,000 on the value of the money borrowed in respect of that residence, is attached as the appendix.

### **5. Recommendations**

The Department recommends the States to agree that:

- 5.1. Resolution 13A of Billet d'Etat XXI, of 2013, is rescinded except to the extent that it applies in respect of section 1 of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.

- 5.2. The draft Ordinance entitled The Income Tax (Tax Relief on Interest Payments) (Guernsey) (Amendment) Ordinance, 2014, accompanying this report, which gives effect to the legislative amendment in respect of introducing a cap on the amount of tax relief on interest paid in respect of a principal private residence at a rate of £25,000 per individual borrower, with effect from the Year of Charge 2014, in addition to the existing cap of £400,000 on the value of the money borrowed in respect of that residence, is approved, and to direct that the same shall have effect as an Ordinance of the States.

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)

## APPENDIX 1

**The Income Tax (Tax Relief on Interest Payments)  
(Guernsey) (Amendment) Ordinance, 2014**

**THE STATES**, in pursuance of their Resolutions of the 29<sup>th</sup> October, 2013<sup>1</sup>, the 11<sup>th</sup> December, 2013<sup>2</sup> and the 28<sup>th</sup> May, 2014<sup>3</sup>, and in exercise of the powers conferred on them by sections 39A, 203A and 208C of the Income Tax (Guernsey) Law, 1975, as amended<sup>4</sup> and all other powers enabling them in that behalf, hereby order:-

**Amendment of Ordinance.**

1. (1) In section 1(2)(a)(i) of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007<sup>5</sup>, for the words "a person" substitute "an individual".

(2) For section 1(2)(b) of the said Ordinance substitute the following paragraph -

"(b) to the extent that -

(i) the amount of money borrowed in respect of the land or building exceeds £400,000, or

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<sup>1</sup> Article I (proposition 13A) of Billet d'État No. XXI of 2013.

<sup>2</sup> Article IX (proposition 11) of Billet d'État No. XXIV of 2013.

<sup>3</sup> Article \*\* of Billet d'État No. \*\* of 2014.

<sup>4</sup> Ordres en Conseil Vol. XXV, p. 124; section 39A was inserted by Order in Council No. XVII of 2001 (Ordres en Conseil Vol. XLI, p. 597); section 203A was inserted by Order in Council No. XVII of 2005; and section 208C was inserted by Order in Council No. V of 2011.

<sup>5</sup> Ordinance No. I of 2008.

- (ii) the amount of interest paid in the year of charge in respect of which the deduction is claimed exceeds £25,000 for any individual borrower (or £50,000 for a married couple where each party to the marriage is the borrower).".

**Citation.**

2. This Ordinance may be cited as the Income Tax (Tax Relief on Interest Payments) (Guernsey) (Amendment) Ordinance, 2014.

**Commencement.**

3. (1) This Ordinance shall, subject to subsection (2), come into force on the 1<sup>st</sup> June , 2014.

(2) Section 1(2) shall be deemed to have come into force on the 1<sup>st</sup> January, 2014, and shall accordingly have effect in respect of the whole of the year of charge 2014.



The Minister  
Treasury and Resources Department  
Sir Charles Frossard House  
St Peter Port  
Guernsey  
GY1 1FH

**Housing**  
Sir Charles Frossard House  
La Charroterie  
St Peter Port, Guernsey  
GY1 1FH  
Tel +44 (0) 1481 717000  
Fax +44 (0) 1481 713976  
Housing Control Fax  
+44 (0) 1481 716457  
[www.gov.gg](http://www.gov.gg)

21 March 2014

Dear Deputy St Pier

### **INCOME TAX: RESTRICTION ON TAX RELIEF FOR INTEREST PAID**

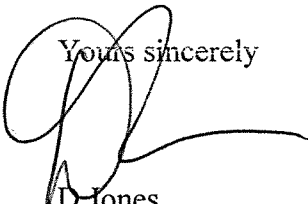
The Housing board was pleased to be consulted on the proposals to clarify the scope of the restrictions on tax relief for interest paid on borrowings in respect of land and buildings.

The operation of the private rented sector is critical to the functioning of the entire Guernsey housing market. A healthy private rented sector reduces the number of people who would otherwise be seeking social rental or partial ownership accommodation.

It follows that any measure that could lead to people withdrawing properties from the private rental sector will not be in the interests of the housing market and will lead to even greater demand for the remaining properties and hence higher rents. The States should be encouraging, not discouraging, investment in the private rental sector.

Accordingly, insofar as they affect the housing market, the Housing board fully supports the proposals and will be happy for this letter to be appended to your States Report should you wish to do so.

Yours sincerely

  
D Jones  
Minister



**(NB The Policy Council supports the Report and is of the view that the proposal complies with the Principles of Good Governance.)**

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 21<sup>st</sup> March, 2014, of the Treasury and Resources Department, they are of the opinion:-

1. To rescind Resolution 13A of Billet d'Etat XXI of 2013, except to the extent that it applies in respect of section 1 of the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007.
2. To approve the introduction of a cap on the amount of tax relief on interest paid in respect of a principal private residence at a rate of £25,000 per individual borrower, with effect from the Year of Charge 2014, in addition to the existing cap of £400,000 on the value of the money borrowed in respect of that residence.
3. To approve the draft Ordinance entitled The Income Tax (Tax Relief on Interest Payments) (Guernsey) (Amendment) Ordinance, 2014, and to direct that the same shall have effect as an Ordinance of the States.

**(NB By virtue of the report's recommendations and its accompanying legislation being published in the same Billet d'État, the Explanatory Memorandum for the accompanying Ordinance is set out below.)**

#### EXPLANATORY MEMORANDUM

This Ordinance amends the Income Tax (Tax Relief on Interest Payments) (Guernsey) Ordinance, 2007 ("the 2007 Ordinance"), which specifies the conditions subject to which a tax deduction in respect of interest paid on money borrowed for the acquisition, construction, reconstruction or repair of the borrower's principal private residence is to be allowed. The amendments amend section 1(2)(a)(i) of the 2007 Ordinance by replacing "a person" with "an individual", with the result that no tax deduction will be allowed unless the lender is *an individual* resident in Guernsey (or, as is the case at present, a company subject to tax in respect of income from banking business at the company intermediate rate); and substituting section 1(2)(b), to add a further condition, so that no tax deduction will be allowed to the extent that the amount of money borrowed exceeds £400,000 (as is currently the case) or (and this is the new condition) the amount of interest paid in the year of charge in respect of which the deduction is claimed exceeds £25,000 for any individual borrower (or £50,000 for a married couple where each party to the marriage is the borrower).

***ORDINANCES LAID BEFORE THE STATES***

**THE UKRAINE (RESTRICTIVE MEASURES) (GUERNSEY) ORDINANCE,  
2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Ukraine (Restrictive Measures) (Guernsey) Ordinance, 2014 made by the Legislation Select Committee on 7<sup>th</sup> March, 2014, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and concerns restrictive measures against Ukraine.

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 7<sup>th</sup> March, 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 TERRITORIAL INTEGRITY ETC. OF UKRAINE (RESTRICTIVE  
MEASURES) (GUERNSEY) ORDINANCE, 2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Territorial Integrity etc. of Ukraine (Restrictive Measures) (Guernsey) Ordinance, 2014 made by the Legislation Select Committee on 19<sup>th</sup> March, 2014, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, and concerns restrictive measures against certain persons from the Russian Federation and elsewhere who are believed to threaten or undermine the territorial integrity, sovereignty and independence of Ukraine.

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 19<sup>th</sup> March, 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 CENTRAL AFRICAN REPUBLIC (RESTRICTIVE MEASURES)  
(GUERNSEY) ORDINANCE, 2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Central African Republic (Restrictive Measures) (Guernsey) Ordinance, 2014 made by the Legislation Select Committee on 24<sup>th</sup> March, 2014, is laid before the States.

**EXPLANATORY MEMORANDUM**

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994, and concerns export controls and restrictive measures against certain persons who are believed to threaten or undermine the peace, stability or security of the Central African Republic.

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 24<sup>th</sup> March, 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.

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

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

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL  
BENEFIT) (AMENDMENT) REGULATIONS, 2014**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) Regulations, 2014 made by the Social Security Department on 4<sup>th</sup> February 2014, 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 4<sup>th</sup> February 2014.

**THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT NO. 2) REGULATIONS, 2014**

In pursuance of Section 35 of The Health Service (Benefit) (Guernsey) Law, 1990, The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment No. 2) Regulations, 2014 made by the Social Security Department on 18<sup>th</sup> March 2014, 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 18<sup>th</sup> March 2014.

**ADMINISTRATIVE DECISIONS (REVIEW) (GUERNSEY) LAW, 1986**

**NEW CHAIRMAN AND DEPUTY CHAIRMAN OF PANEL OF MEMBERS**

VIII.- To elect, in accordance with the provisions of section 4 (2) of the Administrative Decisions (Review) (Guernsey) Law, 1986:-

1. a Chairman of the Panel of Members, who shall be a sitting member of the States of Deliberation and who has held a seat in the States for a period of three years or more, to fill the vacancy which will arise on 1<sup>st</sup> June, 2014, by reason of the expiry of the term of office of Deputy R A Perrot, who is eligible for re-election.
2. a Deputy Chairman of that Panel, who shall be one of the Deans of the Douzaines but who shall not have a seat in the States, to fill the vacancy which will arise on 1<sup>st</sup> June, 2014, by reason of the expiry of the term of office of Douzenier R L Heaume, M.B.E, who is eligible for re-election.

**(NB The Deans of the Douzaines are Douzeniers R L Heaume, MBE, J E Foster, M A Ozanne, B J Hervé, N N Duquemin, P I Le Tocq, N M Dorey, F J Roper, J V Brache, and G Guilbert.)**

## LADIES' COLLEGE BOARD OF GOVERNORS

### NEW MEMBERS

The States are asked:-

IX.- To elect

1. a member of the Ladies' College Board of Governors who shall be appointed by the States with effect from 1<sup>st</sup> June, 2014, to fill a vacancy which will arise by reason of the expiration of the term of office of Advocate B P G Morgan, who is eligible for re-election.

**(NB Candidates may be proposed by Members of the States. The Chairman of the Board of Governors will propose Advocate B P G Morgan in respect of whom the Governors have provided the following profile:**

*Advocate B P G Morgan was the Vice Chairman of the "Gift for Learning" capital fundraising committee and is currently a member of the Finance Sub-Committee and the link governor for the curriculum. He has three daughters who attend the College.*

*Advocate Morgan graduated from Lancaster University (LLB); College of Law qualifying as an English solicitor in 1992 and practised in the City of London with Norton Rose before joining Carey Olsen in 1999. Advocate Morgan became an advocate in 2003 and has been a partner since 2003 in the corporate and finance group and has significant experience in investment funds and corporate law gained from practising with Norton Rose and Carey Olsen.*

*Advocate Morgan is also a member of Carey Olsen LLP which is the firm's London office.*

*Advocate Morgan advises on the formation of all types of alternative investment funds including hedge funds, property funds and private equity funds as well as banking and finance transactions. He acts for a large number of the well-known private equity fund managers and is recognised as one of the most prominent investment funds lawyers in the Channel Islands by the Legal Media Group's 'Expert Guide' on investment funds. Advocate Morgan was listed in the International Who's Who Legal of Private Funds Lawyers in 2014.)*

2. as a member of that Board of Governors with effect from 1<sup>st</sup> June, 2014, Mrs K M N Richards who has been nominated in that behalf by the Chairman, the States appointed Governors and the Education Department nominated Governors for election by the States.

**(NB The Governors have provided the following profile of Mrs Richards:**

*Mrs Kathryn M N Richards is a former pupil of the Ladies College. She was President of the Ladies College Guild before joining the Board of Governors of which she is currently Vice Chairman, Chairman of the Finance Committee and the Link Governor for child protection.*

*Mrs Richards graduated from Bristol University in Psychology and Sociology. She worked for the Imperial Group in the UK and was responsible for establishing a department to research and advise on management education and training. Following her return to the Island and a family career break, Mrs Richards spent a period of time as Senior Lecturer in Management in Further Education. In 1989, Mrs Richards became co-founder of ODL, a Guernsey based consultancy company which provided strategic organization development consultancy, tailored training and qualification design. She is still proprietor and joint Managing Director of this business. Mrs Richards' commercial experience in this role has included responsibility for regulated training centres in the UK. The Company also has a national profile in workforce development and Mrs Richards is actively involved in the development of vocational qualifications and research into education developments across the UK.)*

## **POLICY COUNCIL**

### **ACCESS TO NEIGHBOURING LAND**

#### **Executive Summary**

1. This Report sets out proposals for the preparation of new legislation to allow the owner of a property access to a neighbouring property to undertake essential repairs when access has otherwise been refused.
2. New legislation is required because Guernsey customary law does not permit the acquisition of rights to keep services in other people's land by any prescriptive process – i.e. without title or by virtue of statute.
3. The Report recommends the preparation of legislation to overcome issues which are increasingly arising because of the limitations within Guernsey's property laws. The proposals are to introduce legislation that is broadly based on the Access to Neighbouring Land Act 1992 but with appropriate modifications to take account that customary law remains a strong influence in the Island's property law.
4. The Report outlines the consultation HM Procureur has had with the Bailiff, on behalf of the Royal Court, and the Guernsey Bar Council. It also addresses the additional resources which the Royal Court may require in dealing with applications for access orders and the benefits to the States as a property owner from the proposed legislation.
5. The proposals seek to balance the real difficulties that are being encountered by people wishing to secure a loan/mortgage on a property where there is no agreement or provision to access a neighbouring property to carry out essential repairs with the rights of the owner of the adjoining property.

#### **The Problem**

6. It is not uncommon for owners of properties to have to access a neighbour's property to carry out repairs or generally maintain the property. For example, the gable wall may only be accessible from the garden of the adjoining house or a property's drains may run under a neighbour's land before connecting with the mains network under the public highway.
7. In most cases, the two neighbours will reach an informal agreement to allow the work to be carried out. In some cases, the owner of the neighbouring land may require an agreement be registered with the Greffe setting out when, how and for what purposes one party may go onto his neighbour's land. This latter solution will tend to be used where the works are substantially more than repairs or routine maintenance or the access is over a longer period. However, from time

to time the owner of the neighbouring property may refuse to give permission for whatever reason or may be absent from the Island or otherwise untraceable.

8. The Policy Council understands from representatives of the Bar that there is increasing evidence of access-related difficulties arising when negotiating property sale transactions, particularly those involving commercial lenders, where the general maintenance and repair of a property is dependent on the co-operation of a neighbour regarding access for repairs, etc. In such cases, delays are inevitable to secure the necessary rights and result in inconvenience, worry and added legal costs and, in some cases may thwart a sale if a particular neighbour is uncooperative or the delay affects a transaction chain.
9. The proposals set out in this Report aim to provide a statutory “remedy of last resort”, i.e. the introduction of legislative regime should satisfy the concerns of those advising on or party to a property transaction that any difficulties in securing access to undertake necessary repairs and maintenance can be overcome by way of an access order should a neighbourly agreement not be forthcoming.

### **Background**

10. The difficulties relating to the access to a neighbour’s land to undertake essential repairs, etc were first raised by the Bar Council in the 1990s and it established a sub-committee to investigate possible solutions. The Sub-Committee concluded:
  - The vast majority of neighbours are reasonable about such requests even where no legal right exists and either permit access on an ad hoc basis or agree to the incorporation and registration at the Greffe of a legal right within the property’s title.
  - Difficulties are increasingly arising with property sale transactions, particularly those involving commercial lenders, as the parties’ advisers are being more cautious about properties without legal rights in their titles.
  - Obtaining the necessary rights cause delay, inconvenience, worry and added legal costs at best, and may thwart a sale if a particular neighbour with uncooperative or the delay affects a transaction chain.
  - Guernsey’s customary law may afford rights of access to any owner of a party wall for repair purposes.
  - Statutory conferment or confirmation of such rights – i.e. of their existence and enforceability, subject to necessary safeguards – would be appropriate where the boundary feature in question has been in existence for some time, but may be perceived as potentially unfair if it would enable developers or owners to build on or unreasonably close to boundaries notwithstanding neighbour opposition.



- Such difficulties could be mitigated by legislation providing for a court order permitting access and the conditions relating to such access.
11. At that time the Bar Council consulted the Law Officers but for whatever reason the matter was not referred to the then Advisory and Finance Committee for consideration of the preparation of legislation.
  12. In 2013, the Bar again revisited this matter and reviewed the earlier Sub-Committee's conclusions. The review confirmed that difficulties were now even more commonplace. Further, it noted that some parties had requested a significant payment in return for agreeing a way-leave to keep and maintain services. The Bar also noted access to services, especially in town areas, present further problems as these may run beneath several properties before reaching the public main service, and it is sometimes impossible to be sure about beneath whose properties they run.

### **HM Procureur's Assessment**

13. HM Procureur supports the Bar Council's general view that a statutory regime is required to fully overcome the issues identified. In setting out his advice as to the scope and operation of such a regime, HM Procureur underlines that Guernsey's property law is strongly influenced by customary law. He also reviewed the approaches adopted in a number of other jurisdictions. HM Procureur's analysis of the issues which need to be addressed is set out in Appendix 1.
14. In setting out his recommendations, HM Procureur has identified a number of issues which the new legislation will need to cover in order to balance the Island's existing property laws against an increasing need to provide a remedy where good neighbourliness has not prevailed for whatever reason, namely:
  - (a) Should the rights be enshrined by statutory conferment or confirmation of their existence and enforceability in law as general perpetual rights, or should they be obtainable upon application to a court or other authority? If the latter, should the court or other authority be authorised to grant only temporary rights, for specific works, or might it be appropriate to grant permanent rights for certain works?
  - (b) Should rights relate to existing structures only or should access to develop and maintain new developments also be permitted? Should the ambit of permissible works extend to improvement?
  - (c) In what circumstances might it be appropriate to provide for payment of compensation or other financial recompense to the owner of the land which is the subject of the access right?

- (a) *Should the rights be enshrined by statutory conferment or confirmation of their existence and enforceability in law as general perpetual rights, or should they be obtainable upon application to a court or other authority? If the latter, should the court or other authority be authorised to grant only temporary rights, for specific works, or might it be appropriate to grant permanent rights for certain works?*

15. In considering this issue, HM Procureur has reviewed the approaches adopted in other jurisdictions and concluded that there is a clear distinction between party (jointly owned) and non-party boundary features and between such features (walls, gables, etc) and services. HM Procureur has also underlined the need to balance the Island's ancient Coutume in respect of property rights against considerations under the Human Rights (Bailiwick of Guernsey) Law, 2004.

16. HM Procureur has drawn a distinction between a boundary wall or feature that is jointly owned and so the maintenance will invariably be of benefit to both parties. He concludes,

*“In the hopefully very unusual circumstance of obstructiveness by one party it seems entirely reasonable to confirm by statute that the mutual rights exist and extend to repair and maintenance; whilst requiring a person proposing to enter and undertake work on neighbouring land based on this entitlement to give reasonable written notice to the neighbour concerned; and stipulating that the neighbour should be entitled to apply to the Court for orders. This, in my assessment, would provide important reassurance of rights in relation to party walls and other boundary features, for intending purchasers for example, alongside appropriate judicial oversight in cases of disagreement.”*

17. In his analysis of the issues, HM Procuruer has identified that access to services which in most cases are likely to be located underground and may cross one or more neighbours' land and in many cases the exact route for the services may be unknown before the commencement of any essential work. HM Procureur's analysis in respect of services raises a number of issues in respect of Guernsey's customary law and, in particular, the absence of any route for the acquisition of rights to keep services in another person's land,

*“Unlike boundary features, the services in question must ex hypothesi be physically located in another's land: either they were installed in another's land in the first place (presumably in the vast majority of cases with that other's acquiescence or agreement, albeit unrecorded); or the land was in common ownership at the time of installation, but that in which they were laid has subsequently been conveyed into separate ownership from that which they serve, without reserving appropriate rights in title. That different historical context appears to me to strengthen very significantly the argument for the existence of a right for the benefit of the land served to keep and maintain the services, and axiomatically of a corresponding obligation on the land through which they run not to disturb them and to*

*permit reasonable access for their maintenance etc. But it must be acknowledged that the position in customary law is even more doubtful in the context of services, which would have been little developed under the coutume; and importantly, Guernsey customary law, unlike the common law of other jurisdictions referred to in this letter, does not permit the acquisition of rights to keep services in other people's land by any prescriptive process – i.e. without title or by virtue of statute. Accordingly the case for statutory conferment or recognition of such rights and corresponding obligations seems considerably stronger in the case of services than with reference to non-party boundary features. After much anxious consideration I have concluded that it is right to endorse the view expressed on behalf of the Guernsey Bar that, in respect of services in situ at the date of commencement of the new Law only, an entitlement to have, keep, and exercise access to maintain the same in land belonging to other persons should be conferred by statute. To ensure a proper balance of rights and interests, I further recommend that the Law should:*

- a) require a person proposing to enter and undertake work on neighbouring land based on that entitlement to give reasonable written notice to the neighbour(s) concerned, and provide that the neighbour(s) should be entitled to apply to the Court for orders such as those mentioned with reference to question e in paragraphs 20 to 23 [of the Appendix to this Report]; and further in this particular context*
- b) afford, to an owner of property made subject by the Law to that entitlement, a limited right to apply to the Court for an order approving of such works to the service as are necessary for its protection and future accessibility or authorising its re-location elsewhere on his property where necessary to permit the reasonable development of, or other work proposed to be undertaken on, the property, and an order for a contribution from the owner of the service towards the reasonable costs incurred.*

*These arrangements in combination would again, in my assessment, provide important reassurance of rights in relation to services, for intending purchasers for example, alongside appropriate judicial oversight in cases of disagreement and protection of the interests of owners of land through which such services run.”*

18. In his recommendations to the Policy Council, HM Procureur concludes that, with the exception of services::

*“... a middle course would provide the best solution for Guernsey – a solution which does not go so far as to enshrine in statute the existence and enforceability of access rights as general perpetual rights; but which could in appropriate circumstances provide landowners, and importantly would-be property purchasers, with a somewhat greater measure of reassurance than merely an opportunity to seek a permission order as and when the need might arise. It is that:*

- *A person wishing to access land belonging to another in order to carry out works necessary for the reasonable enjoyment of that first person's property should be expressly enabled and required to obtain permission by way of a Royal Court Order.*
- *If the applicant satisfies the Court (to the civil standard<sup>1</sup>) that the proposed works are necessary for the reasonable enjoyment of the applicant's property and cannot be successfully undertaken without the proposed access (or could only so be undertaken with significant added difficulty and/or expense), there should be a presumption in favour of granting the permission sought, rebuttable only upon the respondent satisfying the Court (to the same standard) that to do so would cause him damage, loss of enjoyment or other significant prejudice to such an extent as to outweigh the interest of the applicant in being allowed to undertake the work.*
- *Whilst such an order might be sought and granted in respect of a particular one-off project at or during a specified time and on terms specifically tailored to that particular project, an order may also be made for a specified period or in perpetuity, at specified intervals or as required, but always on notice, and on specified terms.*

*Statutory recognition of rights in respect of existing services, with a framework for Court settlement of disagreements, seems best calculated to reflect and respect both:*

- *Our ancient Coutume's emphasis on real property rights: The right to enjoyment of one's own land without disturbance, with its reflection in maxims such as nul servitude sans titre, is held in tension with the necessity, to ensure that very enjoyment, of reasonable access to other people's land, which is recognised in concepts such as destination de père de famille; the whole as developed, balanced, and applied by the Seigneurial or Royal Courts; and*
- *Our modern commitment to human rights: The rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms and Guernsey's own Human Rights Law, such as peaceful enjoyment of possessions, respect for a person's private and family life and respect for his home, interestingly produce similar tensions between legitimate expectations of non-disturbance and necessary access for reasonable enjoyment; underpinned by principles such as necessity and proportionality in a democratic society and subject to a guaranteed entitlement, in the determination of rights and obligations, to a fair and public hearing by an independent and impartial tribunal."*

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<sup>1</sup> i.e. on the balance of probabilities

19. In respect of services, HM Procureur recommends a separate statutory entitlement,

*“... to have, keep, repair and maintain (but not to improve) services in and over neighbouring land which are in situ at the date of commencement of the new Law. Corollary to entry in order to exercise that entitlement (to repair or maintain) must in my judgment be a requirement for written notice, and a right for the affected neighbour(s) to apply for orders in the same terms as may be attached to access orders.”*

20. The Policy Council accepts HM Procureur’s advice and agrees that a middle ground approach would be best for Guernsey, i.e. a regime which does not go so far as to enshrine in statute the existence and enforceability of access rights as general perpetual rights but which could, in appropriate circumstances, provide landowners with a remedy to afford them access onto a neighbour’s land to undertake essential repair. It also concurs with HM Procureur’s advice regarding the need for a separate provision relating to access to services in light of the customary law issues he has highlighted. The Policy Council agrees that such an approach should also overcome the difficulties experienced by would-be purchasers by providing a greater measure of reassurance than merely an opportunity to seek a permission order as and when the need might arise.

- (b) *Should rights relate to existing structures only or should access to develop and maintain new developments also be permitted? Should the ambit of permissible works extend to improvement?***

21. In reaching a conclusion of the extent of such access rights, HM Procureur considered the approach adopted in England and Wales, namely that access is restricted to works necessary for the preservation of existing structures against the more permissive regimes in New South Wales and Tasmania. His advice to the Policy Council concluded:

*“Our coutume is historically assiduous in its protection of property rights; property rights are of little value without the ability to maintain reasonable enjoyment of the land and buildings in which they exist, and it seems entirely consistent with the coutume that such protection should extend to the right to execute works necessary to preserve that enjoyment; but in my view it is unlikely that rights of entry would have been readily recognised in order to allow new building, and probably not for significant enhancement of existing structures either.*

*More recent influences such as the Human Rights Convention and Law tend in this context to be more explicitly rooted in protecting peaceful enjoyment of, but also respect for, people’s property, including specifically their homes; the jurisprudence around these rights-based régimes asserts that the protections thereby afforded are not to be theoretical but practical; and that in turn suggests a need for some give-and-take as between neighbouring land owners to enable real and effective enjoyment of the property of each,*

*without compelling one to accept disproportionate interference by the other.*

*In my judgment, a requirement to obtain Court permission can, and in a modern society respectful of reciprocal rights and freedoms ought to, afford some scope for enlarging the sphere within which the coutume would have been likely to permit access to neighbouring land; but an almost unrestricted régime such as that apparently adopted in New South Wales could risk too radical a departure of emphasis away from that coutume, which is certainly not required by, and may despite the margin of appreciation run counter to, modern human rights principles.”*

22. HM Procureur has concluded that Guernsey’s legislation should broadly follow the approach adopted in Tasmania. His reason is that, without some limitation on the scope of works permissible under an order, there could be a risk that vulnerable neighbours could find themselves persuaded by a forceful landowner to accept arrangements which the Court would be unlikely to endorse.
23. HM Procureur recommends that the Court’s powers should generally be limited to what is adjudged reasonably necessary for preservation. Whilst, HM Procureur’s view is that an order should not extend to access related to new construction or the installation of new services, he has proposed that there should be an express provision for improvement of existing structures and services, by way of alteration or adjustment, and for their renewal, including exceptionally through demolition or removal and replacement.
24. The Policy Council supports HM Procureur’s conclusions and is satisfied that the Royal Court would act as an appropriate “gate-keeper” under a more permissive regime to ensure that vulnerable parties are protected from any undue pressure to allow access for work which could be against their best interests.
- (c) ***In what circumstances might it be appropriate to provide for payment of compensation or other financial recompense to the owner of the land which is the subject of the access right?***
25. The various regimes reviewed by HM Procureur all make some provision for the owner of land subject to an access order to receive a measure of financial recompense in certain situations (e.g. for damage caused during the course of authorised entry). Further, most include the reassurance of some security provided by the applicant for compliance with the terms of the order. Some of these approaches also allow the neighbour to recover any professional fees or expenses reasonably incurred and for the court to include a condition relating to the payment or giving by the applicant of security.
26. HM Procureur has advised the Policy Council that he believes the proposed legislation should include similar provisions. The Policy Council fully accepts this advice and agrees that the inclusion of the above recompense and security

provisions should encourage parties to arrive at a neighbourly agreement rather than default to the Royal Court for an access order.

In his advice to the Policy Council, HM Procureur has identified three areas where the question of whether compensation should be available is less clear cut, namely compensation for:

- Financial loss
- Enhanced value of the applicant's land
- Nuisance or inconvenience to the respondent.

27. HM Procureur concludes that the legislation should include the following discretionary powers:

- *Financial loss* – to assess any significant financial loss (e.g. in value of property or otherwise) and include the payment of compensation as a condition of an access order.
- *Enhanced value of the applicant's land* - where the work facilitated by an access order leads to enhancement in value significantly in excess of that attributable simply to the feature's preservation, to pay compensation to the party allowing access.
- *Nuisance or inconvenience to the respondent* – to award compensation where the Court considers it just to make the order despite its potential to occasion “substantial loss of privacy or other substantial inconvenience”.

28. The Policy Council again agrees with HM Procureur's conclusions and recommends that the proposed legislation should include a discretionary power for the Royal Court to award compensation in the circumstances set out above where the Court concludes that it is fair and just to do so.

### **Consultation with the Law Officers**

29. As indicated above, this Report has been prepared following consideration of recommendations from HM Procureur. The Policy Council has consulted with HM Procureur in the preparation of this Report and he has confirmed that the recommendations reflect his advice.

### **Other Consultation**

30. The Policy Council has consulted with the Treasury and Resources Department and, in particular, States Property Services, regarding these proposals. Their response has been positive and they have expressed the view that the proposed legislation will assist them in managing the maintenance of properties in States ownership.

31. The Legal Aid Administrator has advised that it does not appear that legal aid in England and Wales is available for applications under the Access to Neighbouring Land Act 1992. The decision whether such applications would be covered by legal aid in Guernsey would rest with the Policy Council on the advice of the Legal Aid Administrator. The Legal Aid Administrator has advised that there may be cases where in the interests of justice legal aid should be available but, as with all legal aid awards the decision would be subject to the person satisfying the relevant means and merits tests. At this stage it is difficult to say how this new legislation may impact on the overall legal aid budget but the inclusion of means and merits testing should enable any additional costs to be carefully managed and controlled within its powers.
32. Further indicated in paragraphs 10, 11 and 12, the Bar has had an opportunity to comment on the construction and scope of the proposed legislation. The Policy Council has liaised with representatives of the Bar who have confirmed that the proposals as set out in this Report should overcome the majority of matters relating to the access to neighbouring land they are increasingly being asked to resolve. The Bar has indicated that it welcomes the proposed legislation.

### **Financial and Resource Management**

33. The proposed legislation is likely to increase the workload for the Royal Court as the legislation will confer a central rôle on the Royal Court. At this stage, it is difficult to assess how many applications may be made but a land owner should only resort to seeking an access order where it has proven impossible to negotiate agreement in a neighbourly manner or to resolve disagreement, whether through an access order or by stipulating terms for the exercise of rights in respect of existing services or where the particular circumstances call for delicate judgment.
34. HM Procureur has consulted the Bailiff, on behalf of the Royal Court, and he has indicated that the proposed solution will inevitably result in some increase of the business before the Court which may require the provision of additional resources. However, any additional costs could be offset by levying Court fees for such applications.
35. Where somebody needs to apply to the Royal Court for an access order there will be additional costs to him or her, e.g. Court fees, legal costs and potentially any costs incurred by his neighbour and such compensation as the Court may award. Whilst these costs may be significant (especially for a private householder) the potential cost of not being able to undertake essential repairs may be significantly more.
36. The Policy Council is mindful that under the Rules of Procedure (Rule 15(2)), any proposition which may have the effect of increasing revenue expenditure requires an indication of how such an increase could be funded. As regards the impact of the proposals on the Legal Aid budget in particular, the Policy Council concurs with the Legal Aid Administrator's opinion, as highlighted in paragraph



31 above, that it is not possible, prior to the necessary legislation being drafted, to assess with any certainty the impact of the proposals on the Legal Aid budget.

37. Subject to the States' decision to support this report's recommendations, it is the Policy Council's intention to consider the draft legislation at the earliest opportunity in order to ascertain any impact on the Legal Aid budget. Should the proposed legislation have the likely effect of increasing revenue expenditure, the Policy Council will return to the States as soon as practicable, identifying as clearly as possible under the circumstances, the additional resources required, together with proposals for funding such an increase. The Policy Council will also consult with the Royal Court and report to the States regarding the level of fees that the Royal Court intends to introduce for such applications; reporting whether such fees will entirely cover the consequential resource implications on the Court's budget.
38. Apart for the possibility of additional work from the Courts and an increase in Legal Aid expenditure, the Policy Council believes that the proposals are unlikely to result in any other additional costs for the States as the legislation principally relates to an area of private law. However, as the States have a large property portfolio there may be occasions when the States will benefit from the availability of access orders.

### **Human Rights Compliance**

39. As indicated in HM Procureur's comments in paragraphs 14, 15 and 17 the proposed legislation will be compatible with human rights under the European Convention for the Protection of Human Rights and Fundamental Freedoms (as given effect by the Human Rights (Bailiwick of Guernsey) Law, 2000).

### **Compliance with the Principles of Good Governance**

40. In preparing this Report, the Policy Council has been mindful of the States Resolution to adopt the six core principles of good governance as defined by the UK Independent Commission on Good Governance in Public Services (Billet d'État IV of 2011). The Policy Council believes that all of the proposals in this Report comply with those principles.

### **Conclusion**

41. The Policy Council believes that the proposals set out in this Report offer a measured and proportionate solution to a difficulty that is arising with increasing frequency. However, as indicated at the beginning of the Report, the proposals are not intended to stop neighbours reaching agreements between themselves. Indeed, applying to the Royal Court should be seen as "remedy of last resort" and the Court will require the party seeking an order to demonstrate that, for whatever reason good neighbourliness has not prevailed, and the essential repairs cannot be undertaken without an access order. Insofar as the concerns raised by those advising on property transactions and the interests of commercial

lenders, it is anticipated that the availability of a statutory route to secure access should mitigate the requirement to have such agreements in place before consenting to the conveyance.

42. The Policy Council accepts HM Procureur's advice that the proposals offer a sympathetic and proportionate balance between Guernsey's customary law heritage, human rights considerations and a practical and affordable route for land owners to undertake essential work on their property where access is an issue.
43. The proposals have the support of those most closely involved in resolving the problems that have given rise to the paper.
44. Finally, although not within the scope of the proposals in this Report, the intention is that the relevant States Departments will bring a further report to the States regarding improved statutory rights for the Island's utility companies for the laying and maintenance of services in private land.

### **Recommendations**

45. The Policy Council recommends the States to:
  - a) Approve the proposals to allow the owner of a property access to a neighbouring property to undertake essential repairs when access has otherwise been refused, as set out in paragraphs 14 to 28 of this Report; and
  - b) Direct the preparation of legislation to give effect to recommendation (a) above.

J P Le Tocq  
Chief Minister

24<sup>th</sup> March 2014

G A St Pier  
R Domaille  
D B Jones

A H Langlois  
K A Stewart  
M H Dorey

R W Sillars  
P A Luxon  
M G O'Hara

## APPENDIX 1 – HM Procureur’s Analysis

### Analysis

1. I am wholly supportive of the general view espoused by the original sub-committee that some legislative régime ought to be introduced to give appropriate reassurance to landowners who may need to access neighbouring land in order to maintain boundary features and buildings and other structures so close to a boundary as reasonably to require access in order to maintain them. I also concur with those taken by the subsequent working party that recent concern about party-owned features, and similar issues around services running through adjacent, and detached but proximate, land, ought also to be addressed by statute. In considering what type of régime may be most appropriate, whilst due regard should be had to our historical and customary law context, it is interesting and helpful to recognise that in the development of the legislation of other jurisdictions where these matters have been addressed, albeit that differing conclusions have been reached, very much the same issues have been examined. Those issues are:
  - a. Should the rights be enshrined by statutory conferment or confirmation of their existence and enforceability in law as general perpetual rights, or should they be obtainable upon application to a court or other authority?
  - b. If the latter, should the court or other authority be authorised to grant only temporary rights, for specific works, or might it be appropriate to grant permanent rights for certain works?
  - c. Should rights relate to existing structures only or should access to develop and maintain new developments also be permitted?
  - d. Should the ambit of permissible works extend to improvement?
  - e. In what circumstances might it be appropriate to provide for payment of compensation or other financial recompense to the owner of the land which is the subject of the access right?
2. The conclusions which have been arrived at in some other jurisdictions are tabulated in the appendix to this letter. It will be noted that, although there are some significant differences between the régimes, what they all have in common is that if a person wishes to access his neighbour’s land in order to carry out work on his own property (or land, in some cases), an application needs to be made to an appropriate court or other authority; and permissions are granted on a discretionary basis with relevant conditions attached. Where the approaches differ is primarily in terms of the types of work permitted on or from neighbouring land, from the broadly worded ambit of New Zealand – to do any desirable thing in relation to the applicant’s land – to the restricted City of Toronto régime – to undertake renovation works only, but not including the total replacement of an existing structure.

3. In order to understand the reasoning behind some of the differences in approach, particularly with regard to the issues of discretionary permissions or automatic rights of access, preservation works or improvement works, and compensation, it is instructive to refer to the following reports which formed the basis of subsequent legislation:
  - England and Wales – The Law Commission Report “*Rights of Access to Neighbouring Land*” – ‘the E&W Law Commission report’.
  - New South Wales – Law Reform Commission Report “*Right of Access to Neighbouring Land*” – ‘the NSW Law Reform Commission report’.

**Automatic rights or discretionary permissions (specific or enduring) (questions a & b above)?**

4. The E&W Law Commission envisaged ‘formidable difficulties’ with an “automatic right” of access:

*“...it would be necessary to define the circumstances in which, and the methods by which, the automatic right could lawfully be exercised in any given case. The legislation would, for example, have to define the scope of the work in respect of which the right existed and, although the formulation of such a definition need not present great difficulty (it is also an essential element in a discretionary scheme), the question whether a particular operation fell within that definition would often not be readily answered without resort to litigation.”.*

5. Although the main argument put forward in support of an automatic right was its simplicity, the Commission were doubtful as to whether, in reality, this would be the case since *“the scope, incidence and extent of an automatic right would have to be spelled out. There would have to be many exceptions and qualifications.”.*
6. The Commission concluded that whereas *“the concept of a comprehensive right founders on its inflexibility”*, a discretionary scheme would enable the court to take into account the particular circumstances of each case.
7. The NSW Law Reform Commission recognised that while the privacy and security of property owners should not be unreasonably eroded, in some cases it would be necessary for the law to intervene and assist a person seeking to gain access to a neighbouring property, where that neighbour’s consent was not forthcoming. However, it was emphasised that *“such a step should be exercised with caution, because in the Commission’s view the grant of a right of access should not be automatic. Rather, it is something to be determined in each case, giving careful consideration to balance the interests of the affected landowners.”.*

8. There may be thought to be a balance of argument in favour of a specific court order for particular works as recommended by the sub-committee in the context of non-party boundary features. I am also of course conscious that compliance with the Human Rights (Bailiwick of Guernsey) Law, 2000 and the Convention to which the Law gives effect must be ensured: The rights to respect for private and family life and home and to peaceful enjoyment of possessions are perhaps particularly relevant. It is arguable that widely-framed automatic rights of access to neighbouring land would be more likely to attract claims of non-compliance with Article 8 and Article 1 of the First Protocol than discretionary rights, especially in the absence of easily accessible judicial oversight. Further, I recognise the weight of learned opinion from across the world which has been nervous of enshrining perpetual and automatic rights; and I cannot feel entirely confident that such an apparently innovative solution would not risk causing injustice in some boundary cases. That said, I do not perceive the same problem in addressing the more recently raised concern about party-owned features. These being, *ex hypothesi*, jointly owned, and their maintenance being in most cases of benefit to both parties, in the hopefully very unusual circumstance of obstructiveness by one party it seems entirely reasonable to confirm by statute that the mutual rights exist and extend to repair and maintenance; whilst requiring a person proposing to enter and undertake work on neighbouring land based on this entitlement to give reasonable written notice to the neighbour concerned; and stipulating that the neighbour should be entitled to apply to the Court for orders such as those mentioned with reference to question e in paragraphs 20 to 23 below (albeit that elements such as adjustment for enhanced value would be less likely to arise). This, in my assessment, would provide important reassurance of rights in relation to party walls and other boundary features, for intending purchasers for example, alongside appropriate judicial oversight in cases of disagreement.
  
9. The area which causes much more difficulty is the fairest approach to services. That is because, unlike boundary features, the services in question must *ex hypothesi* be physically located in another's land: either they were installed in another's land in the first place (presumably in the vast majority of cases with that other's acquiescence or agreement, albeit unrecorded); or the land was in common ownership at the time of installation, but that in which they were laid has subsequently been conveyed into separate ownership from that which they serve, without reserving appropriate rights in title. That different historical context appears to me to strengthen very significantly the argument for the existence of a right for the benefit of the land served to keep and maintain the services, and axiomatically of a corresponding obligation on the land through which they run not to disturb them and to permit reasonable access for their maintenance etc. But it must be acknowledged that the position in customary law is even more doubtful in the context of services, which would have been little developed under the coutume; and importantly, Guernsey customary law, unlike the common law of other jurisdictions referred to in this letter, does not permit the acquisition of rights to keep services in other people's land by any prescriptive process – ie without title or by virtue of statute. Accordingly the case for statutory conferment or recognition of such rights and corresponding

obligations seems considerably stronger in the case of services than with reference to non-party boundary features. After much anxious consideration I have concluded that it is right to endorse the view expressed on behalf of the Guernsey Bar that, in respect of services in situ at the date of commencement of the new Law only, an entitlement to have, keep, and exercise access to maintain the same in land belonging to other persons should be conferred by statute. To ensure a proper balance of rights and interests, I further recommend that the Law should:

- c) require a person proposing to enter and undertake work on neighbouring land based on that entitlement to give reasonable written notice to the neighbour(s) concerned, and provide that the neighbour(s) should be entitled to apply to the Court for orders such as those mentioned with reference to question e in paragraphs 20 to 23 below; and further in this particular context
- d) afford, to an owner of property made subject by the Law to that entitlement, a limited right to apply to the Court for an order approving of such works to the service as are necessary for its protection and future accessibility or authorising its re-location elsewhere on his property where necessary to permit the reasonable development of, or other work proposed to be undertaken on, the property, and an order for a contribution from the owner of the service towards the reasonable costs incurred.

These arrangements in combination would again, in my assessment, provide important reassurance of rights in relation to services, for intending purchasers for example, alongside appropriate judicial oversight in cases of disagreement and protection of the interests of owners of land through which such services run, .

10. I have concluded that in all other cases a middle course would provide the best solution for Guernsey – a solution which does not go so far as to enshrine in statute the existence and enforceability of access rights as general perpetual rights; but which could in appropriate circumstances provide landowners, and importantly would-be property purchasers, with a somewhat greater measure of reassurance than merely an opportunity to seek a permission order as and when the need might arise. It is that:

- a person wishing to access land belonging to another in order to carry out works necessary for the reasonable enjoyment of that first person's property (the ambit of which is discussed below) should be expressly enabled and required (unless he already has a sufficient proprietary right in title or conferred by statute, or, of course, simply reaches agreement with the other landowner) to obtain permission by way of a Royal Court Order;
- if the applicant satisfies the Court (to the civil standard) that the proposed works are necessary for the reasonable enjoyment of the applicant's property and cannot be successfully undertaken without the proposed access (or could only so be undertaken with significant added difficulty and/or expense), there should be a presumption in favour of granting the permission sought, rebuttable only upon the respondent satisfying the Court (to the same standard) that to do so would

cause him damage, loss of enjoyment or other significant prejudice to such an extent as to outweigh the interest of the applicant in being allowed to undertake the work;

- whilst such an order might be sought and granted in respect of a particular one-off project at or during a specified time and on terms specifically tailored to that particular project, where the reasonable enjoyment of the applicant landowner's property in a safe and satisfactory condition requires that he has periodic access to that other land, an order may be made conferring the necessary permission for a specified period or in perpetuity, at specified intervals or as required, but always on notice, and on specified terms (as discussed below).

11. Statutory recognition of rights in respect of existing services, with a framework for Court settlement of disagreements, plus the middle course recommended above to deal with other cases seems to me best calculated to reflect and respect both:

- Our ancient Coutume's emphasis on real property rights: The right to enjoyment of one's own land without disturbance, with its reflection in maxims such as *nul servitude sans titre*, is held in tension with the necessity, to ensure that very enjoyment, of reasonable access to other people's land, which is recognised in concepts such as *destination de père de famille*; the whole as developed, balanced, and applied by the Seigneurial or Royal Courts; and
- Our modern commitment to human rights: The rights protected by the European Convention for the Protection of Human Rights and Fundamental Freedoms and Guernsey's own Human Rights Law, such as peaceful enjoyment of possessions, respect for a person's private and family life and respect for his home, interestingly produce similar tensions between legitimate expectations of non-disturbance and necessary access for reasonable enjoyment; underpinned by principles such as necessity and proportionality in a democratic society and subject to a guaranteed entitlement, in the determination of rights and obligations, to a fair and public hearing by an independent and impartial tribunal.

**Ambit of works: existing or new structures; preservation or improvement (questions c & d)?**

12. The Bar Council sub-committee's 1997 report reflected concerns that should rights of access extend beyond what is needed for the preservation of existing buildings etc, the owner of a property might effectively compel his neighbour to permit access in order to build a new structure or improve an existing one contrary to his neighbour's wishes.
13. The E&W Law Commission focussed on preservation rather than improvement or new building, in part at least because the complaints which had given rise to the Commission's deliberations related solely to work of the former nature. "To

*extend the scheme further would be to propose a remedy that was wider than the ill which it was designed to cure". The Commission's access scheme also depended on relevant work being "reasonably necessary" for the preservation of land. "While many categories of works may be described as "reasonably necessary", the necessity in the case of preservation work relates to protecting and maintaining existing property, whereas in other cases the only "necessity" is one for making changes to, and thereby enhancing the value of, that property."*

14. Although the Commission did not consider that the access scheme should extend to improvements and alterations *per se*, it was recognised that some such may be merely incidental to the necessary preservation work and should be permitted, for example, *"if a window has to be replaced, it should be permissible to replace it with a better one: apart from anything else, an improvement of this sort may reduce the need for access in the future."*
15. The Commission did not contemplate new structures where none had previously existed, but did suggest that in rare cases it might be just to allow the demolition and rebuilding of a structure, for example *"where a building had become altogether unsafe or had deteriorated (perhaps because access had not previously been available) to a point at which rebuilding was the only course practicable"*. However, the Commission considered that the reconstruction of a house or other building following its total demolition would be unlikely to be categorised as preservation work in most circumstances, and accordingly that access under the scheme for such work should not normally be obtainable.
16. The report of the NSW Law Reform Commission notes that the Tasmanian Commission considered the English approach too restrictive and that it had provided insufficient reasons why new building work should be excluded. The Tasmanian Commission had recommended that *"the kind of work that an access order could authorise should be left in the hands of the tribunal determining the matter, which could take into account all of the relevant circumstances and considerations and impose any restriction that was necessary"*.
17. The NSW Law Reform Commission recommended that the Tasmanian approach be adopted as it provided the court with sufficient discretion to address the possibly competing rights of adjacent and proximate landowners. *"Generally speaking, the Commission sees no need to limit the type of work for which access is sought, if the court subjects such access to reasonable and appropriate conditions and safeguards."*
18. In the result, although both the Tasmanian and New South Wales legislation appear more extensive than that of England and Wales in specifically empowering the courts to make access orders in respect of improvement, alteration and renewal works; that of Tasmania places such works in the context of what is adjudged reasonably necessary for preservation but that of New South Wales does not so stipulate, and expressly contemplates works of construction.



19. There is some force in the view that the legislation of England and Wales may prove insufficiently flexible to do justice in all situations, but I am mindful of the concerns held by the Guernsey Bar Council's sub-committee, and of the potential for exploitation and/or unjust enrichment if the régime did not impose any restraint at all on the ambit of permissible works. It might be thought that the requirement for a Court order (the proposed statutory right to maintain services would not be relevant to new structures or improvements) would avoid all chance of exploitation, and that any enrichment could be satisfactorily shared between the neighbouring landowners through minor nuancing of the compensation provisions discussed below; but there would remain at least a small possibility of a forceful landowner persuading a more vulnerable neighbour to accept arrangements which the Court would be unlikely to endorse. Our coutume is historically assiduous in its protection of property rights; property rights are of little value without the ability to maintain reasonable enjoyment of the land and buildings in which they exist, and it seems entirely consistent with the coutume that such protection should extend to the right to execute works necessary to preserve that enjoyment; but in my view it is unlikely that rights of entry would have been readily recognised in order to allow new building, and probably not for significant enhancement of existing structures either. More recent influences such as the Human Rights Convention and Law tend in this context to be more explicitly rooted in protecting peaceful enjoyment of, but also respect for, people's property, including specifically their homes; the jurisprudence around these rights-based régimes asserts that the protections thereby afforded are not to be theoretical but practical; and that in turn suggests a need for some give-and-take as between neighbouring land owners to enable real and effective enjoyment of the property of each, without compelling one to accept disproportionate interference by the other. In my judgment, a requirement to obtain Court permission can, and in a modern society respectful of reciprocal rights and freedoms ought to, afford some scope for enlarging the sphere within which the coutume would have been likely to permit access to neighbouring land; but an almost unrestricted régime such as that apparently adopted in New South Wales could risk too radical a departure of emphasis away from that coutume, which is certainly not required by, and may despite the margin of appreciation run counter to, modern human rights principles. Again, therefore, I have concluded that a middle course would be best in the Guernsey context, and in these respects I believe that an adaptation of the Tasmanian legislation would provide the most appropriate way forward. Thus, as in England and Wales, the Court permission régime would be circumscribed by what is adjudged reasonably necessary for preservation, and should not extend to new construction or the installation of new services; but, as in Tasmania, express provision should be made for improvement of existing structures, and the improvement of services, by way of alteration or adjustment, and for their renewal, including exceptionally through demolition or removal and replacement.

### Compensation and financial recompense (Question e above)

20. The régimes studied in the course of preparing this letter all make some provision for the owner of land subject to an access order to receive some measure of financial recompense in stated eventualities, and in most cases to have the reassurance of some security provided by the applicant for compliance with the terms of the order. If those terms are not complied with then the entry becomes to that extent a trespass which, even under the customary law of Guernsey, gives rise to an independent right of action if resultant loss can be established. But it is universally agreed between the jurisdictions that physical damage resulting from an authorised entry onto neighbouring land must be compensated, even if not attributable to a breach of those terms (for example damage resulting from a simple accident) and it is in my view axiomatic that a Guernsey access régime should so provide. It is also appropriate in my view, that in common with most of the jurisdictions, any professional fees and expenses reasonably incurred by the respondent should be recoverable as part of any order; and that the payment or giving by the applicant of security should be an available option (not an automatic universal requirement) where judged by the Court to be a proper condition of a particular order being granted. The more difficult issues, concerning which there is not unanimity of approach between the jurisdictions, concern financial loss, enhanced value of the applicant's land, and nuisance or inconvenience to the respondent.

### Compensation for financial loss

21. The E&W Law Commission originally took the view that compensation should be payable in respect of financial loss to the respondent resulting from the authorised entry or resultant work. Although those who responded to the consultation were apparently in general agreement with that proposal, the Commission's view was subsequently modified, "on reflection", so as to distinguish between loss caused by the authorised entry and loss caused by the resultant work. Compensation for loss caused by the exercise of the right of access was in the Commission's view "*plainly right, since it stems directly from an act of interference with [the respondent's] free use of his own land*". However, loss stemming from the work carried out to the applicant's property was considered to be in a different category: such work, provided it was lawful, would not ordinarily give rise to a claim in damages for financial loss (such as diminution in value) to a neighbour if completed without the need to access the neighbour's land; and the Commission pronounced that it should make no difference in principle that the work was carried out pursuant to an access order. This revised view appears to be reflected in the 1992 Act which in this context provides for compensation to be awardable in respect of loss caused "by reason of the entry", not by reason of the authorised works (although see below on enhanced value in some circumstances). With great deference to the Law Commission, whilst their logic doubtless has some academic merit, some respondents may well regard their refined legal distinction, developed on reflection, as unreasonable in practical outcome, and their initial proposal which was widely accepted in consultation as rather more fair. Given especially that

my recommendations would if accepted allow a slightly greater degree of improvement than in England and Wales (albeit within the context of preservation) I am minded to agree with their first widely accepted proposal and suggest that the Court should have discretion to assess any significant financial loss (in value of property or otherwise) and include the payment of compensation therefor as a condition of an access order.

Financial adjustment for enhanced value of applicant's property:

22. The E&W Law Commission dismissed representations that in assessing compensation the Court should take into account any enhancement to the value of the applicant's property, partly because it was thought such increase in value may be difficult to assess, and partly because it was not the purpose of their scheme to reduce any benefit to the applicant "of being able to repair his property". That is understandable when expressed in such terms; and if seen as compensation it is difficult to disagree with their statement that "in no sense could B's loss be measured by A's gain". Here, though, the England and Wales Act parts company from the Law Commission at least in some circumstances, by providing for the Court making an access order, taking into account inter alia "the likely financial advantage of the order to the applicant" including the net increase in the value of his property, to require payment to the respondent of a "sum by way of consideration for the privilege of entering" the respondent's land. As with the facility to award compensation for financial loss resulting from the work, this power (which is, and in my view should be, a power within the Court's discretion rather than an absolute right) appears to me to enable a just sharing of benefit, as part of achieving balance between the competing interests of applicant and respondent. Under the 1992 Act the power is not exercisable where the application is in respect of works for the preservation of residential land, presumably because of the Act's emphasis on permissible improvements being only incidental and eschewing of compensation for resultant financial loss to the respondent. Again, given especially that my recommendations would if accepted allow a slightly greater degree of improvement than in England and Wales (albeit within the context of preservation) I recommend that the Guernsey régime should include such a provision, at the discretion of the Court, where the work facilitated by an access order leads to enhancement in value significantly in excess of that attributable simply to the feature's preservation.

Compensation for nuisance or inconvenience:

23. The Access to Neighbouring Land Act 1992 (England and Wales) provides for compensation to be claimed where the respondent suffers a substantial loss of privacy or other substantial inconvenience as a result of the access order being granted. This provision also departs from the E&W Law Commission's view

that “*there is no general right to claim compensation for inconvenience caused by the act of another person and our conclusion is that the scheme should not permit compensation to be received for inconvenience, whether that inconvenience stems from the exercise of a right of access granted by the court or from the doing of the relevant work*”. The Commission considered that it would be at best difficult and maybe impossible, to quantify inconvenience; and that a certain level of inconvenience is a feature of everyday life; observing that, “*Should the likely inconvenience appear intolerable, that would be a ground on which the order might be refused.*”. That, of course, is quite so, and it should be noted that loss of privacy or inconvenience solely as a result of an access order being granted is excluded from the compensation provisions in New South Wales and Tasmania. I would respectfully join the E&W Law Commission in counselling against a system where payment is available to the respondent (whether called compensation or not) merely because an access order is granted, with the privacy and inconvenience inherently attendant thereon. But I see no reason to advise against, and good cause to support, inclusion in the Guernsey régime of discretion to award compensation where the Court considers it just to make the order despite its potential to occasion “substantial loss of privacy or other substantial inconvenience”.

#### Services in situ at commencement

24. As discussed at paragraph 9 above, I am recommending a separate statutory entitlement to have, keep, repair and maintain (but not to improve) services in and over neighbouring land which are in situ at the date of commencement of the new Law. Corollary to entry in order to exercise that entitlement (to repair or maintain) must in my judgment be a requirement for written notice, and a right for the affected neighbour(s) to apply for orders in the same terms as may be attached to access orders as suggested in paragraphs 20 to 23.

**(NB The Treasury and Resources Department notes that the Policy Council will be returning to the States if the proposed legislation will result in an increase in Royal Court and Legal Aid expenditure.)**

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 24<sup>th</sup> March, 2014, of the Policy Council, they are of the opinion:-

1. To approve the proposals to allow the owner of a property access to a neighbouring property to undertake essential repairs when access has otherwise been refused, as set out in paragraphs 14 to 28 of that Report.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

## TREASURY AND RESOURCES DEPARTMENT

### AURIGNY AIR SERVICES – AIRCRAFT ACQUISITIONS FOR ALDERNEY SERVICES

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

26<sup>th</sup> March 2014

Dear Sir

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

- 1.1 Air transport links are essential to the long-term social and economic sustainability of Alderney. These links are currently operated by Aurigny Air Services using its elderly fleet of Trislander aircraft.
- 1.2 There is now a pressing need for the replacement of these aircraft, particularly as regulatory requirements will significantly curtail their operations in adverse weather conditions with effect from October of this year. Following an evaluation and trial operation, Aurigny has concluded that the aircraft should be replaced with the Dornier 228, initially using second-hand models, but moving to new aircraft in the medium term, subject to decisions having been made about the future of the runway facilities in Alderney. These replacement aircraft will provide a better customer experience, will have two pilots, will be more resilient to the crosswind issues experienced in Alderney and will offer a number of important operational and maintenance benefits and opportunities to Aurigny.
- 1.3 Aurigny has concluded that the optimum solution is to purchase, rather than lease, the replacement aircraft, borrowing the necessary funds to do so. This Report therefore recommends that the Treasury and Resources Department is authorised to facilitate any borrowing for this purpose, either by providing guarantees for borrowing from third parties or by offering the airline a loan from the States General Investment Pool. However, in the event that it does not prove possible or cost effective to source aircraft for purchasing and a lease option has to be considered, then it also recommends that the Department should be authorised to act as a guarantor to such leases, should such guarantees be required.

## **2. Background**

- 2.1 Without doubt, air transport links to Guernsey and Southampton are essential to Alderney. They are fundamental to the long-term economic sustainability of the Island and tourism, in particular, is heavily dependent on such air links. They maintain important links for the Island's population, supporting business and helping to attract inward investment, maintaining friend and family contacts, as well as access to social services such as medical facilities and treatments and access to training and education outside the Island.
- 2.2 Through its ownership of Aurigny Air Services, the States of Guernsey have been able to secure the operation of these lifeline links to Alderney. Analysis of the route economics provided by Aurigny has demonstrated clearly to the Department that these services are not viable as commercial operations. Indeed, in 2014, the Company anticipates a loss of just over £900,000 on its Alderney services.
- 2.3 Links from Alderney to Guernsey and Southampton have been operated by Aurigny using Britten-Norman Trislander aircraft, which entered service with the carrier in the early 1970s. The aircraft can also be quickly converted at very short notice for operation of medevac services from Alderney. Although only three aircraft are required to operate the existing schedules, the airline currently maintains an operational fleet of five Trislanders because of the maintenance and reliability issues associated with such ageing aircraft. The average age of the fleet is 37 years old, with the youngest aircraft being 32 and the two eldest both being 39 (including the venerable Joey).

## **3. Replacement Requirements**

- 3.1 Whilst the Trislander airframes themselves do still have scope for continued operation (in terms of their flight hours and take off/landing cycles), Aurigny has identified a number of factors which, in some cases, mean there is now a pressing need for their replacement.
- 3.2 The first and most significant of these relates to the changing regulatory environment in which the airline operates. In common with all UK airlines, Aurigny is being migrated from the existing Civil Aviation Authority (CAA) regulatory framework to that of the European Aviation Safety Agency (EASA). Under EASA regulations, Aurigny has been advised by its CAA Flight Operations Inspector that the Trislander aircraft will need to be fitted with weather radar equipment with effect from October, 2014, if it wishes to continue flying the aircraft when there is a risk of thunderstorms and other hazardous weather en-route (that such equipment can detect). Aurigny has confirmed that there is no practical means of fitting this equipment to the aircraft and, even if there were, it would be prohibitively expensive. Without the equipment, the Trislanders will be prohibited from flying when there is a risk of such adverse weather conditions. Recent changes to the way the airline operates the

Trislanders, moving from Visual Flight Rules (“VFR”) to Instrument Flight Rules (“IFR”) makes the availability of weather radar essential, as pilots are often operating in cloud and unable to take avoiding action from thunderstorm cells, hail and heavy showers. The reliability of the airline’s scheduled and medevac operations to and from Alderney will therefore be significantly compromised from this winter in the event that the Trislanders remain in service.

- 3.3 Maintenance of the Trislander fleet is becoming increasingly problematic and costly for Aurigny. The principal problem relates to the availability of spare parts, coupled with the very limited support available from the Type Certificate Holder, Britten-Norman, whose business has long since developed into other areas. In some cases, the airline has outstanding orders for spare parts that have been unfulfilled for over two years. Maintenance of the 15-seat piston-engined Trislander is very labour intensive, costing £470 per flying hour. This matches the hourly maintenance costs for the airline’s 72-seat ATR-72 turboprops, resulting in much higher costs per seat.
- 3.4 In addition to the above, the Trislander fleet is subject to a biennial heavy maintenance check (SB190) under the terms of a service bulletin issued by Britten-Norman. This involves a structural inspection of the airframe to check for corrosion and make any repairs. These checks cost in the region of £150,000 per aircraft and, as such, add significantly to the Trislanders’ periodic maintenance costs. They are a function of the aircraft’s age and are unusual in that they must be undertaken on a fixed calendar frequency every other year. More modern aircraft are generally subject to a “progressive” maintenance regime based on the aircraft’s usage rather than fixed calendar points and, as such, the frequency of such inspections is much reduced and considerably less expensive. It is Aurigny’s intention to retire the existing Trislanders from service before they are next required to go through the SB190 check, thereby avoiding total expenditure of around £750,000 before the end of 2015.

#### **4. Replacement Options**

- 4.1 At the present time, there are only a very limited number of short take-off and landing aircraft that can operate into Alderney Airport and seat either the same or more passengers<sup>1</sup> as the Trislander. Following an evaluation of three different aircraft types<sup>2</sup>, Aurigny has concluded that the Dornier 228 presents the best option in both the short to medium term and, subject to any decisions about the future runway facilities at Alderney Airport, also the long-term. These conclusions were reinforced by a two-week trial operation of the Dornier 228 on its scheduled services from Alderney by Aurigny in November 2013.

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<sup>1</sup> Aurigny’s Trislanders have seating for 16 passengers. Payload restrictions mean that, historically, it has only sold 15 seats on its inter-island operations and 14 seats on its services to Southampton. These have now been reduced to 14 and 13 respectively following the recent introduction of temporary runway operating restrictions at Alderney Airport.

<sup>2</sup> Dornier 228; Let L-410; and, Twin Otter



- 4.2 From a passenger perspective, the Dornier 228 will offer a substantially improved and more comfortable experience, offering a more spacious and much quieter cabin, with aisle access and air conditioning. These features were met with a very positive response from those passengers that flew on the aircraft during the trial last year, particularly on the longer sectors between Alderney and Southampton. The operating speed of the aircraft is also much greater than the Trislander. Whilst this will have limited impact on the shorter inter-island sectors, it will reduce journey times by around one third (15 minutes) on flights between Alderney and Southampton, offering much improved connectivity to the Island.
- 4.3 Operationally, the aircraft will offer significant advantages for the airline. One of the most important of these is that the aircraft is able to operate at airfields in crosswinds some 10 knots higher than the Trislanders, which will reduce the number of costly weather related cancellations and delays experienced by passengers and the airline and which have been compounded by the recent temporary increased runway operating restrictions at Alderney Airport.
- 4.4 The Dornier will be able to carry 4 more passengers per sector than the Trislander. Whilst this number is small in itself, it does represent an increase of over 20% compared to the Trislanders and will help Aurigny manage peak travel demand for travel to and from Alderney more effectively. Importantly, the Dornier can also be configured easily for medevac flights and has a sizeable cargo door that will permit pallets to be loaded if required.
- 4.5 Aurigny believes that the range, comfort, speed and capacity of the Dornier will also provide it with more flexibility in the deployment of its aircraft fleet. There will be opportunities to deploy them occasionally on some of its regional services at times of the day or week when demand does not justify the use of the larger ATR-72, for instance on the Bristol route. The aircraft will also enable Aurigny to explore new route opportunities. Specifically, it is intending to launch its new services to London City Airport with the Dornier.
- 4.6 Operation of the Dornier involves two flight-deck crew. Whilst the Trislanders have thus far been exempted from the requirement for a two crew operation, Aurigny has advised the Department that there are no other passenger aircraft seating more than nine passengers in Europe that are permitted to fly with a single pilot. Its Trislanders are only certificated for single crew operations as a result of the cockpit layout and the airline has advised that they cannot be modified for two-crew. Aurigny's expectation is that, in the interests of safety, it may be required to move all of its operations to a two-crew basis. This reduces the risks associated with a single pilot being taken ill on a flight, particularly on the longer sectors to Southampton. It also provides the reassurance of a second member of crew being able to cross-check and verify the safe operation of the aircraft, particularly in more challenging and difficult circumstances, such as night time operations in inclement weather conditions.

## **5. Aircraft Acquisition and Finance Options**

- 5.1 Aurigny anticipates a requirement for three Dornier 228 aircraft. Whilst two aircraft can operate the majority of the schedules from Alderney to Guernsey and Southampton, a third is partially required to fully service its anticipated flight schedule at certain times of the year. The third will also be used to provide additional ad-hoc capacity to Alderney at peak periods, such as Alderney week, as well as establishing new services, such as that to London City Airport. This aircraft will also maintain operational integrity for the core schedules during periods of aircraft maintenance.
- 5.2 The Dornier 228 is currently only available in limited numbers on the second hand market. Aurigny has sourced two aircraft in operation with a European operator and has agreed initial terms, subject to shareholder approval, for an option to purchase them. This option expires in June of this year. In the event that this option is not exercised, Aurigny anticipates considerable difficulty in sourcing sufficient alternative aircraft before October, when its Trislander operations will become restricted in the absence of weather radar equipment.
- 5.3 Aurigny has negotiated a “package” deal that will involve not just the aircraft acquisitions, but also the existing operator (an EASA Part 147 approved training organisation) supporting Aurigny in its transition to this aircraft type, including crew and engineer training, the development of its operating manuals and the transfer of the aircraft onto Aurigny’s air operating certificate (AOC). As part of the arrangement, the Dorniers will be operated under the existing operator’s AOC until such time as Aurigny is ready to make an application to the CAA to transfer them to its own in late 2014, once training etc has been completed. As such, the arrangement will provide Aurigny with a sensible transition plan from the Trislander to the Dornier at a time when it is also focusing on a number of other strategic initiatives, including the introduction its new Embraer 195 jet aircraft and the development of its code-sharing arrangement with Blue Islands.
- 5.4 Full details of the terms of the acquisition must be kept confidential for reasons of commercial confidentiality. However, the Department can confirm that the “package” will involve Aurigny paying in the region of £1m for each aircraft. Aurigny estimates that, after taking into account depreciation and interest payments, the cost of purchasing the aircraft would be £160,000 per annum less than leasing them. In addition, from a cash flow perspective, leasing is a less attractive option, as it involves making payments in advance into a reserve account which is held as security by the lessor for future scheduled maintenance events. As such, Aurigny’s preference is to purchase the aircraft outright. However, Aurigny is still exploring options for the acquisition of a third aircraft and so it cannot be ruled out that it may only be possible to acquire this on a lease basis.
- 5.5 Aurigny anticipates that its operation of second hand Dorniers would be an interim option. Availability of the aircraft on the second hand market is limited

and the two aircraft it has been able to source are over 20 years old. In the medium term, it would propose to operate a mix of new and used aircraft, replacing two of the three second hand Dorniers with new ones at an estimated purchase cost of between £4m to £6m per aircraft (depending on discount negotiated over list price, configuration and detailed specification). However, given current production levels and schedules, these are unlikely to be available until mid-2016 at the earliest. Subject to the provisions of paragraph 5.6 below, any decision to acquire new aircraft would be subject to the acceptance by the Department of a detailed business case from Aurigny, which would include an assessment of the merits at that time of leasing or purchasing them.

- 5.6 The Department is obviously conscious that, following consideration of the Requête<sup>3</sup> on the airfield in Alderney, the States has directed the Policy Council to report in 2014 with recommendations which, once implemented, will likely contribute to stimulating Alderney's economy and reversing depopulation. When undertaking this work, the States has also directed the Policy Council to have particular regard to the case for any work at the airfield which may be necessary to make it suitable for the next 25 years or will contribute to stimulating Alderney's economy and reversing depopulation. In the event that this process results in proposals for changes to the airfield that will materially alter the size of aircraft that are able to land and take off there, no decision will be taken on the purchase of new aircraft until a proper evaluation of the alternatives has been made.
- 5.7 The Department is therefore proposing that it should be authorised to facilitate, if necessary through guarantees, Aurigny borrowing the necessary funds from third parties to purchase the Dorniers. Alternatively, it could borrow from the States General Investment Pool. In the event that it does prove necessary to lease any aircraft that are required, it is also proposing that the Department is provided with the authority to guarantee such a lease.

## **6. Financial Overview**

- 6.1 The Department has previously advised the States that Aurigny has been writing down the value of the Trislanders (and their spare parts) in its accounts since 2012<sup>4</sup>. In the interests of prudence, it intends to write-off the final residual value of the aircraft (currently estimated at approximately £400,000) during the current financial year. Notwithstanding the above, it is aware that there remains a small market for Trislander equipment in some parts of Africa and South America and there may be some limited opportunities to realise some value from their sale there following their withdrawal from service in Guernsey.
- 6.2 From an operational perspective, the Dorniers will have a positive impact in significantly reducing the airline's maintenance costs. Fuel costs are also expected to reduce. Conversely, there will be a negative impact on staff costs

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<sup>3</sup> Article 9 of Billet d'Etat I of 2014

<sup>4</sup> Para 5.26 of Billet d'Etat XXI of 2013

with the transition to a two-crew operation on the flight deck. However, once all of the different operating variables have been taken into consideration, Aurigny is estimating that the financial performance of the Alderney routes will be improved by approximately £100,000 per annum following their introduction.

- 6.3 The States has previously accepted<sup>5</sup> that the recapitalisation of the Aurigny Group should be classified as a category A pipeline project for Capital Reserve funding. Subject to the States' consideration of the Department's next report on the States Capital Investment Portfolio, the Department intends to report to the States with proposals for the recapitalisation of the Group in the last quarter of this year. In the meantime, the Department has been working with Aurigny (and the other States Trading Companies) to review and establish clear shareholder objectives for the company. In the case of Aurigny, a main objective will be for the company to reach a breakeven position. Assuming the States agrees to recapitalise Aurigny and as a result of the strategic initiatives and investments currently being undertaken by the airline, including its proposals for the replacement of the Trislander fleet, its projections continue to show that it will reach a breakeven position and begin making modest profits from 2016 onwards.
- 6.4 In submitting these proposals, the Department has been concerned that the requirement to seek the States' authority for the funding arrangements for capital expenditure by Aurigny (and, indeed, the other States owned entities and trading companies) does not sit at all comfortably with the commercial environment within which it operates and where there are often requirements to operate in confidence and with reasonable speed. These commercial imperatives are often incompatible with the States' processes. In this specific case, Aurigny's ability to negotiate sensibly for the acquisition of suitable second-hand aircraft in a market where supply is very limited has been hampered by the delay of up to 3 months that can be involved in seeking States' approval. As part of its mandate, the States has made the Department responsible for the shareholder function in respect of the States Trading Companies and other States-owned entities. As such, it believes that this should extend to making decisions about capital expenditure (and the associated funding arrangements) that require shareholder approval.
- 6.5 The Department is also conscious that the current process means that expenditure of this nature by the States-owned entities and trading companies is often approached in a piecemeal fashion. These organisations finance much of their capital expenditure through borrowing and the States has a responsibility to manage that overall debt in a structured manner to ensure the most cost-effective sources of finance are in place. The current piecemeal approach to such matters risks the Island not securing the best terms for such finance and means the Island is not making optimum use of its excellent credit standing and strength.

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<sup>5</sup> Resolution 1 of Article 1 of Billet d'Etat XIX of 2013

- 6.6 Accordingly, the Department would like to flag its intention to consider and review the issues set out in sections 6.4 and 6.5 above and to report back to the States on the matter as part of a review of the funding and governance arrangements for all borrowing by public or quasi-public bodies.

## **7. Resources and Principles of Good Governance**

- 7.1 There are no additional financial or staff resource implications for the States associated with the proposals and recommendations set out in this Report.
- 7.2 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 d'Etat IV of 2011). The Department believes that the proposals in this Report comply with those principles.

## **8. Recommendations**

- 8.1 The Department therefore recommends the States:
- a) to authorise the Treasury and Resources Department to facilitate any borrowing by Aurigny Air Services to finance the purchase of such aircraft as are required to operate Aurigny's services to and from Alderney by providing guarantees for borrowing from third parties or by offering the Group a loan from the States General Investment Pool; and
  - b) to authorise the Treasury and Resources Department to facilitate the leasing by Aurigny Air Services of such aircraft as are required to operate Aurigny's services to and from Alderney including if required, acting as guarantor to the lease.

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)

**(NB The Policy Council supports the Report and is of the view that the proposals comply with the Principles of Good Governance.)**

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 26<sup>th</sup> March, 2014, of the Treasury and Resources Department, they are of the opinion:-

1. To authorise the Treasury and Resources Department to facilitate any borrowing by Aurigny Air Services to finance the purchase of such aircraft as are required to operate Aurigny's services to and from Alderney by providing guarantees for borrowing from third parties or by offering the Group a loan from the States General Investment Pool.
2. To authorise the Treasury and Resources Department to facilitate the leasing by Aurigny Air Services of such aircraft as are required to operate Aurigny's services to and from Alderney including if required, acting as guarantor to the lease.

## TREASURY AND RESOURCES DEPARTMENT

### DOUBLE TAXATION ARRANGEMENTS WITH THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS AND THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES

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

3<sup>rd</sup> March 2014

Dear Sir

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

This Report proposes that the States declare, by Resolution, that Double Taxation Arrangements (“DTAs”) entered into with the Government of the Republic of Mauritius (“Mauritius”) (on 17<sup>th</sup> December 2013) and the Government of the Republic of Seychelles (“Seychelles”) (on 27<sup>th</sup> January 2014) 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 DTA is for two governments to agree procedures for the prevention of double taxation – that is, taxation under the laws of both territories in respect of the same income.
- 2.2. Prior to 2008, Guernsey had only two DTAs – one with the United Kingdom (which came into force in 1952) and one with Jersey (which came into force in 1955). Since 2008, several DTAs, albeit restricted in nature, have been signed with other countries, such as Australia, Ireland and New Zealand. More recently, further comprehensive DTAs have been signed – the first with Malta, in March 2012, and during 2013 with Hong Kong, the Isle of Man, Jersey (a revision of the 1955 agreement), Luxembourg, Qatar and Singapore.
- 2.3. When Guernsey negotiates with a country in relation to Agreements for the exchange of tax information, the opportunity is also taken to discuss, with the country concerned, ways of preventing certain types of double taxation and related issues.

- 2.4. After the signing of TIEAs with Mauritius and Seychelles, it was suggested that Guernsey also consider entering into full DTAs with these territories, including an exchange of information Article to the equivalent standard of Article 26 of the OECD's Model Tax Convention on Income and on Capital. A DTA that contains such an article is recognised as meeting international standards on exchange of information.
- 2.5. As a consequence, on 17<sup>th</sup> December 2013, Guernsey signed an Agreement Between The States of Guernsey and the Government of the Republic of Mauritius for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income and, on 27<sup>th</sup> January 2014, an Agreement Between The States of Guernsey and the Government of the Republic of Seychelles for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income. Copies of the Agreements are appended to this Report.
- 2.6. Particular points of note, in relation to the Agreements, are:
- (i) In July 2010, Article 7 ("Business Profits") of the OECD Model Tax Convention was updated. At the time of the negotiations with Mauritius and Seychelles, both jurisdictions expressed a wish to follow the pre-July 2010 text (albeit that Guernsey's preference is now to negotiate on the basis of the July 2010 revised OECD Model text). It is not considered that there is any significant fiscal implication arising from this, however.
  - (ii) Article 10 ("Dividends"), in both Agreements, prescribes that the general principle is that dividends are taxed in the place of residence of the recipient. This is in accord with Guernsey's domestic tax regime under which dividends paid to a non-resident of Guernsey do not suffer deduction of Guernsey tax.
  - (iii) Article 11 ("Interest"), in both Agreements, prescribes that the general principle is that interest is taxed in the place of residence of the recipient. This accords with Guernsey's domestic tax regime under which interest paid to a non-resident of Guernsey, does not suffer Guernsey tax.
  - (iv) Article 12 ("Royalties"), in the Mauritius Agreement, prescribes that the general principle is that Royalties are taxed in the place of residence of the recipient. This accords with Guernsey's domestic tax regime the general principle of which is that royalties paid to a non-resident of Guernsey, do not suffer Guernsey tax.

In the Seychelles Agreement, whilst the general principle is that Royalties are taxed in the place of residence of the recipient, the territory in which the royalties arises also retains the right to tax, but only up to a tax rate of 5%. It is not considered that the effects of the royalties Article in the Seychelles Agreement will have a material effect on Guernsey's revenues.



- (v) Under Article 17 (“Pensions”) of both Agreements, pensions payable from one territory to a resident of the other territory may be taxed in both territories, subject to their respective domestic laws allowing this (and any double taxation that arises as a result may be relieved in accordance with Article 22 - “Elimination of Double Taxation”).

It is not considered that the effects of the pensions Article in these Agreements will have a material effect on Guernsey’s revenues.

The remainder of the Agreements broadly follow the OECD Model.

- 2.7. 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).

### **4. Resource Implications**

- 4.1. Whilst the Agreements with Mauritius and Seychelles set out measures for the avoidance of double taxation, as those obligations extend to both parties to each Agreement, it is not anticipated that the Agreements will give rise to any overall significant loss of, or increase to, the revenues of the States.
- 4.2. Whilst the provisions of the Agreements, relating to the prevention of fiscal evasion, do place obligations on the Parties to obtain and exchange information, such obligations already exist, in relation to exchange of information on request, under the existing TIEAs entered into, and so the resource implications for Guernsey in complying with those obligations is not expected to be significant and can be managed within the existing resources available to the Director of Income Tax.

## **5. Recommendation**

The Treasury & Resources Department recommends that the States should ratify the Agreements made with Mauritius and Seychelles, as appended to this Report, so that they have effect in accordance with 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)

Desiring to conclude  
prevention of fiscal

Have agreed

**AGREEMENT**

**BETWEEN**

**THE STATES OF GUERNSEY**

**AND**

1. This Agreement  
Contracting Parties  
involved

**THE GOVERNMENT OF THE REPUBLIC OF MAURITIUS**

**FOR THE AVOIDANCE OF DOUBLE TAXATION AND**

**THE PREVENTION OF FISCAL**

**EVASION WITH RESPECT TO TAXES ON INCOME**

4. This Agreement  
which are intended  
Agreement



The States of Guernsey and the Government of the Republic of Mauritius,

Desiring to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

Have agreed as follows:

**ARTICLE 1**  
**PERSONS COVERED**

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

**ARTICLE 2**  
**TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed on behalf of a Contracting Party or its local authorities, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income.
3. The existing taxes to which this Agreement shall apply are in particular:
  - (a) in Guernsey, income tax;  
(hereinafter referred to as "Guernsey tax");
  - (b) in Mauritius, the income tax;  
(hereinafter referred to as "Mauritius tax").
4. This Agreement shall apply also to any identical or substantially similar taxes which are imposed by either Contracting Party after the date of signature of the Agreement in addition to, or in place of, the existing taxes.
5. The competent authorities of the Contracting Parties shall notify each other of any significant changes which have been made in their respective taxation laws and if it seems desirable to amend any Article of this Agreement, without affecting the general

principles thereof, the necessary amendments may be made by mutual consent of the Parties by means of an Exchange of Notes.

### **ARTICLE 3**

#### **GENERAL DEFINITIONS**

1. In this Agreement, unless the context otherwise requires:
  - (a) the term "Guernsey" means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies therein and in the islands of Alderney and Herm;
  - (b) the term "Mauritius" means the Republic of Mauritius and includes:
    - (i) all the territories and islands which, in accordance with the laws of Mauritius, constitute the State of Mauritius;
    - (ii) the territorial sea of Mauritius; and
    - (iii) any area outside the territorial sea of Mauritius which in accordance with international law has been or may hereafter be designated, under the laws of Mauritius, as an area, including the Continental Shelf, within which the rights of Mauritius with respect to the sea, the sea-bed and sub-soil and their natural resources may be exercised;
  - (c) the term "business" includes the performance of professional services and of other activities of an independent character;
  - (d) the terms "a Contracting Party" and "the other Contracting Party" mean Guernsey or Mauritius, as the context requires;
  - (e) the term "company" means any body corporate or any entity which is treated as a body corporate for tax purposes;
  - (f) the term "competent authority" means:
    - (i) in the case of Guernsey, the Director of Income Tax of the States of Guernsey or his delegate; and
    - (ii) in the case of Mauritius, the Director-General of the Mauritius Revenue Authority or his authorised representative;
  - (g) the term "enterprise" applies to the carrying on of a business;

- (h) the terms "enterprise of a Contracting Party" and "enterprise of the other Contracting Party" mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
- (i) the term "international traffic" means any transport by a ship or aircraft operated by an enterprise which has its place of effective management in a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
- (j) the term "national" means:
  - (i) in the case of Guernsey, any individual who has a place of abode in Guernsey and possesses British citizenship, and any legal person, partnership or association deriving its status as such from the laws in force in Guernsey;
  - (ii) in the case of Mauritius, any individual having the citizenship of Mauritius and any legal person, partnership (société) or association deriving its status as such from the laws in force in Mauritius;
- (k) the term "person" includes an individual, a company, a trust and any other body of persons which is treated as an entity for tax purposes; and
- (l) the term "tax" means Guernsey tax or Mauritius tax, as the context requires.

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 Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that 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 Party, is liable to tax therein by reason of his domicile, residence, place of management, control or any other criterion of a similar nature and also includes that Party and any local authority thereof. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that 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 in accordance with the following rules:

- (a) he shall be deemed to be a resident only of the Party in which he has a permanent home available to him. If he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
- (b) if the Party in which he has his centre of vital interests cannot be determined, or if he does not have a permanent home available to him in either Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
- (c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national;
- (d) if he is a national of both Parties or of neither of them, the competent authorities of the Contracting Parties shall settle 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 Party in which its place of effective management is situated.

## **ARTICLE 5**

### **PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2. The term "permanent establishment" shall include:

- (a) a place of management;
- (b) a branch;
- (c) an office;
- (d) a factory;
- (e) a workshop;

- (f) a warehouse, in relation to a person providing storage facilities for others;
  - (g) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources; and
  - (h) an installation or structure used for the exploration of natural resources.
3. The term "permanent establishment" likewise encompasses:
- (a) a building site or construction, installation or assembly project, or supervisory activities in connection therewith only if the site, project or activity lasts more than 12 months;
  - (b) the furnishing of services including consultancy services by an enterprise of a Contracting Party through employees or other personnel engaged by the enterprise for such purpose in the other Contracting Party, provided that such activities continue for the same or a connected project for a period or periods aggregating to more than 9 months within any 12 month period.
4. Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:
- (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;
  - (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character; and
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.



5. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 6 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Contracting Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **ARTICLE 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting Party from immovable property, (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.

2. The term "immovable property" shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

## **ARTICLE 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other Party but only so much of them as is attributable to that permanent establishment.

2. Subject to the provisions of paragraph 3, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Contracting Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment including executive and general administrative expenses so incurred, whether in the Party in which the permanent establishment is situated or elsewhere.

4. In so far as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.

5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **SHIPPING AND AIR TRANSPORT**

1. Profits of an enterprise 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. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting Party in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting Party of which the operator of the ship is a resident.

3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft shall include profits:

- (a) derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic; and
- (b) derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits described in paragraph 1.

4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

**ARTICLE 9**  
**ASSOCIATED ENTERPRISES**

1. Where:

- (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or
- (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting Party and an enterprise of the other Contracting Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party - and taxes accordingly - profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting Parties shall if necessary consult each other.

**ARTICLE 10**  
**DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party shall, if the recipient is the beneficial owner of the dividends, be taxable only in that other Party.

2. The term "dividends" as used in this Article means income from shares, "jouissance" shares or "jouissance" rights, mining shares, founders' shares or other rights, not being debt-claims, participating in profits, as well as income from other

corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting Party of which the company making the distribution is a resident.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident through a permanent establishment situated therein and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

4. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company except in so far as such dividends are paid to a resident of that other Party or in so far as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on undistributed profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

## **ARTICLE 11**

### **INTEREST**

1. Interest arising in a Contracting Party and paid to a resident of the other Contracting Party shall, if the recipient is the beneficial owner of the interest, be taxable only in that other Party.

2. The term "interest" as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article. The term "interest" shall not include any item which is treated as a dividend under the provisions of Article 10 of this Agreement.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **ROYALTIES**

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party shall, if the recipient is the beneficial owner of the royalties, be taxable only in that other Party.

2. The term "royalties" as used in this Article means payments of any kind received as a consideration for the use of, or the right to use, any copyright of literary, artistic or scientific work (including cinematograph films and films, tapes or discs for radio or television broadcasting), any patent, trade mark, design or model, computer programme, plan, secret formula or process, or for information concerning industrial, commercial or scientific experience.

3. The provisions of paragraph 1 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise through a permanent establishment situated therein and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties paid, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such a case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

### **ARTICLE 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.

2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise), may be taxed in that other Party.

3. Gains from the alienation of ships or aircraft operated in international traffic or 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.

4. Gains from the alienation of any property other than that referred to in paragraphs 1, 2 and 3 shall be taxable only in the Contracting Party of which the alienator is a resident.

### **ARTICLE 14**

### **DEPENDENT PERSONAL SERVICES**

1. Subject to the provisions of Articles 15, 17, 18 and 19, 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 Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.

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

- (a) the recipient is present in the other Party for a period or periods not exceeding in the aggregate 183 days in any 12-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 Party; and
- (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.

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 15**

### **DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.

## **ARTICLE 16**

### **ENTERTAINERS AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by 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 other Contracting Party, may be taxed in that other 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 Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

3. Notwithstanding the provisions of paragraphs 1 and 2, income derived by a resident of a Contracting Party from activities, referred to in paragraph 1 or 2, performed in the other Contracting Party under a cultural agreement or arrangement between the Contracting Parties shall be exempt from tax in the Contracting Party in which the activities are exercised if the visit to that Party is wholly or substantially supported by funds of either Contracting Party, a local authority or a public institution thereof.

## **ARTICLE 17**

### **PENSIONS**

Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration (including lump sum payments) paid to a resident of a Contracting Party in consideration of past employment, or self-employment and social security pensions, shall be taxable only in that Contracting Party. However, such pensions and other similar remuneration may also be taxed in the other Contracting Party if they arise in that Party.

## **ARTICLE 18**

### **GOVERNMENT SERVICE**

1. (a) Salaries, wages, and other similar remuneration, other than a pension, paid by a Contracting Party or a local authority or statutory body thereof to an individual in respect of services rendered to that Party or authority or body shall be taxable only in that 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 that Party and the individual is a resident of that Party who:
  - (i) is a national of that Party; or
  - (ii) did not become a resident of that Party solely for the purpose of rendering the services.

2. (a) Any pension including a lump sum payment paid by, or out of funds created by, a Contracting Party or a local authority or statutory body thereof to an individual in respect of services rendered to that Party or authority or body shall be taxable only in that Party.
  - (b) However, such pension shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Party.
3. The provisions of Articles 14, 15, 16 and 17 shall apply to salaries, wages and other similar remuneration, and to pensions, in respect of services rendered in connection with a business carried on by a Contracting Party, or a local authority or statutory body thereof.

## **ARTICLE 19**

### **PROFESSORS AND TEACHERS**

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting Parties for a period not exceeding two years for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that Party and who is, or immediately before such visit was, a resident of the other Contracting Party shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned Party, provided that such remuneration arises from sources outside that Party.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

## **ARTICLE 20**

### **STUDENTS AND BUSINESS APPRENTICES**

A student or business apprentice who is present in a Contracting Party solely for the purpose of his education or training and who is, or immediately before being so present was, a resident of the other Contracting Party, shall be exempt from tax in the first-mentioned Party on payments arising from sources outside that first-mentioned Party for the purposes of his maintenance, education or training.

**ARTICLE 21**  
**OTHER INCOME**

1. Subject to the provisions of paragraph 2 of this Article, items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income other than income from immovable property as defined in paragraph 2 of Article 6 if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such a case, the provisions of Article 7 shall apply.

**ARTICLE 22**  
**ELIMINATION OF DOUBLE TAXATION**

Double taxation shall be eliminated as follows:

1. In the case of Guernsey:
  - (a) Where a resident of Guernsey derives income which, in accordance with the provisions of this Agreement, may be taxed in Mauritius, Guernsey shall allow as a deduction from the Guernsey tax on the income of that resident, an amount equal to the income tax paid in Mauritius. Such deduction shall not, however, exceed that part of the Guernsey tax, as computed before the deduction is given, which is attributable to the income which may be taxed in Mauritius.
  - (b) Where in accordance with any provision of the Agreement income derived by a resident of Guernsey is exempt from tax in Guernsey, Guernsey may nevertheless, in calculating the amount of Guernsey tax on the remaining income of such resident, take into account the exempted income.
2. In the case of Mauritius:
  - (a) Where a resident of Mauritius derives income from Guernsey the amount of tax on that income payable in Guernsey in accordance with the

provisions of this Agreement may be credited against the Mauritius tax imposed on that resident.

- (b) Where a company which is a resident of Guernsey pays a dividend to a resident of Mauritius who controls, directly or indirectly, at least 5% of the capital of the company paying the dividend, the credit shall take into account (in addition to any Guernsey tax for which credit may be allowed under the provisions of subparagraph (a)) the Guernsey tax payable by the first-mentioned company in respect of the profits out of which such dividend is paid.

Provided that any credit allowed under this paragraph shall not exceed the Mauritius tax (as computed before allowing any such credit), which is appropriate to the profits or income derived from sources within Guernsey.

## **ARTICLE 23**

### **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 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. Stateless persons who are residents of a Contracting Party shall not be subjected in either 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 the Party concerned in the same circumstances, in particular with respect to residence, are or may be subjected.

3. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Contracting Party to grant to residents of the other Contracting Party any personal allowances, reliefs and

reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.

4. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 4 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party. Similarly, any debts of an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable capital of such enterprise, be deductible under the same conditions as if they had been contracted to a resident of the first-mentioned Party.

5. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of that first-mentioned Party are or may be subjected.

6. In this Article the term "taxation" means taxes which are the subject of this Agreement.

#### **ARTICLE 24**

#### **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 Parties, present his case to the competent authority of the Contracting Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that of the Contracting Party of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.

2. The competent authority shall endeavour, if the objection appears to it to be justified and if it is not itself able to arrive at an appropriate 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 the 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 the Agreement.

4. The competent authorities of the Contracting Parties may communicate with each other directly, including through a joint commission consisting of themselves or their representatives, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **ARTICLE 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes of every kind and description imposed on behalf of the Contracting Parties, or of their local authorities, insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Articles 1 and 2.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. Notwithstanding the foregoing, information received by a Contracting Party may be used for other purposes when such information

may be used for such other purposes under the laws of both Parties and the competent authority of the supplying Party authorises such use. For the avoidance of doubt, information shall not be disclosed to any third jurisdiction for any purpose.

3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:

- (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
- (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Contracting Party;
- (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).

4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Contracting Party to decline to supply information solely because it has no domestic interest in such information.

5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

6. For the purposes of this Article, exchange of information on request shall be dealt with in accordance with the Agreement between the Government of the Republic of Mauritius and the States of Guernsey on Exchange of Information on Tax Matters signed in London on the 6<sup>th</sup> day of February of the year 2013. Other forms of exchange of information shall be governed by this Agreement and the competent authorities shall by mutual agreement settle the mode of operation.

**ARTICLE 26**  
**DIPLOMATIC AGENTS AND CONSULAR OFFICERS**

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

**ARTICLE 27**  
**ENTRY INTO FORCE**

1. Each of the Contracting Parties shall notify to the other in writing of the completion of the procedures required by its law for the entering into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

2. The provisions of this Agreement shall have effect:

- (a) in Guernsey, in respect of income for any year of charge beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
- (b) in Mauritius, in respect of income for any income year beginning on or after the first day of January next following the date upon which this Agreement enters into force.

**ARTICLE 28**  
**TERMINATION**

1. This Agreement shall remain in force indefinitely but either of the Contracting Parties may terminate the Agreement, through appropriate channels, by giving to the other Contracting Party written notice of termination not later than the 30 June of any calendar year starting five years after the year in which the Agreement entered into force.



2. In such event the Agreement shall cease to have effect:
- (a) in Guernsey, in respect of income for any year of charge beginning on or after the first day of January next following the date upon which this Agreement enters into force; and
  - (b) in Mauritius, in respect of income for any income year beginning on or after the first day of January next following the calendar year in which such notice is given.

**IN WITNESS WHEREOF** the undersigned, duly authorised thereto, have signed this Agreement in London on this 17th day of December of the year of 2013, in two originals, in the English language.



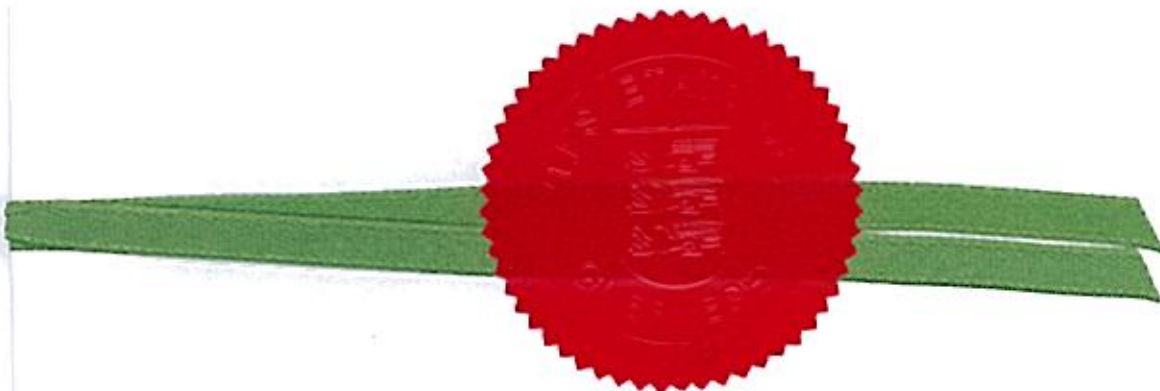
Deputy Kevin Stewart  
Minister for the Commerce &  
Employment Department

**FOR THE STATES OF GUERNSEY**



H. E. Mr. A. Kundasamy  
High Commissioner

**FOR THE GOVERNMENT OF THE  
REPUBLIC OF MAURITIUS**



**AGREEMENT BETWEEN  
THE STATES OF GUERNSEY  
AND  
THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES  
FOR THE AVOIDANCE OF DOUBLE TAXATION  
AND  
THE PREVENTION OF FISCAL EVASION  
WITH RESPECT TO TAXES ON INCOME**

## **SUMMARY OF THE AGREEMENT**

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Article 2	Taxes covered

## **DEFINITIONS**

Article 3	General definitions
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## **TAXATION OF INCOME**

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**SPECIAL PROVISIONS**

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**FINAL PROVISIONS**

Article 27            Entry into force  
Article 28            Termination

**THE STATES OF GUERNSEY**

**AND**

**THE GOVERNMENT OF THE REPUBLIC OF SEYCHELLES,**

**DESIRING** to conclude an Agreement for the avoidance of double taxation and the prevention of fiscal evasion with respect to taxes on income,

**HAVE AGREED** as follows:

## **ARTICLE 1**

### **PERSONS COVERED**

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

## **ARTICLE 2**

### **TAXES COVERED**

1. This Agreement shall apply to taxes on income imposed by or on behalf of a Contracting Party, irrespective of the manner in which they are levied.
2. There shall be regarded as taxes on income all taxes imposed on total income, or on elements of income, including taxes on the total amounts of wages or salaries paid by enterprises.
3. The existing taxes to which the Agreement shall apply are:
  - (a) in the case of Guernsey:
    - (i) income tax;  
(hereinafter referred to as “Guernsey tax”);
  - (b) in the case of Seychelles:
    - (i) the business tax;
    - (ii) the income and non-monetary benefits tax; and
    - (ii) the petroleum income tax;

(hereinafter referred to as “Seychelles tax”).
4. This Agreement shall apply also to any identical or substantially similar taxes that are imposed after the date of signature of the 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 respective taxation laws which may affect matters covered by the Agreement, and if it seems desirable to amend any Article of the Agreement without affecting the general principles thereof, the necessary amendments may be made by mutual consent of the Parties by means of exchange of notes.

### ARTICLE 3

#### GENERAL DEFINITIONS

1. For the purposes of this Agreement, unless the context otherwise requires:
  - (a) the term “Guernsey”, means the States of Guernsey and, when used in a geographical sense, means the islands of Guernsey, Alderney and Herm, and including the territorial sea adjacent to those islands, in accordance with international law, save that any reference to the law of Guernsey is to the law of the island of Guernsey as it applies there and in the islands of Alderney and Herm;
  - (b) the term “Seychelles” means the territory of the Republic of Seychelles, including its exclusive economic zone and continental shelf where Seychelles exercises sovereign rights and jurisdiction in conformity with the provisions of the United Nations Convention on the Law of the Sea;
  - (c) the terms “a Contracting Party” and “the other Contracting Party” mean Guernsey or Seychelles, as the context requires;
  - (d) the term “business” includes the performance of professional services and of other activities of an independent character;
  - (e) the term “company” means any body corporate or any entity that is treated as a body corporate for tax purposes;
  - (f) the term “competent authority” means:
    - (i) in the case of Guernsey, the Director of Income Tax of the States of Guernsey or his delegate;
    - (ii) in the case of Seychelles, the Minister responsible for Finance or an authorised representative of the Minister;
  - (g) the term “enterprise” applies to the carrying on of any business;
  - (h) the terms “enterprise of a Contracting Party” and “enterprise of the other Contracting Party” mean respectively an enterprise carried on by a resident of a Contracting Party and an enterprise carried on by a resident of the other Contracting Party;
  - (i) the term “international traffic” means any transport by a ship or aircraft operated by an enterprise that has its place of effective management in a Contracting Party, except when the ship or aircraft is operated solely between places in the other Contracting Party;
  - (j) the term “national” in relation to a Contracting Party means:

- (i) in the case of Guernsey, any individual who has a place of abode in Guernsey and possesses British citizenship, and any legal person, partnership or association deriving its status as such from the laws of Guernsey;
  - (ii) in the case of Seychelles, any individual possessing the nationality or citizenship of Seychelles and any legal person, partnership or association deriving its status as such from the laws in force in Seychelles;
  - (k) the term “person” includes an individual, a company and any other body of persons that is treated as an entity for tax purposes.
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 laws of that Party for the purposes of the taxes to which the Agreement applies, any meaning under the applicable tax laws of that Party prevailing over a meaning given to the term under other laws of that 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 Party, is liable to tax therein by reason of his domicile, residence, place of management, control or any other criterion of a similar nature, and also includes that Party. This term, however, does not include any person who is liable to tax in that Party in respect only of income from sources in that 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 Party in which he has a permanent home available to him; if he has a permanent home available to him in both Parties, he shall be deemed to be a resident only of the Party with which his personal and economic relations are closer (centre of vital interests);
  - (b) if the 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 Party, he shall be deemed to be a resident only of the Party in which he has an habitual abode;
  - (c) if he has an habitual abode in both Parties or in neither of them, he shall be deemed to be a resident only of the Party of which he is a national;
  - (d) if he is a national of both Parties or neither of them, the competent authorities of the Parties shall settle 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 Party in which its place of effective management is situated.



**ARTICLE 5****PERMANENT ESTABLISHMENT**

1. For the purposes of this Agreement, the term “permanent establishment” means a fixed place of business through which the business of an enterprise is wholly or partly carried on.
2. The term “permanent establishment” includes especially:
  - (a) a place of management;
  - (b) a branch;
  - (c) an office;
  - (d) a factory;
  - (e) a workshop; and
  - (f) a mine, an oil or gas well, a quarry or any other place of extraction of natural resources.
3. A building site, a construction, assembly or installation project or supervisory activity connected therewith constitutes a permanent establishment but only if such site, project or activity continues for a period of more than twelve months.
4. The furnishing of services, including consultancy services, by an enterprise through employees or other personnel engaged by the enterprise for such purpose, constitutes a permanent establishment but only where activities of that nature continue for the same or a connected project within the Contracting Party for a period or periods exceeding in the aggregate 183 days in any twelve month period commencing or ending in the fiscal year concerned.
5. Notwithstanding the preceding provisions of this Article, the term “permanent establishment” shall be deemed not to include:
  - (a) the use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;
  - (b) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;
  - (c) the maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;
  - (d) the maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or of collecting information, for the enterprise;

- (e) the maintenance of a fixed place of business solely for the purpose of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character;
  - (f) the maintenance of a fixed place of business solely for any combination of activities mentioned in subparagraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.
6. Notwithstanding the provisions of paragraphs 1 and 2, where a person – other than an agent of an independent status to whom paragraph 7 applies – is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting Party an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that Party in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 5 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.
  7. An enterprise shall not be deemed to have a permanent establishment in a Contracting Party merely because it carries on business in that Party through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.
  8. The fact that a company which is a resident of a Contracting Party controls or is controlled by a company which is a resident of the other Contracting Party, or which carries on business in that other Party (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

## **ARTICLE 6**

### **INCOME FROM IMMOVABLE PROPERTY**

1. Income derived by a resident of a Contracting Party from immovable property (including income from agriculture or forestry) situated in the other Contracting Party may be taxed in that other Party.
2. The term “immovable property” shall have the meaning which it has under the law of the Contracting Party in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, boats and aircraft shall not be regarded as immovable property.
3. The provisions of paragraph 1 shall apply to income derived from the direct use, letting, or use in any other form of immovable property.

4. The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise.

## **ARTICLE 7**

### **BUSINESS PROFITS**

1. The profits of an enterprise of a Contracting Party shall be taxable only in that Party unless the enterprise carries on business in the other Contracting Party through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits that are attributable to the permanent establishment in accordance with the provisions of paragraph 2 may be taxed in that other Party.
2. Subject to the provisions of paragraph 3 of this Article, where an enterprise of a Contracting Party carries on business in the other Contracting Party through a permanent establishment situated therein, there shall in each Party be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.
3. In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the business of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting Party in which the permanent establishment is situated or elsewhere. However, no such deduction shall be allowed in respect of amounts, if any, paid (otherwise than towards reimbursement of actual expenses) by the permanent establishment to the head office of the enterprise or any of its other offices, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, except in the case of a banking enterprise by way of interest on moneys lent to the permanent establishment. Likewise, no account shall be taken, in the determination of profits of a permanent establishment, for amounts charged (otherwise than towards reimbursement of actual expenses), by the permanent establishment to the head office of the enterprise or any of its other offices, by the way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission for specific services performed or for management, or, except in the case of a banking enterprise, by way of interest on moneys lent to the head office of the enterprise or any of its other offices.
4. Insofar as it has been customary in a Contracting Party to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting Party from determining the profits to be taxed by such an apportionment as may be customary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.
5. No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6. For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.
7. Where profits include items of income which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

## **ARTICLE 8**

### **SHIPPING AND AIR TRANSPORT**

1. Profits 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. If the place of effective management of a shipping enterprise is aboard a ship, then it shall be deemed to be situated in the Contracting Party in which the home harbour of the ship is situated, or, if there is no such home harbour, in the Contracting Party of which the operator of the ship is a resident.
3. For the purposes of this Article, profits derived from the operation in international traffic of ships and aircraft include profits:
  - (a) derived from the rental on a bareboat basis of ships and aircraft if operated in international traffic; and
  - (b) derived from the use, maintenance or rental of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise,

where such rental profits or profits from such use, maintenance or rental, as the case may be, are incidental to the profits described in paragraph 1.
4. The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

## **ARTICLE 9**

### **ASSOCIATED ENTERPRISES**

1. Where:
  - (a) an enterprise of a Contracting Party participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting Party; or
  - (b) the same persons participate directly or indirectly in the management, control or capital of an enterprise of a Party and an enterprise of the other Party,

and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2. Where a Contracting Party includes in the profits of an enterprise of that Party – and taxes accordingly – profits on which an enterprise of the other Contracting Party has been charged to tax in that other Party and the competent authorities of the Contracting Parties agree, after consultation, that all or part of the profits so included are profits which would have accrued to the enterprise of the first-mentioned Party if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other Party shall make an appropriate adjustment to the amount of the tax charged therein on those agreed profits. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Parties shall if necessary consult each other.

## **ARTICLE 10**

### **DIVIDENDS**

1. Dividends paid by a company which is a resident of a Contracting Party to a resident of the other Contracting Party and which are beneficially owned by that resident shall be taxable only in that other Party.
2. Paragraph 1 shall not affect the taxation of the company in respect of the profits out of which the dividends are paid.
3. The term “dividends” as used in this Article means income from shares, “jouissance” shares or “jouissance” rights, mining shares, founders’ shares or other rights, not being debt-claims, participating in profits, as well as income from other corporate rights which is subjected to the same taxation treatment as income from shares by the laws of the Contracting Party of which the company making the distribution is a resident.
4. The provisions of paragraph 1 shall not apply if the beneficial owner of the dividends, being a resident of a Contracting Party, carries on business in the other Contracting Party of which the company paying the dividends is a resident, through a permanent establishment situated therein, and the holding in respect of which the dividends are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
5. Where a company which is a resident of a Contracting Party derives profits or income from the other Contracting Party, that other Party may not impose any tax on the dividends paid by the company, except insofar as such dividends are paid to a resident of that other Party or insofar as the holding in respect of which the dividends are paid is effectively connected with a permanent establishment situated in that other Party, nor subject the company's undistributed profits to a tax on the company's undistributed

profits, even if the dividends paid or the undistributed profits consist wholly or partly of profits or income arising in such other Party.

## **ARTICLE 11**

### **INTEREST**

1. Interest arising in a Contracting Party and which is beneficially owned by a resident of the other Contracting Party shall be taxable only in that other Party.
2. The term “interest” as used in this Article means income from debt-claims of every kind, whether or not secured by mortgage and whether or not carrying a right to participate in the debtor's profits, and in particular, income from government securities and income from bonds or debentures, including premiums and prizes attaching to such securities, bonds or debentures. Penalty charges for late payment shall not be regarded as interest for the purpose of this Article.
3. The provisions of paragraph 1 shall not apply if the beneficial owner of the interest, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the interest arises, through a permanent establishment situated therein, and the debt-claim in respect of which the interest is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
4. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the interest, having regard to the debt-claim for which it is paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## **ARTICLE 12**

### **ROYALTIES**

1. Royalties arising in a Contracting Party and paid to a resident of the other Contracting Party may be taxed in that other Party.
2. However, such royalties may also be taxed in the Contracting Party in which they arise and according to the laws of that Party, but if the beneficial owner of the royalties is a resident of the other Contracting Party, the tax so charged shall not exceed 5% per cent of the gross amount of the royalties.
3. The term “royalties” as used in this Article means an amount, however described or computed, whether periodical or a lump sum, as consideration for:
  - (a) the use of, or right to use any patent, invention, design or model, secret formula or process, trade mark, or other like property or right;

- (b) the use of, or right to use any copyright of a literary, artistic, or scientific work (including films or video tapes for use in connection with television broadcasting or tapes in connection with radio broadcasting);
  - (c) the receipt of, or right to receive, any visual images or sounds, or both, transmitted by satellite, cable, optic fibre, or similar technology in connection with television, radio, or internet broadcasting;
  - (d) information concerning industrial, commercial or scientific experience.
4. The provisions of paragraph 1 and 2 shall not apply if the beneficial owner of the royalties, being a resident of a Contracting Party, carries on business in the other Contracting Party in which the royalties arise, through a permanent establishment situated therein, and the right or property in respect of which the royalties are paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.
  5. Royalties shall be deemed to arise in a Contracting Party when the payer is a resident of that Party. Where, however, the person paying the royalties, whether that person is a resident of a Party or not, has in a Party a permanent establishment with which the right or property in respect of which the royalties are paid is effectively connected, and such royalties are borne by such permanent establishment, then such royalties shall be deemed to arise in the Party in which the permanent establishment is situated.
  6. Where, by reason of a special relationship between the payer and the beneficial owner or between both of them and some other person, the amount of the royalties, having regard to the use, right or information for which they are paid, exceeds the amount which would have been agreed upon by the payer and the beneficial owner in the absence of such relationship, the provisions of this Article shall apply only to the last-mentioned amount. In such case, the excess part of the payments shall remain taxable according to the laws of each Contracting Party, due regard being had to the other provisions of this Agreement.

## **ARTICLE 13**

### **CAPITAL GAINS**

1. Gains derived by a resident of a Contracting Party from the alienation of immovable property referred to in Article 6 and situated in the other Contracting Party may be taxed in that other Party.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) may be taxed in that other Party.
3. 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 Party in which the place of effective management is situated.

4. Gains from the alienation of any property, other than that referred to in paragraphs 1, 2 and 3, shall be taxable only in the Contracting Party of which the alienator is a resident.

## **ARTICLE 14**

### **INCOME FROM EMPLOYMENT**

1. Subject to the provisions of Articles 15, 17 and 18, 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 Party unless the employment is exercised in the other Contracting Party. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other Party.
2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting Party in respect of an employment exercised in the other Contracting Party shall be taxable only in the first-mentioned Party if:
  - (a) the recipient is present in the other 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 Party; and
  - (c) the remuneration is not borne by a permanent establishment which the employer has in the other Party.
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 15**

### **DIRECTORS' FEES**

Directors' fees and other similar payments derived by a resident of a Contracting Party in his capacity as a member of the board of directors of a company which is a resident of the other Contracting Party may be taxed in that other Party.



## **ARTICLE 16**

### **ARTISTES AND SPORTSMEN**

1. Notwithstanding the provisions of Articles 7 and 14, income derived by 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 other Contracting Party, may be taxed in that other 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 Articles 7 and 14, be taxed in the Contracting Party in which the activities of the entertainer or sportsman are exercised.

## **ARTICLE 17**

### **PENSIONS AND ANNUITIES**

1. Subject to the provisions of paragraph 2 of Article 18, pensions and other similar remuneration, including lump sum payments, and annuities, arising in a Contracting Party and paid to a resident of the other Contracting Party, may be taxed in the first-mentioned Party.
2. The term “annuity” means a stated sum payable periodically at stated times during life or during a specified or ascertainable period of time under an obligation to make the payments in return for adequate and full consideration in money or money’s worth.
3. Notwithstanding the provisions of paragraph 1, pensions paid and other payments made under a public scheme which is part of the social security system of a Contracting Party shall be taxable only in that Party.

## **ARTICLE 18**

### **GOVERNMENT SERVICE**

- 1 (a) Salaries, wages and other similar remuneration, paid by a Contracting Party or a statutory body thereof to an individual in respect of services rendered to that Party or body shall be taxable only in that 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 that Party and the individual is a resident of that Party who:
  - (i) is a national of that Party; or
  - (ii) did not become a resident of that 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 statutory body thereof to an individual in respect of services rendered to that Party or body shall be taxable only in that Party.
- (b) However, such pensions and other similar remuneration shall be taxable only in the other Contracting Party if the individual is a resident of, and a national of, that Party.
3. The provisions of Articles 14, 15, 16 and 17 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 statutory body thereof.

## **ARTICLE 19**

### **STUDENTS AND BUSINESS APPRENTICES**

Payments which a student 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 first-mentioned 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 Party, provided that such payments arise from sources outside that Party.

## **ARTICLE 20**

### **PROFESSORS AND TEACHERS**

1. Notwithstanding the provisions of Article 14, a professor or teacher who makes a temporary visit to one of the Contracting Parties for a period not exceeding two years from the date of first arrival in that Party, solely for the purpose of teaching or carrying out research at a university, college, school or other educational institution in that Party and who is, or immediately before such visit was, a resident of the other Contracting Party shall, in respect of remuneration for such teaching or research, be exempt from tax in the first-mentioned Party, provided that such remuneration is derived by the professor or teacher from sources outside that Party.
2. The provisions of this Article shall not apply to income from research if such research is undertaken not in the public interest but wholly or mainly for the private benefit of a specific person or persons.

## **ARTICLE 21**

### **OTHER INCOME**

1. Items of income of a resident of a Contracting Party, wherever arising, not dealt with in the foregoing Articles of this Agreement shall be taxable only in that Party.

2. The provisions of paragraph 1 shall not apply to income, other than income from immovable property as defined in paragraph 2 of Article 6, if the recipient of such income, being a resident of a Contracting Party, carries on business in the other Contracting Party through a permanent establishment situated therein, and the right or property in respect of which the income is paid is effectively connected with such permanent establishment. In such case the provisions of Article 7 shall apply.

## **ARTICLE 22**

### **ELIMINATION OF DOUBLE TAXATION**

1. 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 Party shall allow, as a deduction from the tax on the income of that resident, an amount equal to the income tax paid in that other Party. Such deduction in either case shall not, however, exceed that part of the income tax, as computed before the deduction is given, which is attributable, as the case may be, to the income which may be taxed in that other Party.
2. Where in accordance with any provision of the Agreement income derived by a resident of a Contracting Party is exempt from tax in that Party, such Party may nevertheless, in calculating the amount of tax on the remaining income of such resident, take into account the exempted income.

## **ARTICLE 23**

### **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 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 Parties.
2. The taxation on a permanent establishment which an enterprise of a Contracting Party has in the other Contracting Party shall not be less favourably levied in that other Party than the taxation levied on enterprises of that other Party carrying on the same activities. This provision shall not be construed as obliging a Party to grant to residents of the other Party any personal allowances, reliefs and reductions for taxation purposes on account of civil status or family responsibilities which it grants to its own residents.
3. Except where the provisions of paragraph 1 of Article 9, paragraph 4 of Article 11, or paragraph 6 of Article 12, apply, interest, royalties and other disbursements paid by an enterprise of a Contracting Party to a resident of the other Contracting Party shall, for the purpose of determining the taxable profits of such enterprise, be deductible under the same conditions as if they had been paid to a resident of the first-mentioned Party.

4. Enterprises of a Contracting Party, the capital of which is wholly or partly owned or controlled, directly or indirectly, by one or more residents of the other Contracting Party, shall not be subjected in the first-mentioned Party to any taxation or any requirement connected therewith which is other or more burdensome than the taxation and connected requirements to which other similar enterprises of the first-mentioned Party are or may be subjected.
5. The provisions of this Article shall, notwithstanding the provisions of Article 2, apply to taxes of every kind and description.

## **ARTICLE 24**

### **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 Parties, present his case to the competent authority of the Party of which he is a resident or, if his case comes under paragraph 1 of Article 23, to that Party of which he is a national. The case must be presented within three years from the first notification of the action resulting in taxation not in accordance with the provisions of the Agreement.
2. The 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 the Agreement. Any agreement reached shall be implemented notwithstanding any time limits in the domestic law of the 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 the Agreement. They may also consult together for the elimination of double taxation in cases not provided for in the Agreement.
4. The competent authorities of the Contracting Parties may communicate with each other directly, for the purpose of reaching an agreement in the sense of the preceding paragraphs.

## **ARTICLE 25**

### **EXCHANGE OF INFORMATION**

1. The competent authorities of the Contracting Parties shall exchange such information as is foreseeably relevant for carrying out the provisions of this Agreement or to the administration or enforcement of the domestic laws concerning taxes covered by this Agreement insofar as the taxation thereunder is not contrary to the Agreement. The exchange of information is not restricted by Article 1.

2. Any information received under paragraph 1 by a Contracting Party shall be treated as secret in the same manner as information obtained under the domestic laws of that Party and shall be disclosed only to persons or authorities (including courts and administrative bodies) concerned with the assessment or collection of, the enforcement or prosecution in respect of, the determination of appeals in relation to the taxes referred to in paragraph 1, or the oversight of the above. Such persons or authorities shall use the information only for such purposes. They may disclose the information in public court proceedings or in judicial decisions. For the avoidance of doubt, information shall not be disclosed to any third jurisdiction for any purpose.
3. In no case shall the provisions of paragraphs 1 and 2 be construed so as to impose on a Contracting Party the obligation:
  - (a) to carry out administrative measures at variance with the laws and administrative practice of that or of the other Contracting Party;
  - (b) to supply information which is not obtainable under the laws or in the normal course of the administration of that or of the other Party;
  - (c) to supply information which would disclose any trade, business, industrial, commercial or professional secret or trade process, or information, the disclosure of which would be contrary to public policy (*ordre public*).
4. If information is requested by a Contracting Party in accordance with this Article, the other Contracting Party shall use its information gathering measures to obtain the requested information, even though that other Party may not need such information for its own tax purposes. The obligation contained in the preceding sentence is subject to the limitations of paragraph 3 but in no case shall such limitations be construed to permit a Party to decline to supply information solely because it has no domestic interest in such information.
5. In no case shall the provisions of paragraph 3 be construed to permit a Contracting Party to decline to supply information solely because the information is held by a bank, other financial institution, nominee or person acting in an agency or a fiduciary capacity or because it relates to ownership interests in a person.

## **ARTICLE 26**

### **MEMBERS OF DIPLOMATIC MISSIONS AND CONSULAR POSTS**

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

**ARTICLE 27****ENTRY INTO FORCE**

1. The Contracting Parties shall notify each other in writing that the legal requirements for the entry into force of this Agreement have been complied with.
2. The Agreement shall enter into force thirty days after the date of the later of the notifications referred to in paragraph 1 and its provisions shall have effect in respect of taxes on income derived during any taxable period or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the Agreement enters into force.

**ARTICLE 28****TERMINATION**

This Agreement shall remain in force until terminated by a Contracting Party. Either Party may terminate the Agreement by giving written notice of termination at least six months before the end of any calendar year beginning after the expiration of a period of five years from the date of its entry into force. In such event, the Agreement shall cease to have effect in respect of taxes on income derived during any taxable period or accounting period, as the case may be, beginning on or after the first day of January immediately following the date on which the notice of termination is given.

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

**DONE** at London this twenty seventh day of January 2014 in duplicate in English.



For the States of Guernsey



For the Republic of Seychelles



**(NB The Policy Council supports the proposal to ratify the Agreements made with Mauritius and Seychelles. The Policy Council is of the view that the proposal complies with the Principles of Good Governance.)**

The States are asked to decide:-

XII.- Whether, after consideration of the Report dated 3<sup>rd</sup> March, 2014, of the Treasury and Resources Department, they are of the opinion to ratify the Agreements made with the Government of the Republic of Mauritius and the Government of the Republic of Seychelles, as appended to that Report, so that they have effect in accordance with section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended.

## TREASURY AND RESOURCES DEPARTMENT

### LADIES' COLLEGE LEASE OF LAND AND BUILDINGS

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

10<sup>th</sup> March 2014

Dear Sir

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

- 1.1 This report makes recommendations to enable the transfer of the responsibility for the management, maintenance, refurbishment and development of the land and buildings at Les Gravées, St Peter Port, owned by the States of Guernsey and currently used by the Ladies' College, to the Ladies' College.
- 1.2 The proposal is for an initial lease term of 25 years, renewable for a further 25 year term. This would be on the condition that, in return for a peppercorn rent, the Ladies' College would be responsible for all repairing, insuring, upgrading and major works liabilities for the term(s).
- 1.3 In addition, and in further consideration of the payment of only a nominal rent, the Ladies' College will be required to invest an aggregate of at least £10m (such aggregate to be increased, but not decreased, in direct proportion to the increase (but not the decrease) in the Guernsey All Items Index of Retail Prices (RPIX) between the date of this report and the date of any relevant investment) of funds into the assets, within the first 21 years of the initial 25 year term, to replace, improve and modernise the facilities provided for the education of children at the school.
- 1.4 The Ladies' College proposes to raise funds for the large scale building works through both donations and a loan from the Royal Bank of Scotland International (RBSI) of £4m.
- 1.5 Agreement is being sought for the States of Guernsey to provide a 'step in' facility, which will only be required in the event of any default by the Ladies' College in relation to any borrowing to fund works.



## **2. Background**

### **College History**

- 2.1 The Ladies' College was founded in 1872 to provide an academic education for girls in Guernsey. An early example of the pioneering movement in women's education, it drew much of its inspiration from Cheltenham Ladies' College. The College seeks to nurture academic aspirations and to foster the qualities of leadership, enterprise, hard work and social responsibility.
- 2.2 For more than 140 years the Ladies' College has played a leading role in the education of girls in Guernsey. From 1907 onwards a number of places have been reserved each year for State funded pupils and demand for places at the College has continued to rise. Since 1962 the College has operated as an autonomous grant-aided school under the supervision of its own Board of Governors and the Education Department.

### **Funding History**

- 2.3 The College was restructured under the Ladies' College (Guernsey) Law 1962. From that time, until 2005, the College received financial support under a deficit funding arrangement whereby any losses incurred were funded by the States, but any surpluses would be paid to the States.
- 2.4 The funding arrangement changed in 2005. For the period between 2005 and 2012 the College received financial support by way of the fees for Special Place Holders (23 in each year) and a grant of £2179 per fee paying student and special place holder.
- 2.5 As a result of a States' decision, made during 2011, the funding agreement changed from the start of the 2012 academic year to a system whereby a single grant is allocated for the three Colleges (Elizabeth College, Blanchelande and the Ladies' College). In 2013 this grant was £4,834,400. This is apportioned to the Colleges based firstly on the fees for their Special Place holders and the balance of the grant is then allocated to each College pro-rata the number of students each College has enrolled. The total grant will reduce by £1.1m over the seven year life of the funding agreement.

## **3. Les Gravées Premises**

- 3.1 For many years the Ladies' College has operated out of buildings on land that belong to the States of Guernsey without any form of lease or formal agreement. During this time the Education Department has been responsible for the major repairs and refurbishment. The Ladies' College Board, in return for paying no rent, has dealt with the day-to-day running of the school buildings and land. In practice the Ladies' College has, mainly through surpluses and philanthropic

donations, carried out both large repair refurbishment and new build facilities on the site.

- 3.2 However this 'ad hoc' arrangement needs to be regularised, both to ensure the longer term viability of the facilities and to safeguard the private funds that have been donated to the Ladies' College.
- 3.3 Prior to the 1962 restructure the College owned the site at Les Gravées as well as its former building in the Grange (now occupied by the Education Department). As part of the reorganisation, the ownership of both properties was transferred to the States and the States funded the building of the current Senior School buildings which were built for the College in 1963/64, the late Queen Mother laying the foundation stone in 1963.
- 3.4 The main buildings were designed for the College to be a two form entry school. During 1999, with the agreement of what was then the Education Council, the College expanded into a three form entry school which necessitated additional classrooms and the "port-a-cabin" style huts ("the Huts") were bought by the College from the States of Guernsey, many having been previously used at the Forest School.
- 3.5 The main buildings are now over 40 years old and whilst functional, some aspects are showing signs of age. The College has funded a full structural survey of the buildings which has shown that major works such as re-roofing and re-cladding can extend their useful life significantly. These works were completed during the summer of 2013.
- 3.6 The same cannot be said of the Huts which are all nearing the end of their useful life.
- 3.7 It is therefore proposed that a 25 year lease of the land and buildings be entered into by the States of Guernsey and the Ladies' College, with the option of a further 25 year period following on from the initial term. In return for this the Ladies' College would be responsible for all maintenance, repair, insurance and all other issues to ensure compliance with current and future legal requirements for the provision of the facilities for and education of the young people at the Ladies' College.
- 3.8 During the initial 25 year term of the lease the Ladies' College will also undertake at least £10m (such aggregate to be increased, but not decreased, in direct proportion to the increase (but not the decrease) in the Guernsey All Items Index of Retail Prices (RPIX) between the date of this report and the date of any relevant investment)) of investment in the school and facilities. This would be funded by way of a mixture of donations, fundraising and borrowing. The borrowing facility would be secured by means of a letter of comfort giving 'step-in' rights for the States of Guernsey to ensure the Bank, RBSI, does not exercise any power of sale under their mortgage arrangements. The provision of this

facility (for £4m) would be based on the current arrangements in regard to the grant funding and development of social housing.

#### **4. Capital Expenditure - A Funding History**

- 4.1 For 40 years, since 1962 while the deficit funding model was in operation, the College was not allowed to build reserves to fund any capital expenditure (it has funded all routine maintenance and decoration), as was noted in the Policy Council report on College funding contained in Billet XV, September 2011, *"Prior to 2005 the College was maintained on a deficit funding model, which gave no ability to accrue any capital fund"*.
- 4.2 It has to be implicit in a funding model which did not allow the College to build a capital fund that the States would be responsible for all major capital expenditure other than planned, cyclical and responsive maintenance, indeed this was acknowledged in the Educational Development Plan 3 [2002], *".... the Ladies College however, does not pay for any capital repairs and development to its land and buildings, although it does pay for revenue repairs and maintenance out of the deficit funding arrangements"*.
- 4.3 The same States' report went on to note *"It continues to be, therefore the States' responsibility to ensure that The Ladies College buildings and facilities are "fit for purpose"."*
- 4.4 It was clear that the deficit funding model curtailed initiative and inhibited the physical development of the College. The change away from deficit funding in 2005 allowed the College, for the first time in 40 years, to start to build reserves for capital projects.

#### **5. Recent Capital Expenditure**

- 5.1 The Board of Governors realised that in terms of States major capital expenditure the College ranks after the High Schools and the College of Further Education and therefore instigated the "Gift for Learning" fund raising campaign in 2010 which raised £1m. This amount, together with reserves the College had built since 2005 enabled the College to undertake Phases 1 and 2 of the 3 phase premises development plan, building the new 6<sup>th</sup> Form Centre and the new art, drama and classroom block which is used by both Melrose and the Senior School.
- 5.2 During the summer of 2013 the College re-roofed and re-clad the main building as well as upgraded the canteen facilities.
- 5.3 The total the College has spent on upgrading the States owned premises is over £4.2m over the last four years.

## **6. Proposed Capital Expenditure**

- 6.1 The works undertaken on the main building during 2013, as well as a rolling programme of upgrading the classrooms, will bring the main building up to the standards expected of a leading school in the 21<sup>st</sup> Century. The Huts however fall well below these standards.
- 6.2 Phase 3 is planned to be the building of a new classroom block and music centre to replace all of the Huts, additionally a new canteen will be incorporated into the new extension.
- 6.3 It is anticipated that this phase will cost in the region of £8m (at 2013 prices).

## **7. Access to Funds**

- 7.1 The current reserves, combined with the currently projected surpluses of the College, indicate that there is a funding shortfall of approximately £4m. The Board of Governors has approached its Bank, RBSI, which is willing to provide a loan of up to £4m<sup>\*</sup> to the College, repayable over a 20 year period. The actual loan will be dependent upon the financial projection and business case at the time the loan is made which is likely to be during 2016, therefore the Department is proposing approval to support a loan of up to £4m.
- 7.2 The Bank will only provide such a loan on a secured basis, the normal arrangement would be for the land and buildings to be provided as security for such a loan. However, since the College does not own the premises a normal mortgage is not a viable solution.
- 7.3 Following discussions between the Bank, Treasury and Resources Department and the Board of Governors, the preferred solution is for the States of Guernsey to agree to a letter of comfort providing for a "step-in" commitment whereby if the College is unable to finance the repayment the States of Guernsey would step-in and take over repayment of the loan. This is similar to the current arrangement with the Guernsey Housing Association.

## **8. Risks to the States and their Mitigation**

- 8.1 The main risk to the States is that the step-in obligation may be called and the States would have to fund the repayments of the loan.

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The College intends to embark on another fund raising campaign and so the anticipated loan required may be less than £4m or the improved facilities within Phase 3 will be maximised.

8.2 This should be mitigated by:

- Careful consideration of the College's Business and Strategic Plan and six year financial forecasts;
- The combination of the lease with the step in rights will support the College's fundraising which should in turn reduce the amount borrowed and therefore the risk to the States;
- Any additional future borrowing by the College will need the prior sanction of the States of Guernsey who will need to be assured that the College will be able to finance the existing borrowing, and any additional borrowing before considering its approval.

8.3 Realistically the step-in obligation will only be called if the Ladies' College was to financially fail in which case the States would have a responsibility under the Education Law 1970 to educate all the students attending the College and would have the option to be able to do so in buildings which will have had over £11m of capital improvements.

8.4 The Education Department are satisfied that the Ladies' College have a secure place in the Education Department's strategic plan for the Guernsey Education System.

## **9. Summary of Benefits to the States and to the College**

9.1 The benefits to the States of Guernsey are:

- Improved facilities for the education of some local students;
- Improvement in States owned built facilities;
- The Ladies' College accepts formal responsibility for the buildings over the term of the lease, removing a liability from the States in return for a peppercorn rent.

9.2 The benefits to the College are:

- Security of tenure;
- Access to funds to improve facilities for its students;
- Tangible improvement in facilities;
- Attracting more students due to improved facilities and thereby ensuring/increasing income stream to fund borrowings.

## **10. Lease**

10.1 As previously noted the College currently occupies the premises without a lease or any formal arrangement. It would be irresponsible for the Board of Governors to commit the College to a long term loan and such a level of capital expenditure without security of tenure. The College has been in negotiation with the Treasury and Resources Department regarding a lease.

- 10.2 The lease is proposed to be for a period of 25 years with an option for it to be extended for a further period of 25 years. The exercise of the option will be dependent upon the College having invested not less than £10 million (such aggregate to be increased, but not decreased, in direct proportion to the increase (but not the decrease) in the Guernsey All Items Index of Retail Prices (RPIX) between the date of this report and the date of any relevant investment) in capital improvements within the first 21 years of the initial lease term of 25 years.
- 10.3 The lease would be for a peppercorn rent, the value to the States is represented by the cost of the ongoing maintenance obligation and the commitment to invest in the upgrading of the premises being carried out by the Ladies' College.
- 10.4 It is noted that the land and buildings that are the subject of this report could be either sold for development (subject to statutory permissions), for a sum that could be between £13.5 and £15.5million (for the development of private residential housing at a density of approximately 6 houses per vergee, or 15 houses per acre), or be charged out at a rental value of between £380,000 and £550,000 per annum. These sums have been obtained from notional 'desk top' valuations carried out by a local firm of qualified valuers, which, of necessity, include many assumptions and estimated costs. There is however the set off against these sums of the value of the provision of education for over 550 young people within the Bailiwick which otherwise would be the full responsibility of the Education Department to provide and the States of Guernsey to fund in its entirety.
- 10.5 The Treasury and Resources Department (T&R) has negotiated the terms and conditions for this proposed lease with the Ladies' College Board over a number of years. The final lease details will need to be agreed by the T&R Board and with the Law Officers of the Crown, to protect the interests of the States of Guernsey.

## **11. Why not Ownership?**

- 11.1 The Treasury and Resources Department explored the viability of selling the land and buildings outright to the Ladies' College. However if the Department were to recommend that the "freehold" of the premises be transferred to the College it would have to be subject to a "clawback" condition to protect the position of the States. The clawback would be such that if the premises were to cease being used as a school or the College found itself in financial difficulty the ownership would revert to the States. Such a clawback provision relating to the ownership of the premises effectively means that 'ownership' of the building is meaningless since there would have to be a significant curtailment on the powers of the College in its dealings with the property, to preserve the asset, and there would be significant issues to be dealt with in any funding proposals with RBSI which might well result in the premises not being acceptable to the Bank as security for the loan.

## **12. Consultation / Resources / Need for Legislation**

- 12.1 The Treasury and Resources Department has consulted with the Education Department, the Law Officers of the Crown, RBSI and the Board of Governors of the Ladies' College regarding the lease and the step-in obligations. The Law Officers have not identified any reason in law why the proposals set out in this report cannot be implemented.
- 12.2 The approval of the recommendations would have no implications for the manpower or immediate direct impact on the revenue expenditure of the States other than these set out in the body of this report, nor do they require any legislation as there will be no need for any legislative changes. However were the States to have to exercise their step in rights, there would be either the requirement for revenue expenditure to step-in to service the loan or a Capital expenditure to repay it.
- 12.3 With regard to financial resources the agreement removes the ongoing cost of managing and maintaining the land and buildings. However the notional value of the revenue subsidy is between approximately £380-550,000 per annum and the potential capital receipt that might be obtained from sale of the land for residential development could be around £13.5-£15.5 million.
- 12.4 It should be noted the Minister, Treasury and Resources Department decided that, whilst the Board had agreed he did not have a special or direct interest in the matter, to avoid any perceived conflict of interest he would not have any involvement in either Board discussions on or the drafting of this report.

## **13. Conclusions**

- 13.1 The Treasury and Resources Department is of the opinion that the proposals within this are in the interests of both the College and the States of Guernsey for the reason outlined in Section 9, (Summary of Benefits), above and therefore is supporting their implementation. All measures, save the step-in rights, can be carried out under the Board's current mandate for land and property resources.

## **14. Recommendations**

The Treasury and Resources Department therefore recommends the States;

- 1. To authorise the Treasury and Resources Department, on behalf of the States of Guernsey, to enable a letter of comfort for providing step-in rights for the Ladies' College Bank loan in order to carry out improvements to the land and buildings it leases from the States of Guernsey, up to a maximum of £4 million;
- 2. To note that the improvements to be funded (by various fundraising methods by the College) will be in excess of an aggregate of £10m (such aggregate to be increased, but not decreased, in direct proportion to the

increase (but not the decrease) in the Guernsey All Items Index of Retail Prices (RPIX) between the date of this report and the date of any relevant investment) within the first 21 years of the first lease term of 25 years;

3. To note the other proposals in this report concerning the property arrangements with Ladies' College.

Yours faithfully

J Kuttelwascher  
Deputy Minister

A Spruce  
A H Adam  
R A Perrot

Mr J Hollis  
(Non-States Member)



**(NB The Policy Council supports the proposals set out in this report and is of the view that the proposal complies with the Principles of Good Governance.)**

The States are asked to decide:-

XIII.- Whether, after consideration of the Report dated 10<sup>th</sup> March, 2014, of the Treasury and Resources Department, they are of the opinion:-

1. To authorise the Treasury and Resources Department, on behalf of the States of Guernsey, to enable a letter of comfort for providing step-in rights for the Ladies' College Bank loan in order to carry out improvements to the land and buildings it leases from the States of Guernsey, up to a maximum of £4 million.
2. To note that the improvements to be funded (by various fundraising methods by the Ladies' College) will be in excess of an aggregate of £10 million (such aggregate to be increased, but not decreased, in direct proportion to the increase (but not the decrease) in the Guernsey All Items Index of Retail Prices (RPIX) between the date of that report and the date of any relevant investment) within the first 21 years of the first lease term of 25 years.
3. To note the other proposals in that report concerning the property arrangements with Ladies' College.

## COMMERCE AND EMPLOYMENT DEPARTMENT

### APPOINTMENT OF THE PUBLIC TRUSTEE

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

18<sup>th</sup> March 2014

Dear Sir

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

- 1.1 The term of office of the Public Trustee, David Trestain, ends on 31 May 2014. It is the responsibility of the Commerce and Employment Department to recommend to the States either re-appointment of the current Public Trustee or recommend an alternative suitable candidate. An explanation of duties and key criteria for this statutory role is set out in appendix 1.

#### **2. Re-appointment of the Public Trustee**

- 2.1 Under the Public Trustee (Bailiwick of Guernsey) Law, 2002 (“the Law”), paragraph 1.(4), “the Public Trustee shall hold office for a term not exceeding five years and a person may, on the recommendation of the [Department] ....., be appointed to that office by the States for more than one term of office”. He or she may be removed from office by the States, on the recommendation of the Department, on the grounds of permanent incapacity, misbehaviour or gross incompetence. He or she may resign from office at any time but such notice shall not take effect until a successor takes office as Public Trustee.
- 2.2 Mr Trestain has indicated that he wishes to retire from the post and therefore has not been considered for re-appointment.

#### **3. Appointment of the Public Trustee**

- 3.1 The Commerce and Employment Department has undertaken a recruitment process to find a successor. The Department is pleased to recommend to the States the appointment of Catherine Rowe as Public Trustee and further recommends that the appointment should be for five years. There are no additional finance or resource implications with regard to the successor appointment.

- 3.2 Catherine Rowe has 12 years' experience in trusts including complex trust structures with a wide variety of assets including investments, chattels and property. Catherine has extensive experience in dealing with other professionals and holds the STEP Diploma in International Trust Management and a Masters Degree in Corporate Management.

Catherine retired in 2012 in order to spend more time with her family. Prior to this, she was a Director at Trident Trust Company (Guernsey) Ltd where she had been employed for 5 years.

#### **4. Recommendation**

- 4.1 The Department recommends the States to agree that Catherine Rowe be appointed as Public Trustee for a period of five years commencing 1 June 2014.

Yours faithfully

K A Stewart  
Minister

A H Brouard  
Deputy Minister

D de G De Lisle  
L B Queripel  
H J R Soulsby

Advocate T Carey  
Non-States Member

## **APPENDIX 1**

### **Job Title**

### **Public Trustee**

Office of the Public Trustee, Commerce and Employment Department

### **Salary**

£7001 (per annum) based on an expected average time commitment of 1 day per month.

### **Position Overview**

In accordance with the Public Trustee (Bailiwick of Guernsey) Law, 2002, the Public Trustee is required to carry out certain statutory functions under the Public Trustee law to protect the trusts assets or otherwise in the interests of the beneficiaries of the trust, or for the protection or, enhancement of the reputation of the Bailiwick in relation to the formation and management of trusts.

Further information regarding the role and responsibilities of the Public Trustee can be found in the below linked Projet De Loi entitled The Public Trustee (Bailiwick of Guernsey) Law, 2002:-

<http://www.guernseylegalresources.gg/article/96912/Public-Trustee-Bailiwick-of-Guernsey-Law-2002>

### **Requirements of the Post Holder**

1. An understanding of the role of the Office of the Public Trustee in the Bailiwick of Guernsey;
2. Ability to administer complex trust structures in accordance with the Public Trustee (Bailiwick of Guernsey) Law, 2002;
3. Ability to work in accordance with precise legal instructions;
4. Ability to maintain personal confidentiality and public trust while carrying out the role.

**(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 recommendation to appoint Catherine Rowe and is of the view that the proposal made in the report supports the Principles of Good Governance.)**

The States are asked to decide:-

XIV.- Whether, after consideration of the Report dated 18<sup>th</sup> March, 2014, of the Commerce and Employment Department, they are of the opinion to agree that Catherine Rowe be appointed as Public Trustee for a period of five years commencing 1<sup>st</sup> June 2014.

## EDUCATION DEPARTMENT

### THE INTRODUCTION OF A UNIVERSAL ENTITLEMENT TO PRE-SCHOOL EDUCATION

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

10<sup>th</sup> March 2014

#### EXECUTIVE SUMMARY

1. The case for the States to provide greater support and commitment to pre-school education in Guernsey and Alderney is overwhelming, based on growing evidence from many western jurisdictions, including those with which we are in economic competition. Work within both the British Irish Council and the OECD (Organisation for Economic Co-operation and Development), amongst others, is showing the high value of such an investment by government in terms of economic, educational and social returns. Even in the current challenging economic times, administrations are increasingly recognising the economic value of investment in pre-school education. In addition to the enhanced economic opportunities which result, there are also many social benefits to be gained from “a prevention being better than cure approach”; better not just for the States but for the individual and the community as a whole.
2. The Education Department’s Vision “Today’s Learners, Tomorrow’s World”, which was considered by the States at their meeting in July 2013, recognised this and acknowledged the need to ensure the very best possible start in life for all our children. This report flows from the Vision. **This report includes compelling evidence supporting the value of enhancing pre-school education in the Bailiwick, and explains clearly why this should be through a universal entitlement to 15 hours a week, 38 weeks a year of pre-school education for all 3-4 year olds.**
3. The desired outcome of this policy initiative is to increase the percentage of children receiving 15 hours per week pre-school education from the current 39% towards 100% receiving 15 hours of high quality pre-school education. Whilst this is an entitlement, it will not be mandatory but through education, cross department support and encouragement we expect to increase the participation considerably from existing levels.

4. The Department strongly believes delaying enhanced pre-school provision would be a false economy for the Islands, which would miss opportunities for significant long-term social benefits.
5. This report sets out how such pre-school provision would be enhanced through universal provision, working collaboratively and in partnership both with private providers (in terms of provision and educational quality) and the Health and Social Services Department (in terms of necessary regulation).
6. All reports and research referred to within this report are referenced in Appendix 1.

## **1. Introduction**

- 1.1 As part of the Education Department's vision 'Today's Learners, Tomorrow's World' there is a commitment to ensure the very best possible start in life for all our children. To support this ambition the Education Board is recommending the introduction in principle, with effect from September 2016, of a universal entitlement to 15 hours a week, 38 weeks a year, of pre-school education for all 3–4 year olds. This recommendation is built upon established evidence of the educational, social and economic impact that high quality pre-school has for the individual and society as a whole. This approach could be complemented by the introduction of an Early Years Collaborative Group as part of the Children and Young Peoples' Plan (C&YPP) to ensure the best provision of support for children from pre-birth to three. In order to successfully achieve this, the Education Department will work closely with the Health and Social Services Department.
- 1.2 This proposal aligns with the States' Strategic Plan. Early Years contributes to the achievement of the long term objectives of both the 'Economic and Fiscal' and 'Social' Policy Plans. One of the three General Objectives of the Social Policy Plan which promotes "Equality of opportunity, social inclusion and social justice" is of particular relevance.
- 1.3 The Education Department is the Department with responsibility for providing a range of statutory and non-statutory education, training and support services. One of the Department's main policy priorities is planning for the introduction of a universal entitlement to free, quality pre-school education for all 3-4 year olds in partnership with private providers.
- 1.4 The commitment to good quality Early Years provision is also highlighted in the Health and Social Services Department's '2020 Vision' for health services over the next decade.

## 2. Background

- 2.1 Pre-school and nursery provision within Guernsey and Alderney is predominantly provided by the private sector, with limited States provision. Direct States provision is only provided for the most vulnerable learners, for example, Le Rondin Special School offers nursery provision for children who have a particular special educational need.
- 2.2 Guernsey's Education Law requires children who reach the age of five before 1<sup>st</sup> September in a particular year to attend school from the start of the next academic year. The Education Department has also agreed that children who reach the age of four on or before 31<sup>st</sup> August, may also start from the beginning of the academic year in September, but only if spaces and staff are available at the school. Prior to this age many children access private pre-school and nursery provision.
- 2.3 The Health and Social Services Department Early Years' Service is responsible for regularly inspecting and monitoring all pre-schools, nurseries, crèches and private schools that take children under five years. Child minders are registered with the Health and Social Services Department and are also regularly inspected and monitored to ensure that they continue to meet the required standards.
- 2.4 There are currently three 'supported' pre-schools in Guernsey which cater for children who would not normally access pre-school provision. These pre-schools provide subsidised provision and operate as charities. Two of these establishments are supported by a Social Security Department grant. These pre-schools work in close partnership with each other and the Health and Social Services Department, with places being allocated through Health Visitor recommendation. Typically, these children are offered two years of provision from the age of two.

### **Current provision and take up rates of pre-school provision in Guernsey**

- 2.5 A list of Health and Social Services Department registered providers of child care for pre-school children is available at [www.gov.gg/earlyyears](http://www.gov.gg/earlyyears).
- 2.6 For the past two years a joint Education Department and Guernsey Pre-School Learning Alliance (GPLA) annual questionnaire has been carried out. The outcomes have provided an accurate and up to date picture of the uptake and trends for children in the year prior to them starting Reception. The return rate in 2012 was very high (291 respondents), with the parents and carers of over 50% of pupils entering Reception responding. **In 2013 the response rate was slightly lower (266 respondents) at 44% although this still represents a very high response rate.** The cohort of children entering the States Primary sector in September 2013 was just over 600 pupils. So the Department has no data on pre-school education for well over 300 children. This information provides the most comprehensive view of the current uptake of places across the Island.



2.7 The 2013 outcomes identified the following (2012 in brackets):

- 94.4% (93.8%) of children whose parents responded to the survey attended a Health and Social Services Department registered pre-school, nursery or private school prior to starting Reception.
- The most frequent number of hours of provision was nine (nine) hours.
- The overall mean of hours accessed was 14.01 (14.99) hours. However, this was broken down as follows:
  - 61.1% (59%) of those surveyed had between 0.01 and 14.59 hours of provision
  - 38.9% (42%) of those surveyed had over 15.00 hours of provision
- 64.5% (66.1%) of children attended term time provision, with 35.5% (33.9%) of provision being all year round.
- Around two thirds 65% (67%) of parents and carers indicated that a State provision would have allowed them to seek employment or increase their working hours.
- 93.2% (94.7%) of parents and carers surveyed would have taken up the offer of 15 hours of funded pre-school provision.

### 3. Options Considered

3.1 As part of a previous consultation process in 2008, detailed comparisons between various options were compiled and updated.

<b>Option 1</b> An Education Grant which funds a universal offer of 15 hours of pre-school provision in the academic year prior to the child starting school. This would be facilitated by a public / private partnership.	
<b>Advantages</b> <ul style="list-style-type: none"> <li>• Builds upon private provision already in existence on the island.</li> <li>• The use of a Quality Standard and agreed curriculum would support consistency of provision across all providers, whilst allowing for significant parental choice.</li> <li>• Provides universal access for all children of 15 hours entitlement.</li> <li>• Majority of places provided by private providers, with responsive public provision.</li> </ul>	<b>Potential disadvantages</b> <ul style="list-style-type: none"> <li>• Could be perceived to support children from higher income background.</li> </ul>
<b>Conclusion</b> This option provides the most cost effective strategy for allowing for universal provision to be implemented across the Bailiwick. This would build upon the existing network of private providers. The Education Board unanimously supports this option.	

**Option 2**

Providers supported and developed by the Education Department through the achievement of an 'Educational Guernsey Quality Award'.

Advantages	Potential disadvantages
<ul style="list-style-type: none"> <li>• Inexpensive to introduce.</li> <li>• Could be implemented within a reasonable time scale.</li> <li>• Promote an island wide expectation in terms of education.</li> </ul>	<ul style="list-style-type: none"> <li>• Without the Education Grant the children could be segregated according to parental income maintaining the current inequality of access.</li> <li>• Unless supported by law this would be difficult to enforce.</li> </ul>

**Conclusion**

This option would provide a clear set of criteria which would support providers in ensuring a consistent educational standard across Guernsey and Alderney. **(N.B) This would neither replace, nor contradict the current HSSD regulation.** There would however be no requirement to follow the standards .

**Option 3**

Universal provision facilitated by the public sector through the establishment of Nursery classes attached to existing Primary Schools

Advantages	Potential disadvantages
<ul style="list-style-type: none"> <li>• Continuity of progression for pupils into Reception classes.</li> <li>• A social mix of children from a range of backgrounds.</li> </ul>	<ul style="list-style-type: none"> <li>• Significant detrimental effect on the private providers, resulting in possible closures and large scale redundancy.</li> <li>• Potential loss of provision on island for the 2-3 year old group, as often the fees for 3-4 year olds subsidise the cost of smaller ratios for providers.</li> <li>• Considerable building works required to the majority of schools.</li> <li>• Expensive to operate and maintain.</li> </ul>

**Conclusion**

This option would require considerable resource implications, in terms of building works, resourcing and on-going staffing. This would not currently be a viable economic option. This would also have a significant detrimental effect upon private providers.

**Option 4**

Increase in the targeted provision for pre-school.

Advantages	Potential disadvantages
<ul style="list-style-type: none"> <li>• Significantly cheaper to implement than universal provision.</li> <li>• Funding is secured and guarantees future of supported pre-schools.</li> </ul>	<ul style="list-style-type: none"> <li>• Would potentially miss vulnerable children who fall just above the target income bracket.</li> <li>• Could be detrimental to the current supported pre-schools. HSSD and health visitors currently work in</li> </ul>

	<p>partnership with these providers to ensure most vulnerable children have access to provision.</p> <ul style="list-style-type: none"> <li>• Some parents, whose children do not qualify for one of the three supported pre-schools, may have difficulties meeting the fees of private providers.</li> <li>• Possibly expensive to administer as often relies upon means testing.</li> <li>• Targeted is unlikely to realise the same benefits as inclusive provision.</li> </ul>
<p><b>Conclusion</b></p> <p>Although this option is financially attractive, in reality often the most vulnerable children are already supported through the supported pre-school system. Any form of targeting will also potentially exclude groups of vulnerable children. Evidence would suggest that a targeted model is not the most effective in realising benefits to children and the wider community.</p>	

#### 4. The Benefits of Universal Access to Pre-school

4.1 The benefits of universal access to high quality pre-school education are well documented and supported by extensive research. The impact can be measured far more widely than solely academic achievement. Longitudinal studies which have followed the development of young children have confirmed the impact of a high quality pre-school experience can be seen not only in later schooling, but also into adulthood.

4.2 The need for state-level support for universal pre-school education to promote sustainability and equitable access to education is internationally recognised.

*‘Evidence from the Organisation for Economic Co-operation and Development (OECD) thematic reviews suggest that significant public funding is necessary to support a sustainable and equitable early childhood system. Without that investment, a shortage of good quality programmes, unequal access, and segregation of children according to income follows.’*  
*OECD 2006 p.102*

4.3 Within other jurisdictions the offer of state-funded, universal pre-school provision has increased participation rates for children. For example, in the Republic of Ireland the access rate to pre-school education in 2005 was approximately 50%<sup>1</sup>. However, since the introduction of state-funded universal pre-school in January 2010 there has been a significant increase in participation to 95%. This has gone beyond the European Union 2010 target of 90%. (*This*

<sup>1</sup> The National Economic and Social Forum (NESF) 2005 report on Early Childhood Care and Education available at [www.nesc.ie](http://www.nesc.ie)

*target was agreed at the Barcelona Summit of European Union Member States in 2002. The target agreed was that by 2010, 90% of all children between three and compulsory school age to should be in early childhood education.)*

- 4.4 Even with the current considerable economic issues facing the economy in the Republic of Ireland the commitment to the universality of the scheme remains firm.

*‘This free pre-school currently attracts 95% of qualifying children. Given the importance of early years’ education and early interventions to improving the educational and developmental outcomes for children, my Department has been steadfast in preserving the universality of this scheme’* Minister for Children and Youth Affairs Frances Fitzgerald statement made on 5<sup>th</sup> December 2011.

- 4.5 The positive impact of universal provision on the progress of all children is also a key benefit to society. As Barnett and Frede<sup>2</sup> summarise.

*‘A surprising number of studies indicate that all children from middle – and higher income families (not just those who are behind) would benefit from universal pre-K. The Tulsa study for example, found positive effects for all income groups. Effects for the highest income group were, on average, 87 percent as large as those for the lowest income group.’* 2010 Barnett and Frede

- 4.6 In summary, the benefits of universal versus targeted pre-schooling are increasingly recognised. The OECD Report Starting Strong II<sup>3</sup> puts forward the following:

*‘Proponents of universal services point out that targeting is costly, and inefficient. Programmes such as Head Start, miss most poor children, and at the same time, exclude by regulation low-income families just above the eligibility for subsidised services. These children would also benefit greatly from free state services.’* OECD (2006) p. 74

- 4.7 OECD Research<sup>4</sup> concluded that high performing and equitable school systems are also those with little socio-economic disparity in access to pre-school education. In addition, how pre-school education is provided affects the extent to which attendance benefits individual students.

- 4.8 The OECD recognises that there is a growing body of research that early childhood education programmes improve children’s well-being, help to create a

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<sup>2</sup> The Promise of Preschool, Barnett and Frede, American Educator, Spring 2010 available at [www.aft.org/pdfs/americaneducator/spring2010/BarnettFrede.pdf](http://www.aft.org/pdfs/americaneducator/spring2010/BarnettFrede.pdf)

<sup>3</sup> Starting Strong II Early Childhood Education and Care OECD 2006 available at [www.oecd.org](http://www.oecd.org)

<sup>4</sup> PISA in focus 2011/1 (February) does participation in PSC primary education translate into better learning outcomes at school?

foundation for lifelong learning, make learning outcomes more equitable, reduce poverty and improve social mobility from generation to generation. Results from OECD's Programme for International Student Assessment (PISA) suggest that participation in pre-primary education is strongly associated with higher reading performance at age 15 in those countries where policies have sought to improve the quality of pre-primary education. The OECD concludes that widening access to pre-primary education can improve both overall performance and equity, if extending coverage does not compromise quality. This States Report is therefore seeking to provide an improved quality and a universal entitlement rather than a targeted provision of pre-school education.

4.9 In summary there are four main problems with targeted provision of pre-school:

- targeted provision could be seen as socially divisive;
- it would result in additional bureaucracy and costs for the States;
- those children whose parents would be slightly above the threshold, who may benefit from pre-school education may not be able to get access to this entitlement; and
- many parents are reliant upon the States Children's Allowances to pay for the pre-school education.

## 5. The Advantages of High Quality Pre-School

The advantages of high quality pre-school can be classified under three broad headings; economic, educational and social.

### 5.1 Economic

5.1.1 There are several key economic advantages to universal pre-schooling. The strongest of these relates to preventative spend, i.e., that effective early intervention can mitigate the need for greater expenditure at a later date. This viewpoint is also supported by research such as the Independent Report to Her Majesty's Government by Graham Allen MP 'Early Intervention: The Next Steps 2011'<sup>4</sup> which states: *'I recommend an essential shift to a primary prevention strategy which offers substantial social and financial benefits,'* it goes on to comment: *'we should exploit the potential for massive savings in public expenditure through an Early Intervention Model'.*

5.1.2 This viewpoint fully concurs with that of the States of Guernsey Social Policy Group who in their Review of 2012 promoted a 'Shift to Prevention', which should: *'Mitigate costs of social expenditure through early intervention, prevention and better use of resources resulting in most effective spend.'*

5.1.3 The Social Policy Group believes that both strategically and financially the best way forward is to focus the development of social policy in two ways:

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<sup>4</sup> <http://www.dwp.gov.uk/docs/early-intervention-next-steps.pdf>

1. Proactive prevention rather than crisis management.
2. Better cross-departmental co-ordination of service delivery.

5.1.4 This approach has been specifically endorsed by the States via the States Strategic Plan 2013-2017 (Social Policy Objectives).

5.1.5 Another key economic factor is supporting parents to return to the labour market. This will contribute towards the Fiscal and Economic Plan Objective of developing a “Skilled, sustainable and competitive workforce” which has also been approved as part of the States Strategic Plan.

*‘Harmonising policy goals on quality and parents’ needs plays a critical role in building reliability and accountability in early childhood education’ (OECD 2012 p. 27)*

5.1.6 This is supported by the view of Allen 2011: *‘It is known that the availability of free or low-cost quality childcare that allows parents to go to work, thus increasing household income, also makes a difference.’* Allen 2011 p.71

5.1.7 The affordability of childcare for pre-school age children was investigated as part of the States of Guernsey Childcare needs survey 2009/10.<sup>5</sup> This report found that affordability, and in particular that of pre-school education, was an issue raised by respondents.

*‘Unsurprisingly it is those households using formal childcare provision only who are significantly less satisfied with the affordability of childcare (57% satisfied compared with 63% of all households using childcare). In a similar vein, it is also those households with more than one child all of pre-compulsory schooling age (who themselves are more likely to use formal childcare provision) that are significantly less likely to be satisfied (just 47%) with the affordability of childcare in Guernsey and Alderney. States of Guernsey 2010, Childcare Needs Survey IFF, Paragraph 3.109*

5.1.8 The report goes on to state that:

*‘These findings certainly indicate that formal childcare provision is not currently perceived among parents to be good value for money and that action should be taken by the States of Guernsey to provide some financial assistance particularly to parents of children of pre-school age.’ States of Guernsey 2010, Childcare Needs Survey IFF, Paragraph 3.111*

5.1.9 The 2006 Starting Stronger II OECD report highlighted the way in which pre-school education can especially support the return of mothers to the labour market.

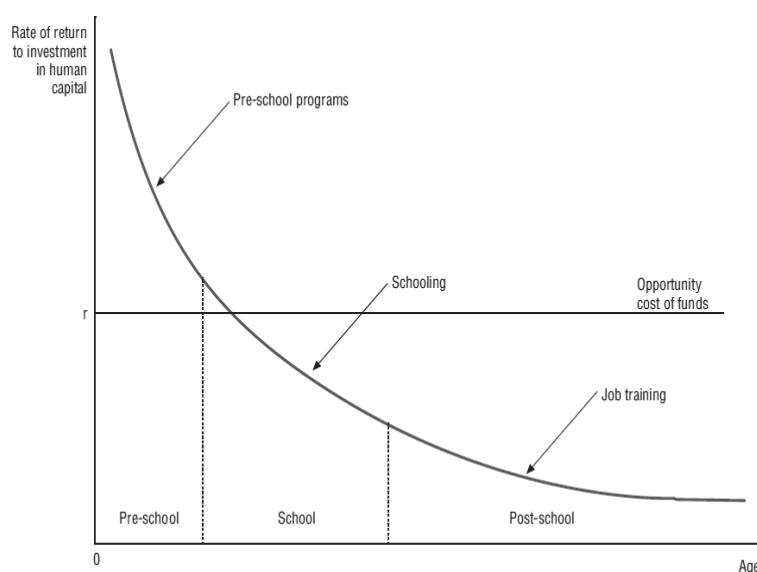
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<sup>5</sup> States of Guernsey Childcare Needs Survey 2009/10, available at [www.gov.gg/article/6358/Childcare-Needs-Survey](http://www.gov.gg/article/6358/Childcare-Needs-Survey)

*'The financial incentive for a mother to continue to work may be removed by the excessive costs of child care.'* Starting Stronger II OECD 2006 p.37

- 5.1.10 Economists and the majority of OECD member states are increasingly aware of the financial benefits and returns offered by high quality pre-school education.

*'The move towards seeing early childhood services as a public good has received much support in recent years from economists as well as from education researchers'* Starting Stronger II OECD 2006 p.37



The adjacent graph is taken from the Starting Stronger II 2006 OECD Report. It highlights the greatest 'return' on investment in terms of human capital is achieved through effective pre-school programmes. This works on the basis that the next stage of learning is based upon the previous.

Source: Cunha et al. (2005), *Interpreting the Evidence on Life Cycle Skill Formation*.

- 5.1.10 This view of the economic importance of quality early years provision is a major focus for the OECD. At the recent OECD Summit which was hosted by Norway in January 2012, Kristin Halvorsen, the Norwegian Minister of Education commented that:

*'Investment in early childhood education is not just an investment in our children and their future; it is a sound economic investment.'* Halvorsen, (2012) Opening Speech OECD Conference January 2012

## 5.2 Educational

- 5.2.1 There is considerable research which highlights the educational/academic advantages of pre-school education. The Effective Provision of Pre-School Education (EPPE) project is the first major European longitudinal study of a national sample of young children's development between the ages of 3 and 14 years. To investigate the effects of pre-school education, the EPPE team collected a wide range of information on 3,000 children. The main findings at the end of each Key Stage are recorded below (*links to full summary reports are included within Appendix I*):

### 5.2.2 Benefits at the end of Key Stage 1 (3-7 years of age) included:

- the beneficial effects of pre-school remained evident throughout Key Stage 1, although some outcomes were not as strong as they were on entry;
- pre-school experience, compared to none, enhances all-round development in children;
- high quality pre-schooling is related to better intellectual and social/behavioural development for children;
- full time attendance led to no better gains for children than part-time provision.

*EPPE: Findings from pre-school to end of Key Stage 1, Sylva et al. 2004*

### 5.2.3 Benefits at the end of Key Stage 2 (3-11 years of age) included:

- the positive benefits of both medium and high quality pre-school education have persisted to the end of Key Stage 2 (11 year olds) for attainment in reading/English and mathematics and all social/behavioural outcomes;
- having attended a high quality pre-school was especially beneficial for boys, pupils with special educational needs (SEN) and those from disadvantaged backgrounds for most social/behavioural outcomes;
- high quality pre-school was especially beneficial for the most disadvantaged pupils and those of low qualified parents in promoting better mathematics outcomes at age 11.

*EPPE: Final report from the Primary Phase, Sylva et al. 2008 DCSF-RB061*

### 5.2.4 Benefits at the end of Key Stage 3 (3-14 years of age) included:

- there were continuing effects of pre-school quality for later attainment in maths and science, but not in English;
- the effectiveness of the pre-school attended continued to predict better outcomes in English at the age of 14, but this was only statistically significant when comparing children who had attended highly effective providers with the 'home' group;  
(The 'home' group are those students who had little or no pre-school experience.)
- higher pre-school quality also predicted better social-behavioural outcomes at age 14;
- high quality pre-school had particular benefits for children who had a poor early years Home Learning Experience;
- parents recognised that pre-school developed literacy, numeracy and social skills as well as preparing children for school.

*EPPE: Final report from the Key Stage 3 Phase, Sylva et al. 2012 DFE-RB202*



5.2.5 The EPPE research is also supported by the outcomes from the 2011 PISA report which highlighted the advantages of pre-school education. The PISA Report posed the question: ‘Does participation in pre-primary education translate into better learning outcomes at school?’

5.2.6 The report highlights:

- the results show that in practically all OECD countries 15 year old students who had attended some pre-primary school outperformed students who had not. In fact, the difference between students who had attended for more than one year and those who had not attended at all averaged 54 score points in the PISA reading assessment – or more than one year of formal schooling (39 score points)
- that those school systems that perform the best and provide equitable learning opportunities to all students are also those that provide more inclusive access to pre-primary education.

5.2.7 In summary it concludes:

*‘The bottom line: Widening access to pre-primary education can improve both overall performance and equity by reducing socio-economic disparities among students, if extending coverage does not compromise quality.’*

### **5.3 Social**

5.3.1 The social effects of good quality pre-school provision are also well documented. It should also be noted that this area covers many aspects of the individual child, their family, local communities and the state as a whole.

5.3.2 It is clear that children’s earliest experiences go on to shape their future life chances, and their ability to take an active role in society.

5.3.3 Whilst quality pre-school education is a cornerstone of development, pre-school is not a single answer. There are many factors to consider, for example, the role of parents and carers, parenting skills, poverty and mental ill-health; all of which greatly influence the development of a child.

5.3.4 Additional interventions are often required to support families facing adversities, and those finding parenting difficult.

5.3.5 A study by Robert G Lynch (2005) entitled ‘Early Childhood Investment Yields Big Payoff’ compared and contrasted a range of Early Childhood Development (ECD) programmes to evaluate their impact and cost effectiveness.

5.3.6 Pre-school education is one example of government early intervention strategies available as a policy choice. Lynch assessed in detail the effectiveness of pre-school education.

5.3.7 He concludes that there are many advantages for not only children who participate in high quality pre-school programmes, but also for their principal carers and society as a whole.

<b>Children who participate in high quality ECD programmes tend to have...</b>	<b>These children are less likely to be teenage parents and more likely to ...</b>	<b>This also supports the mothers of the children who attend the programmes often...</b>
<ul style="list-style-type: none"> <li>• Higher scores on maths and reading achievement tests</li> <li>• Greater language ability</li> <li>• Less need for Special Education and other remedial work</li> <li>• Lower dropout rates</li> <li>• Higher high school graduation rates</li> <li>• Improved nutrition and health</li> <li>• Experienced less child abuse and neglect</li> </ul>	<ul style="list-style-type: none"> <li>• Have higher employment and earnings as adults</li> <li>• Pay more taxes</li> <li>• Depend less on welfare</li> <li>• Experience lower rates of alcohol and other drug use</li> <li>• Engage in fewer criminal acts as juveniles and adults</li> <li>• Have lower incarceration rates.</li> </ul>	<ul style="list-style-type: none"> <li>• Have fewer additional births</li> <li>• Have better nutrition and smoke less</li> <li>• Are less likely to abuse or neglect their children</li> <li>• Complete more years of schooling</li> <li>• Are more likely to be employed</li> <li>• Have higher earnings</li> <li>• Engage in few criminal acts</li> <li>• Have lower alcohol and other drug abuse.</li> </ul>

Source: *Early Childhood Investment Yields Big Payoff*, Lynch, R.G. 2005

5.3.8 The Graham Allen MP Report for Her Majesty's Government previously cited also refers to benefits early intervention can have on parents and carers as well as the children themselves:

*'to fulfil their roles, parents and carers must themselves benefit from policies across the age range 0–18 which significantly strengthen the ability of babies, children and young people to raise their future children with the social and emotional capabilities that are the right of every child. These policies are also interventions, which break damaging cycles and prevent the transmission of social and emotional underdevelopment through successive generations.'* Allen 2011 p. 6

5.3.9 This is summarised in the Allen Report as being: *'there are much greater opportunities to intervene early to help our children to be ready for school (for primary school), ready for work (as they leave secondary school or university) and ready for life (to become loving and nurturing parents themselves)'* Allen 2011 P.42

## **6. The importance of ensuring high quality pre-school education**

6.1 The importance of ensuring a high quality pre-school education cannot be over emphasised. Research shows that the quality of the pre-school experience is

crucial in supporting not only the immediate needs of the individual child, but also to ensure the long term sustained improvements for society as a whole.

- 6.2 The immediate impact of low quality provision on the progress of the individual child was noted as part of the 2004 EPPE project:

*‘Pre-school quality was significantly related to children’s scores on standardised tests of reading and mathematics at the age of 6.’ EPPE 2004, p.2.*

- 6.3 This was further reinforced when the same longitudinal study reported in 2008 that:

*‘Children who had attended poor quality/less effective pre-school generally showed no significant age 11 benefits in improved outcomes compared to those who did not attend any pre-school. However, they did show better Pro-social behaviour but poorer rating for Hyperactivity.’ EPPE 2008 p.2*

- 6.4 The OECD paper of 2006 highlighted the critical importance of ensuring good quality pre-school education, and highlighted the unique opportunity this age group provides. It also strongly acknowledged the detrimental effect that poor quality provision can have on child development.

*‘Unlike buying a product that can be returned or exchanged, to remove a child from an inferior early childhood placement cannot compensate for the previous loss of opportunity, while the continued use of an inferior service may actually harm the development of the child.’ OECD 2006 p.37*

- 6.5 In addition to developing universal access, the most recent OECD report 2012 Starting Strong III<sup>6</sup> reinforces the importance of quality provision.

*‘All of these benefits are conditional on “quality”. Expanding access to services without attention to quality will not deliver good outcomes from children or the long-term productivity benefits for society. Furthermore, research has shown that if quality is low, it can have long-lasting detrimental effects on child development, instead of bringing positive ones’. OECD 2012 Starting Strong III, Executive Summary.*

- 6.6 The OECD Starting Strong Toolkit III (2012) contains a toolkit drawing on best-practice research from member states, many of which have heavily invested in their Early Years provision. It identified five key levers which it considers are effective in supporting quality pre-school education regardless of the stage countries are at.

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<sup>6</sup> Starting Strong III is available from [www.oecd.org](http://www.oecd.org)

- Policy Lever 1:** Setting out quality goals and regulations;  
**Policy Lever 2:** Designing and implementing curriculum and standards;  
**Policy Lever 3:** Improving qualifications, training and working conditions;  
**Policy Lever 4:** Engaging families and communities; and  
**Policy Lever 5:** Advancing data collection, research and monitoring.

- 6.7 Using these policy levers would allow Guernsey and Alderney to learn from the very best of international best practice.

### **The Quality Standard Framework for Guernsey**

*‘Quality goals can promote more consistent, co-ordinated and child-centred services through a national framework with shared social and pedagogical objectives.’ (OCED 2012 p.25)*

- 6.8 Currently, pre-school provision is regulated by the Health and Social Services Department who oversee pre-school education on behalf of the States of Guernsey<sup>7</sup>. However, these regulations are primarily focussed upon meeting the required standards in health and safety, staffing and welfare. The current minimum standards for day nurseries and pre-schools can be found at [www.gov.gg/earlyyears](http://www.gov.gg/earlyyears)
- 6.9 Part of the universal pre-school education offer that the Education Department is proposing to develop would include the establishment of a Quality Standard Mark. In order to access the States funding, private providers would be required to meet the standard laid out. The Quality Standard Mark would be developed and constructed in partnership with the Health and Social Services Department in consultation with private providers to ensure the requirements fully dovetail together to ensure no duplication and to minimise any potential ambiguity. Once the Quality Standard Mark has been agreed, the Education Department will work in partnership with the Health and Social Services Department to ensure private providers have support in reaching the required standard ahead of the implementation of this universal entitlement.
- 6.10 The Quality Standard Framework would incorporate the key elements of effective research based practice. The vast majority of Quality Standard Frameworks from various jurisdictions share the following key features:
- key welfare safeguarding standards of provision, including staffing qualifications and ratios, health and safety requirements alongside appropriate inter-agency working;
  - high quality curriculum guidance and structure to ensure appropriate and consistent progression in learning;
  - a focus to ensure high quality leadership of providers at all levels;

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<sup>7</sup> See [www.gov.gg/earlyyears](http://www.gov.gg/earlyyears) for the most current regulations

- effective regulation to ensure the highest standards of provision quality are established and maintained;
- strong and consistent partnership working with parents and carers, recognising the importance of them as lifelong educators of their children.

- 6.11 These identified key elements would form the basis of the Guernsey Quality Standard Framework. The Framework would clearly identify the minimum expected standard of provision against each of these features that providers would be required to meet in order to be eligible to take part in the State funded scheme. The Framework would include key principles and requirements of effective practice which would be applicable to the full range of childcare provision in Guernsey. A key component of the Quality Standard would be strong self-evaluation, with providers reviewing and analysing their own development against the quality standard framework.
- 6.12 In order to establish a Quality Standard Framework, an audit of current pre-school provision in Guernsey would be carried out. This would be completed by an independent provider and would be based upon a recognised international measure such as the Early Childhood Environment Rating Scale (ECERS). This would provide an objective global view of the current strengths and areas for improvement. In this way, resources for the implementation of the Guernsey Quality Standard could be carefully targeted to ensure maximum impact.

### **Developing strong practice**

- 6.13 A detailed timeline of implementation and professional development for providers will be integral to successful implementation. To ensure a successful and efficient full scale roll out a small pilot will take place. Pilot providers will be chosen to represent the full range of providers on Guernsey. This detailed pilot will ensure that the final Standard is applicable to the complete range of providers and the needs of Guernsey and Alderney.

<b>Timescale</b>	<b>Actions and responsibilities</b>
2 years prior to full implementation	<ul style="list-style-type: none"> <li>• Initial assessment of ECERs carried out to establish a baseline.</li> <li>• Draft of key criteria for the Quality Standard Framework established.</li> <li>• Initial support materials for pilot providers are produced and trialled.</li> <li>• Pilot providers identified to reflect the range of providers on Guernsey.</li> <li>• Initial training to pilot providers carried out.</li> </ul>
18 months prior to full implementation	<ul style="list-style-type: none"> <li>• Pilot providers work towards the Quality Standard Framework.</li> <li>• Regulatory authority established and evaluation Framework</li> </ul>

	established. <ul style="list-style-type: none"> <li>• A detailed log of the stages of development of each setting is recorded. This will later be used to establish case studies.</li> </ul>
1 year prior to full implementation	<ul style="list-style-type: none"> <li>• Full-scale training for providers on the Quality Standard Framework is carried out. This will include direct professional development, alongside ‘bridging’ modules, which would be delivered by individual providers within their setting.</li> <li>• Providers start to work towards attaining the Quality Standard Framework.</li> </ul>
6 months prior to full implementation	<ul style="list-style-type: none"> <li>• First formal accreditation of providers takes place.</li> <li>• Peer assessment and development continues.</li> </ul>

### Evaluation

- 6.14 The vast majority of jurisdictions include an emphasis on rigorous, robust and transparent regulation to ensure the highest standards of education and welfare quality are being maintained. OECD reinforced the need for evaluation to focus upon all of the needs of the whole child, rather than a segregation into ‘care’ and ‘education’.

*‘The separation of “education” and “care” can, in some cases, undermine the delivery of quality goals. The result can be a lack of coherence for children and families, with a confusing variation in objectives, funding streams, operational procedures, regulatory frameworks, staff training and qualifications. (OECD 2012 p.24)’*

- 6.15 Often this is carried out by an independent body and incorporates key aspects of both planned and unannounced inspection.

## 7. Curriculum Framework

- 7.1 Alongside a clear Quality Standard Mark being in place, the establishment of a common curriculum framework would also be implemented. The benefits of having an agreed curriculum framework are well known. OECD Starting Strong III (2012) succinctly summarises the importance of establishing a curriculum framework.

*‘Curriculum and learning standards can have a positive impact on children’s learning and development. They are of particular importance in ensuring even quality across ECEC (Early Childhood Education and Care) providers, supporting staff by giving them guidance on how to enhance children’s learning and well-being, and informing parents about what the ECEC centres do and what they as parents can do at home.’ Starting Strong II 2012, Executive Summary p. 2*

- 7.2 A uniform curriculum framework also enables jurisdictions to ensure a greater level of consistency within pre-school providers. A key consideration of any curriculum framework is how it aligns to any school-level framework and curriculum. A key advantage of adopting a common curriculum framework would be to strengthen transition into primary education at the age of five.
- 7.3 Within Guernsey and Alderney all providers who may wish to take part in the universal pre-school offer would also be expected to adopt this agreed curriculum framework. This framework would provide sufficient rigour to support the Quality Standard Mark, but would remain flexible to meet the needs of the various styles of pre-school being delivered within Guernsey and Alderney. There are many examples of such curricular frameworks from various jurisdictions, and these will be investigated further to find an appropriate curriculum for the islands context. Initially, this Framework would run alongside the existing Health and Social Services Department's regulatory Framework. In this way, providers could remain registered within the Health and Social Services Department context, but not be eligible to receive funding through the universal entitlement if they chose not to.

## 8. Country Profiles

- 8.1 Guernsey's current level of state funded provision for pre-school education is currently well below that of other comparative jurisdictions. Below are examples from other countries.

Country	England	Providers	Private and Public
Entitlement	570 hours per year, usually delivered as 15 hours of free nursery education for 38 weeks of the year		
All three and four year olds are entitled to 15 hours of free nursery education for 38 weeks of the year. This applies until they reach compulsory school age (the term following their fifth birthday). Free early education places are available at a range of early years providers including nursery schools and classes, children’s centres, day nurseries, playgroups, preschools and child-minders. All Early Years provision comes under the regulation and inspection of Ofsted.			
Further information can be found at: <a href="http://www.education.gov.uk">www.education.gov.uk</a>			

Country	Scotland	Providers	Government Funded
Entitlement	475 hours of funded pre-school education over the year		
All children aged three and four year olds have a universal entitlement to provision. This is usually delivered on a daily basis in blocks of 2½ hours, during the morning or afternoon, during school term times. There is flexibility, for example, parents may request two sessions a day for two days and then one session on another day. Centres			

providing pre-school education must be registered with the Care Inspectorate and receive regular joint inspection by the Care Inspectorate and HM Inspectorate of Education. However, The Children and Young People Bill, if passed, will entitle three and four-year-olds to 600 hours of free early learning nursery education per year from 2014.

**Further information can be found at:** [www.scottishchildcare.gov.uk](http://www.scottishchildcare.gov.uk)

<b>Country</b>	Northern Ireland	<b>Providers</b>	Private and Public
<b>Entitlement</b>	Between 2 ½ and 4 hours per day for the majority of children		

Pre-school education is a non-compulsory phase of education which is designed for children who are in the year immediately before they enter Primary 1. Most pre-school places are available on a part-time basis (at least 2½ hours per day) however, some nursery schools and classes may offer full-time places (around 4 hours, with lunch available).

**Further information can be found at:** [www.deni.gov.uk/index/support-and-development-2/early-years-education.htm](http://www.deni.gov.uk/index/support-and-development-2/early-years-education.htm)

<b>Country</b>	Jersey	<b>Providers</b>	Private and Public
<b>Entitlement</b>	Funding available up to 20 hours a week, 38 weeks a year - term-time only.		

Free States funded nursery education is available to children provided they become 4 years old between 1<sup>st</sup> September and 31<sup>st</sup> August in the year before they are due to start primary school. Parents are able to secure a place with a nursery provider which is committed to the work of the Jersey Early Years and Childcare Partnership (EYCP). The Nursery Education Fund scheme enables registered private and voluntary sector day nurseries and pre-schools to be paid by the States of Jersey to educate children up to 20 hours a week during term-time only.

**Further information can be found at:**  
[www.gov.je/Education/Preschool/Pages/NurseryEducation.aspx](http://www.gov.je/Education/Preschool/Pages/NurseryEducation.aspx)

<b>Country</b>	Isle of Man	<b>Providers</b>	Private
<b>Entitlement</b>	A voucher with a face value of £350.00 or £800.00 redeemable at approved providers		

From September 2012, the Department of Education and Children (DEC) will cease to provide non statutory, pre-school sessions. Parents or guardians of children of pre-school age can apply for a pre-school credit certificate towards the cost of accessing pre-school education for their children. A credit certificate with a value of £350 towards pre-school education will be available to parents of all eligible children who



reach their fourth birthday between 1<sup>st</sup> September 2013 and 31<sup>st</sup> August 2014. There is an additional £800 available for those who would be eligible for free school meals - that is, in receipt of Employed Person's Allowance, Income Support or income based Jobseeker's Allowance.

**Further information can be found at:**

[www.cf.gov.im/categories/education,-training-and-careers/pre-school/](http://www.cf.gov.im/categories/education,-training-and-careers/pre-school/)

## **9. In Practice**

9.1 The Education Department is recommending, with effect from September 2016, the introduction of universal pre-school provision for all 3-4 year olds. This introduction would adhere to the following principles:

- to establish a universal pre-school offer of high quality provision for all 3-4 year olds, consisting of 15 hours per week, 38 weeks of the year;
- the universal pre-school offer would be implemented as part of a public and private partnership. The majority of places would be provided by the private sector using providers who have achieved the Quality Standard Mark. Remaining places, would be provided through the public sector;
- support and training would be available where required in the development of, implementation of, and delivery of the curriculum framework and the Quality Standard Mark;
- admission to private providers would be funded through a universal Education Grant.

## **10. Cost**

10.1 It is currently estimated that this scheme would require an annual commitment of approximately £1.9 million. This estimate was derived from the number of children entitled to receive pre-school education in a cohort and the average hourly rate for pre-school provision in the Bailiwick. It also includes the costs for funding the quality assurance scheme.

10.2 Lynch also summarised the cost benefit analyses for a range of Early Childhood Development programmes. Lynch commented that it was not possible to quantify in monetary terms all the benefits of each programme (eg reduced child abuse), but in each case the costs were fully captured. Despite the inability to capture all of the benefits, the benefit cost ratios varied from a minimum of 3.78 to 1 (Abecedarian) to a high of 17.07 to 1 (Perry Pre-School). In other words, every dollar invested in these programmes generated \$3.78 or more in benefits.

## **11. Cross States Departmental and Partnership Working**

11.1 The Education Department and Health and Social Services Department are working with the Guernsey Pre-School Learning Alliance (GPLA), which represents the majority of private providers, on the details of introducing such a

scheme. By working together the Department would ensure that the introduction of a universal entitlement to pre-school education is achieved in a way that benefits the child but does not have a detrimental effect on existing private providers. This will include the development of a curriculum framework and quality standards as well as looking at training requirements for staff and helpers and the funding necessary to run such a scheme.

- 11.2 The Education Department would anticipate the entitlement to Pre-School education forming an important part of the new Children and Young People's Plan which is being led by the Health and Social Services Department.

## **12. Compliance with Corporate Governance and Strategic Objectives**

- 12.1 The contents of this States Report are in accordance with the objectives in the States Strategic Plan, in particular the objectives on equality of opportunity and sustainable long term finances.
- 12.2 The report is also compliant with the Principles of Good Governance as outlined in Billet d'État IV, 2011, particularly Principles 1 and 4 and the Department has consulted with the Health and Social Services Department, the Social Security Department and the GPLA as necessary to meet principle 6:-

**Principle 1:** focusing on the organisation's purpose and on outcomes for citizens and service users;

**Principle 4:** taking informed, transparent decisions and managing risk; and

**Principle 6:** engaging stakeholders and making accountability real.

- 12.3 The Education Department has consulted on these proposals with the Treasury and Resources Department, Health and Social Services Department, Social Security Department (response included in Appendix 2) and the States of Alderney. The Education Department is appreciative of the constructive contributions and input from these stakeholders in the preparation of this States Report.

## **13. Beyond Pre-school**

- 13.1 The Education Department will of course continue to work closely with other States Departments and others as necessary, to support families with children from birth to age 18, to ensure that every child is in a strong position to take an active role in future life. This is a key commitment of the Department's Vision for Education in Guernsey and Alderney, and an integral part of the States' social and economic policy planning.

## **14. Recommendations**

14.1 The States are recommended to:

1. agree in principle the introduction of a universal entitlement of quality pre-school provision of 15 hours per week for the equivalent of 38 weeks a year for all 3-4 year olds, delivered through a partnership approach with the private and voluntary sectors with effect from September 2016 as set out in section 9 of this report; and
2. direct that by no later than September 2015 the Education Department and the Treasury and Resources Department shall jointly lay before the States a report advising of one or more viable options for funding universal pre-school education.

Yours faithfully

R W Sillars  
Minister

A R Le Lievre  
Deputy Minister

R Conder  
C J Green  
P A Sherbourne

D Mulkerrin CBE  
Non-States member

## Appendix 1

### Links to supporting documents

- Sylva, K et al. (2004) *The Effective Provision of Pre-School Education (EPPE) Project: Findings from the Early Primary Years, SureStart, London*  
[http://www.ioe.ac.uk/RB\\_Findings\\_from\\_early\\_primary\(1\).pdf](http://www.ioe.ac.uk/RB_Findings_from_early_primary(1).pdf)
- Sylva, K et al. (2004) *The Effective Provision of Pre-School Education (EPPE) Project: Findings from Pre-school to end of Key Stage 1, Sure Start, London*  
<http://eppe.ioe.ac.uk/eppe/eppepdfs/RBTec1223sept0412.pdf>
- Sylva, K et al. (2008) *The Effective Pre-school and primary education 3-11 (EPPE 3-11) Project: Final Report from the Primary Phase: pre-school, school and family influences on children's development during Key Stage 2. DCSF-RB06, London*  
<http://webarchive.nationalarchives.gov.uk/20130401151716/https://www.education.gov.uk/publications/eOrderingDownload/DCSF-RR061.pdf>
- Sylva, K et al. (2012) *The Effective Pre-School , primary and secondary education Project (EPPSE): Final report from the Key Stage 3 phase: Influences of students' development from age 11-1, DfE-RB202, London*  
[http://www.ioe.ac.uk/KS3\\_final\\_report\\_RB.pdf](http://www.ioe.ac.uk/KS3_final_report_RB.pdf)
- OECD (2011) *PISA in Focus 1: Does participation in pre-primary education translate into better learning outcomes at school?*, OECD Paris  
[http://www.oecd-ilibrary.org/fr/education/does-participation-in-pre-primary-education-translate-into-better-learning-outcomes-at-school\\_5k9h362tpvxp-en;jsessionid=12u3hvd18ixpb.delta](http://www.oecd-ilibrary.org/fr/education/does-participation-in-pre-primary-education-translate-into-better-learning-outcomes-at-school_5k9h362tpvxp-en;jsessionid=12u3hvd18ixpb.delta)
- Lynch, R.G, (2005) *Early Childhood Investment yields big payoff*. WestEd,, California  
[http://www.wested.org/online\\_pubs/pp-05-02.pdf](http://www.wested.org/online_pubs/pp-05-02.pdf)

(NB The Treasury and Resources Department has commented as follows:



**Treasury and Resources**  
 Sir Charles Frossard House  
 La Charroterie  
 St Peter Port, Guernsey  
 GY1 1FH  
 Telephone +44 (0) 1481 717000  
 Facsimile +44 (0) 1481 717321  
[www.gov.gg](http://www.gov.gg)

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

4 April 2014

Dear Chief Minister

**EDUCATION DEPARTMENT – THE INTRODUCTION OF A UNIVERSAL ENTITLEMENT TO PRE-SCHOOL EDUCATION**

The Treasury and Resources Department recognises that early intervention initiatives, including pre-school education, may produce savings in wider government expenditure in the longer term. However, it should be recognised that there could be a significant number of expenditure pressures in the coming years resulting from increases in the demand or cost of providing existing services or for the introduction of enhanced or new services. These could only be funded by increasing income through taxation or by decreasing expenditure in other areas (either through efficiencies or by reducing service provision in other areas to enable reprioritisation of existing budgets) and should not be considered in isolation.

The resolutions of the Policy Council's Government Service Plan States Report (approved in July 2013) include "To approve the development of a Government Service Plan as the corporate mechanism for allocating the resources available to the States in accordance with States strategic aims and objectives and agreed priorities." The Treasury and Resources Department agrees that such a prioritisation mechanism is vital and therefore strongly recommended to the Education Department that it only submit proposition 1 amended to include "and subject to funding being made available", in order that the States only approve the concept in principle. For the avoidance of doubt therefore, in approving this Report States Members will not be committing to the allocation of additional budget to the Education Department, now or in the future, to fund the introduction of a universal entitlement to pre-school education.

The Treasury and Resources Department is bound to point out that it also has concerns over the demonstration of value for money in introducing a universal entitlement to pre-school education, as a large proportion of the annual expenditure of £1.9million could be reimbursing parents for costs they already incur rather than resulting in a child either accessing or increasing to 15 hours per week of pre-school education. The Department is of the opinion that the arguments outlined in paragraph 4.9 against more targeted provision, which may prove to be a more cost effective or affordable option, have not been explored in any depth in this report. The Report also does not contain any assessment of whether any other early intervention policies might produce better value for money and outcomes.

The estimated costs of £1.9million are outlined in paragraph 10.1 but the Treasury and Resources Department is also concerned that this is unsupported by any further detailed analysis.

The Personal Tax, Benefits and Pensions Review is considering the appropriateness of existing universal benefits and the Treasury and Resources Department is of the view that the provision of a universal entitlement to pre-school education should be considered therein, including whether funding can be made available.

Yours sincerely

A handwritten signature in dark ink, appearing to read 'Gavin St Pier', with a stylized, cursive script.

Gavin St Pier  
Minister)

**(NB The Policy Council whilst supporting the objectives of the positive social and economic outcomes acquired from investment in early childhood development, and acknowledging the work undertaken on the general principles of pre-school education, by a majority, must strongly advise the States not to approve the present report.**

**The Policy Council is aware that the States report has potential estimated costs of £1.9 million, when a large proportion of families are accessing pre-school education privately, through charities or paid for through the Social Security Department already. In this respect the universal provision would displace these investments.**

**Although the proposals would help families access more hours of quality pre-school education, the States have already agreed measures that have been put in place to avoid increases in general revenue expenditure.**

**Any consideration of new service developments should not be considered in isolation on a first come basis but should be looked at in the round with other demands on the public purse. It therefore cannot be seen as effective, responsible corporate governance to submit proposals under the current fiscal constraints without identifying how such changes are to be funded sustainably. The Policy Council has therefore determined that the report is an example of poor compliance with some of the principles of good governance in relation to funding.)**

The States are asked to decide:-

XV.- Whether, after consideration of the Report dated 10<sup>th</sup> March, 2014, of the Education Department, they are of the opinion:-

1. To agree in principle the introduction of a universal entitlement of quality pre-school provision of 15 hours per week for the equivalent of 38 weeks a year for all 3-4 year olds, delivered through a partnership approach with the private and voluntary sectors with effect from September 2016 as set out in section 9 of that report.
2. To direct that by no later than September 2015 the Education Department and the Treasury and Resources Department shall jointly lay before the States a report advising of one or more viable options for funding universal pre-school education.

## APPENDIX 1

### STATES ASSEMBLY AND CONSTITUTION COMMITTEE

#### RECORD OF MEMBERS' ATTENDANCE AT MEETINGS OF THE STATES OF DELIBERATION, THE POLICY COUNCIL, DEPARTMENTS AND COMMITTEES

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

4<sup>th</sup> March 2014

Dear Sir

On the 29<sup>th</sup> October, 2010 the States resolved, *inter alia*:

1. ...
2. *That departments and committees shall maintain a record of their States Members' attendance at, and absence from meetings and that the reason for absence shall also be recorded.*
3. *That the records referred to in 2 above, together with a record of States Members' attendance at meetings of the States of Deliberation, shall be published from time to time as an appendix to a Billet d'État.*

In laying this report before the States, the Committee would draw attention to the fact that the tables in it record only the attendance by Members of the States at Departmental and Committee meetings. They do not show attendance at Departmental or Committee sub-committee meetings or presentations. Nor do they show the amount of work or time spent, for example, on dealing with issues raised by parishioners, correspondence and preparing for meetings.

I should be grateful if you would arrange for this report, in respect of statistics provided by Her Majesty's Greffier, Departments and Committees for the six months ended 31<sup>st</sup> October, 2013, to be published as an appendix to a Billet d'État.

Yours faithfully

M. J. FALLAIZE

Chairman  
States Assembly and Constitution Committee



**PART I - REPORT BY DEPARTMENT/COMMITTEE**

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States business	Personal business/ holiday	Other

**POLICY COUNCIL**

P. A. Harwood	16	13			1	1	1 conflict
J. P. Le Tocq	16	10			4	2	
G. A. St. Pier	16	15				1	
K. A. Stewart	16	14			1	1	
M. G. O'Hara	16	11		2	2	1	
R. W. Sillars	16	11	1	1	1	1	1 conflict
R. Domaille	16	13				3	
M. H. Dorey	16	9	1		4	1	1 conflict
D. B. Jones	16	13		1		2	
P. A. Luxon	16	12			2	2	
A. H. Langlois	16	11	1		3	1	

**Alternate Members:**

S. A. James, M.B.E.	3	3					
A. Spruce	1	1					
F. W. Quin	5	5					
M. P. J. Hadley	3	3					
S. J. Ogier	1	1					
A. R. Le Lièvre	2	2					
P. R. Le Pelley	1	1					
M. J. Storey	1	1					
M. K. Le Clerc	1	1					
B. J. Brehaut	1	1					
J. Kuttelwascher	1	1					
A. H. Brouard	1	1					

**COMMERCE AND EMPLOYMENT DEPARTMENT**

K. A. Stewart	12	11				1	
A. H. Brouard	12	11				1	
D. de G. De Lisle	12	12					
L. B. Queripel	12	11				1	
H. J. R. Soulsby	12	10			2		

**CULTURE AND LEISURE DEPARTMENT**

M. G. O'Hara	11	11					
D. A. Inglis	11	11					
D. J. Duquemin	11	10				1	
P. R. Le Pelley	11	10				1	
F. W. Quin	11	11					

**EDUCATION DEPARTMENT**

R. W. Sillars	16	15				1	
A. R. Le Lièvre	16	15				1	
R. Conder	16	14	2				
C. J. Green	16	16					
P. A. Sherbourne	16	15				1	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States business	Personal business/ holiday	Other

ENVIRONMENT DEPARTMENT							
R. Domaille	12	10				2	
A. Spruce	12	10				2	
B. L. Brehaut	12	9	1			2	
Y. Burford	12	10	1	1			
B. J. E. Paint	12	9	1		2		

HEALTH AND SOCIAL SERVICES DEPARTMENT							
M. H. Dorey	21	20				1	
M. J. Storey	21	11		5		5	
B. L. Brehaut	21	18	1			2	
E. G. Bebb	21	17	1			3	
S. A. James, MBE	21	14	2		2	3	

HOME DEPARTMENT							
J. P. Le Tocq	21	15	1	1	3	1	
F. W. Quin	21	20				1	
M. K. Le Clerc	21	15	5			1	
A. M. Wilkie	21	19				2	
M. M. Lowe	21	20				1	

HOUSING DEPARTMENT							
D. B. Jones	13	10				3	
M. P. J. Hadley	13	13					
P. R. Le Pelley	13	11		1		1	
B. J. E. Paint	13	11			2		
M. J. Storey	13	6		7			

PUBLIC SERVICES DEPARTMENT							
P. A. Luxon	12	12					
S. J. Ogier	12	10	1			1	
Y. Burford	12	10	2				
D. J. Duquemin	12	10				2	
R. A. Jones	12	11				1	

SOCIAL SECURITY DEPARTMENT							
A. H. Langlois	17	16			1		
S. A. James, MBE	17	14	1		2		
J. A. B. Gollop	17	13	3	1			
C. J. Green	17	16				1	
M. K. Le Clerc	17	15			2		

TREASURY AND RESOURCES DEPARTMENT							
G. A. St. Pier	27	24	1			2	
J. Kuttelwascher	27	23	1			3	
G. M. Collins	4	3	1				
A. Spruce	27	23				4	
R. A. Perrot	27	24	1			2	
A. H. Adam	23	22				1	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States business	Personal business/ holiday	Other

**LEGISLATION SELECT COMMITTEE**

R. A. Jones	7	7					
J. A. B. Gollop	7	6			1		
E. G. Bebb	7	5	1		1		
L. B. Queripel	7	6		1			
D. de G. De Lisle	7	6				1	

**PUBLIC ACCOUNTS COMMITTEE**

H. J. R. Soulsby	4	4					
M. K. Le Clerc	4	4					
S. A. James, MBE	4	2	1	1			
P. A. Sherbourne	4	2			1	1	
E. P. Arditti	4	1	1	2			

**SCRUTINY COMMITTEE**

E. P. Arditti	5	4		1			
R. A. Jones	5	5					
A. R. Le Lièvre	1	0			1		
P. R. Le Pelley	5	5					
S. J. Ogier	5	5					
P. A. Sherbourne	5	3			2		
H. J. R. Soulsby	5	5					
Lester C. Queripel	5	5					
Laurie B. Queripel	5	5					
B. J. E. Paint	4	2				2	

**STATES ASSEMBLY AND CONSTITUTION COMMITTEE**

M. J. Fallaize	9	9					
P. L. Gillson	9	8				1	
E. G. Bebb	9	7				2	
R. Conder	9	8	1				
A. H. Adam	9	7	1			1	

**PAROCHIAL ECCLESIASTICAL RATES REVIEW COMMITTEE**

J. A. B. Gollop	1	1					
M. M. Lowe	1	1					
R. Conder	1	1					
C. J. Green	1	1					
D. de G. De Lisle	1	1					

**STATES REVIEW COMMITTEE**

P. A. Harwood	7	6			1		
M. J. Fallaize	7	7					
G. A. St Pier	7	5			2		
R. Conder	7	6			1		
M. H. Dorey	7	6			1		

**PART II - REPORT BY MEMBER/ELECTORAL DISTRICT****Summary of Attendances at Meetings of the Policy Council, Departments and Committees**

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States business	Personal business/ holiday	Other
ST PETER PORT SOUTH							
P. A. Harwood	23	19			2	1	1 conflict
J. Kuttelwascher	28	24	1			3	
B. L. Brehaut	34	28	2			4	
R. Domaille	28	23				5	
A. H. Langlois	33	29	1		4	1	
R. A. Jones	24	23				1	
ST PETER PORT NORTH							
M. K. Le Clerc	43	31	5			7	
J. A. B. Gollop	25	20	3	1	1		
P. A. Sherbourne	25	20			3	2	
R. Conder	33	29	3		1		
M. J. Storey	35	18		12		5	
E. G. Bebb	37	29	2		1	5	
L. C. Queripel	5	5					
ST. SAMPSON							
G. A. St. Pier	50	44	1		2	3	
K. A. Stewart	28	25			1	2	
P. L. Gillson	9	8				1	
P. R. Le Pelley	29	27		1		1	
S. J. Ogier	18	16	1			1	
L. S. Trott	0						
VALE							
M. J. Fallaize	16	16					
D. B. Jones	29	23		1		5	
L. B. Queripel	24	22		1		1	
M. M. Lowe	22	21				1	
A. R. Le Lièvre	19	17			1	1	
A. Spruce	40	34				6	
G. M. Collins	4	3	1				
CASTEL							
D. J. Duquemin	23	20				3	
C. J. Green	34	33				1	
M. H. Dorey	44	35	1		5	2	1 conflict
B. J. E. Paint	29	22	1		4	2	
J. P. Le Tocq	37	25	1	1	7	3	
S. A. James, MBE	45	33	4	1	4	3	
A. H. Adam	32	29	1			2	

NAME OF MEMBER	TOTAL NUMBER OF MEETINGS	MEMBER PRESENT		MEMBER ABSENT			
		Whole Meeting	Part of Meeting	Indisposed	States business	Personal business/ holiday	Other
WEST							
R. A. Perrot	27	24	1			2	
A. H. Brouard	13	12				1	
A. M. Wilkie	21	19				2	
D. de G. De Lisle	20	19				1	
Y. Burford	24	20	3	1			
D. A. Inglis	11	11					
SOUTH-EAST							
H. J. R. Soulsby	21	19			2		
R. W. Sillars	32	26	1	1	1	2	1 conflict
P. A. Luxon	28	24			2	2	
M. G. O’Hara	27	22		2	2	1	
F. W. Quin	37	36				1	
M. P. J. Hadley	16	16					
ALDERNEY REPRESENTATIVES							
E. P. Arditti	9	5	1	3			
L. E. Jean	0						
TOTAL							
Number of meetings	1,192	1,004	34	26	43	83	3*
		85%	3%	2%	3%	7%	<1%
AVERAGE PER MEMBER							
	25	21	<1	<1	1	<2	<1

\*3 conflicts

**PART III – REPORT OF ATTENDANCE AND VOTING IN THE STATES OF DELIBERATION**

<b>NAME OF MEMBER</b>	<b>TOTAL NUMBER OF DAYS (or part)</b>	<b>DAYS ATTENDED (or part)</b>	<b>TOTAL NUMBER OF RECORDED VOTES</b>	<b>RECORDED VOTES ATTENDED</b>
<b>ST PETER PORT SOUTH</b>				
P. A. Harwood	20	20	52	51
J. Kuttelwascher	20	20	52	52
B. L. Brehaut	20	20	52	52
R. Domaille	20	20	52	52
A. H. Langlois	20	20	52	51
R. A. Jones	20	20	52	52
<b>ST PETER PORT NORTH</b>				
M. K. Le Clerc	20	20	52	52
J. A. B. Gollop	20	20	52	50
P. A. Sherbourne	20	20	52	52
R. Conder	20	20	52	52
M. J. Storey	20	9	52	21
E. G. Bebb	20	20	52	51
L. C. Queripel	20	20	52	51
<b>ST SAMPSON</b>				
G. A. St. Pier	20	20	52	51
K. A. Stewart	20	19	52	48
P. L. Gillson	20	20	52	51
P. R. Le Pelley	20	17	52	38
S. J. Ogier	20	20	52	51
L. S. Trott	20	20	52	50
<b>VALE</b>				
M. J. Fallaize	20	20	52	52
D. B. Jones	20	20	52	51
L. B. Queripel	20	16	52	45
M. M. Lowe	20	20	52	52
A. R. Le Lièvre	20	20	52	51
A. Spruce	20	20	52	50
G. M. Collins	20	18	52	44
<b>CASTEL</b>				
D. J. Duquemin	20	20	52	52
C. J. Green	20	20	52	52
M. H. Dorey	20	20	52	52
B. J. E. Paint	20	16	52	44
J. P. Le Tocq	20	19	52	44
S. A. James, MBE	20	19	52	45
A. H. Adam	20	20	52	52

NAME OF MEMBER	TOTAL NUMBER OF DAYS (or part)	DAYS ATTENDED (or part)	TOTAL NUMBER OF RECORDED VOTES	RECORDED VOTES ATTENDED
<b>WEST</b>				
R. A. Perrot	20	19	52	47
A. H. Brouard	20	20	52	52
A. M. Wilkie	20	20	52	51
D. de G. De Lisle	20	20	52	52
Y. Burford	20	20	52	52
D. A. Inglis	20	20	52	52
<b>SOUTH-EAST</b>				
H. J. R. Soulsby	20	20	52	51
R. W. Sillars	20	20	52	52
P. A. Luxon	20	20	52	52
M. G. O'Hara	20	19	52	44
F. W. Quin	20	20	52	52
M. P. J. Hadley	20	20	52	51
<b>ALDERNEY REPRESENTATIVES</b>				
E. P. Arditti	20	20	52	51
L. E. Jean	20	20	52	50

**Note:**

The only inference which can be drawn from the attendance statistics in this part of the report is that a Member was present for the roll call or was subsequently *relevé(e)*.

Some Members recorded as absent will have been absent for reasons such as illness.

The details of all recorded votes can be found on the States' website –  
<http://www.gov.gg/article/80939/States-Members-Voting-Records>

**APPENDIX 2****POLICY COUNCIL****GUERNSEY OVERSEAS AID COMMISSION - ANNUAL REPORT 2013**

The Policy Council has received the Guernsey Overseas Aid Commission's 2013 Annual Report which is attached for publication as an appendix to a Billet d'État.

J P Le Tocq  
Chief Minister

24<sup>th</sup> March 2014

G A St Pier  
M H Dorey  
R Domaille

K A Stewart  
D B Jones

M G O'Hara  
P A Luxon

R W Sillars  
A H Langlois





# Guernsey Overseas Aid Commission

## 2013 Annual Report



***“Helping the world’s  
least developed  
countries through a  
hand up rather than  
a handout”***

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<b>MAG</b> – Mines clearance in Moxico, Angola	
	<b>ACORD</b> – new cattle feeding troughs and wells in Loitokitok District, Kenya
<b>Build Africa</b> – Kayera Primary School, Masindi, Uganda	<b>Concern Universal</b> – Food security and environmental management Wuli and Sandu districts, Upper River Region, The Gambia

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## Chairman's Introduction

I am pleased to present my second Annual Report as Chairman of the Guernsey Overseas Aid Commission.

2013 has proved to be a very busy year for the Commission and I continue to be impressed at the hard work and commitment of the Commissioners. I am very mindful that the Commissioners are unpaid volunteers who are not only giving of their time, energy and experience to do something for Guernsey but are also ensuring that the funds the States of Guernsey provides the Commission for use on overseas aid projects brings the greatest benefit to some of the poorest and most vulnerable communities in the world.

At the start of 2013, the Commissioners were busy reviewing and assessing the applications for Grant Aid funding. No sooner had they completed this task, they turned their attention to a review of the Commission's policies and procedures. This review saw a number of changes in how the Commission allocates money from both its Grant Aid and Disaster Emergency Relief budgets and, perhaps most importantly, strengthened its approach to the monitoring and scrutiny of how the various charities receiving funding use the awards. In undertaking this review, the Commissioners were very mindful that they are acting "on behalf of the people of Guernsey" and so it is essential that we use our best endeavours to ensure that each £1 of our budget reaches those most in need of overseas aid.

At the end of 2013 the Commissioners again turned their attention to scrutinising the applications for Grant Aid funding from the Commission's 2014 budget. This undertaking has placed unprecedented demands on the Commissioners time as the number of applications for funding rose by nearly 45 percent, with 329 applications totalling £14 million seeking a share of Guernsey's annual Overseas Aid budget of £2.6 million. There are several reasons why the number of applications increased so dramatically and all appear to be as a direct result of the Commission's more pro-active approach in publicising its work. Indeed, over 20 percent of applicants indicated that they had learnt of the Commission's Grant Aid Awards from an internet search.

In the midst of this heavy work load, several of the Commissioners also took the opportunity to visit charities and agencies to learn at firsthand about some of the work being undertaken with Commission funding. In each case the Commissioner funded the visit at entirely their own cost and I am grateful to them for "going the extra mile" to gain a better insight into how projects funded by the Commission do change the lives of so many.

In closing, I wish to re-iterate my appreciation and thanks to each of the Commissioners for their continued hard work and dedication.

Deputy Mike O'Hara  
Chairman  
Guernsey Overseas Aid Commission

## 1. The Commissioners

During 2013 there were no changes in the Commission's membership. Deputy Mike O'Hara remained as the Commission's Chairman and the Commissioners are:

Mr. Tim Peet.  
 Mr. Steve Mauger  
 Mr. Philip Bodman  
 Miss Judy Moore  
 Dr. Nick Paluch  
 Ms. Teresa de Nobrega

In addition to reviewing and assessing all applications for funding from the Commission's Grant Aid and Disaster Emergency Relief Funds several of the Commissioners undertook a number of fact finding visits in their own time and at their own expense.

In April 2013, Ms. Teresa de Nobrega and the Commission's Secretary visited the offices of the UK's Disaster Emergency Committee and were able to see at firsthand how a small but dedicated team drawn from across the fourteen charities that make up the DEC determine whether a disaster is one which the Committee should respond to through the launch of a national appeal and how the funds raised during such an appeal are distributed across the various member charities.

In June 2013, Miss Judy Moore and Ms. Teresa de Nobrega accepted an invitation from UNICEF to visit its emergency aid distribution centre in Copenhagen. Two Commissioners toured the charity's new warehouse and attended a seminar on UNICEF's role in providing life-saving supplies to children around the world.



**Exterior of the UNICEF Supply Division warehouse**



**Interior view of the warehouse's storage system**

UNICEF's Supply Division moved into the above fully automated warehouse in 2012 which is over 20,000m<sup>2</sup> (the equivalent of 3 football pitches) in size. The warehouse houses over 850 different supply items and is the largest humanitarian warehouse in the world.





**An emergency midwifery pack**



**An emergency "school in a box"**

In November 2013, Dr. Nick Paluch travelled to Zambia where he was able to check on the progress of some much needed staff accommodation at the St. Francis Mission Hospital in Katete which is being built with funding from Guernsey based charity The Friends of Katete and with a grant from the Commission. The 400 bed hospital serves a local population of more than 250,000 and acts as a referral centre for the whole Province.



**Dr. Paluch presenting the building crew at St Francis Hospital with a plaque to acknowledge the financial support given to the hospital by the people of Guernsey**

During his visit Dr Paluch was able to join the medical ward rounds and help in the outpatient clinic. He said,

*"The hospital serves a very large population spread across a remote and rural part of Zambia which makes it difficult for them to recruit and retain staff. The accommodation which the Commission is funding will improve this but at present they still rely heavily on volunteers from abroad. During my visit there were just two resident Zambian doctors and the hospital's busy 80 bed paediatric ward was being covered by a single junior doctor from the UK."*

*Cases of infectious disease are far more common than in Guernsey and I was involved in the treatment of many patients suffering with problems I rarely see here such as malaria, meningitis, TB, typhoid and of course HIV/Aids. On the surgical ward I was particularly struck and saddened by the number of children with severe and extensive burns sustained on the open village fires and I was fascinated to see that these burns are often dressed with sterilised banana leaves."*

In December 2013, Tim Peet took the opportunity of a few hours to spare whilst travelling through London to also visit the DEC's offices. His visit was a few days after the DEC had launched its appeal in response to Typhoon Haiyan (see Section 7 for further details) and so he was able to see the team "in action".

During 2013, representatives of several charities and agencies either made short presentations to the Commission or met with the Commission's Secretary.

The feedback from these various visits and from talking at first hand with key players from the charities funded by the Commission is invaluable as it enables the Commissioners to gain a clearer insight into the work being undertaken, the challenges that have to be overcome and how the completed projects do make a lasting difference in improving the lives of some of the world's poorest and most vulnerable people.

## **2. Commission Staff**

During 2013, there were no staff changes within the Commission and Ms Dene continues to act as its Secretary on a half-time basis.

## **3. Commission Budget**

In January 2012, the States of Deliberation resolved,

*"1. That the States of Guernsey maintain its current level of contribution (+RPIX) per annum.*

*2. That the States of Guernsey monitor the level of Overseas Aid expenditure with a view to reconsidering it once there is a higher degree of certainty over corporate taxation and when the fiscal position improves, or within 5 years, whichever is sooner."*

The Commission's Grant Aid Budget for 2013 was £2,600,000 and its Disaster Emergency Relief budget was £200,000.

## **4. 2013 Grant Aid Awards**

In 2013 the Commission received 180 applications from 98 individual different charities and humanitarian agencies.

The applications for Grant Aid amounted to £6,107,431 and ranged from applications for £4,400 towards the costs of shipping a container from Guernsey to Tanzania (reported on in the Commission's 2012 Annual Report) to a number of applications for £40,000 (the Commission's general maximum level for Grant Aid awards).

The Commission approved funding for 81 individual projects and the total amount of the awards was £2,657,392 (see Appendix 1 for the details of the funded projects and Appendix 2 for the details of the unsuccessful applications). The over-subscription of applications for Grant Aid funding meant that the Commission again was faced with some very hard decisions as its budget did not allow it to fund many projects which would have merited support had more funds been available.

Table 1 provides an overview of the Grant Aid awards by project category and region. The Commission has adopted the following award categories which reflect the principle focus of an application for funding:

<b>Agriculture</b>	Includes projects focusing on agriculture, horticulture, forestry and fishing and food security projects
<b>Education</b>	Includes all education and training programmes and the construction of schools and education facilities
<b>Health</b>	Includes all health care, vaccination and disease prevention programmes and public health projects and the construction of medical facilities
<b>Other</b>	Includes income generation programmes, micro-loans, outreach projects, disaster preparedness, land mine clearance and rehabilitation projects)
<b>Water</b>	Includes projects to provide or improve water and sanitation services, the provision of wells and clean water supplies and the construction of latrine and washing facilities

Just over 80% of all awards were for projects in Africa. This was an increase of approximately 10% on 2012. The Commission only received two applications for projects within Latin America (both in Haiti) and there was also a drop in the number of applications from the India Sub-Continent and Asia and the Pacific regions, especially for projects in India, Thailand and Pakistan. This change may reflect the improving economies in these two countries.

<b>Table 1</b>	<b>Africa</b>	<b>Latin America</b>	<b>Indian Sub-Continent</b>	<b>Asia and Pacific Regions</b>	<b>Total</b>
<b>Agriculture</b>	7	2	0	1	10
<b>Education</b>	17	0	0	1	18
<b>Health</b>	17	0	3	6	26
<b>Other</b>	11	0	0	0	11
<b>Water</b>	13	0	1	2	16
<b>TOTAL PROJECTS</b>	<b>65</b>	<b>2</b>	<b>4</b>	<b>10</b>	<b>81</b>



Figure 1 shows how the various Grant Aid awards were distributed by region across the world.

**Figure 1 - Distribution of 2013 Grant Aid by Region**

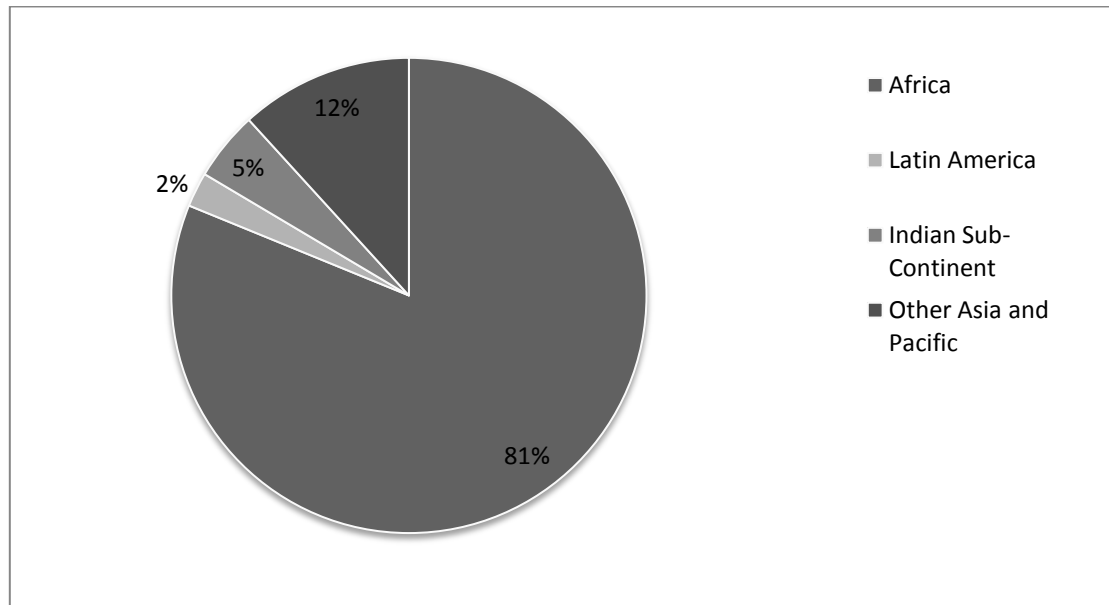


Figure 2 shows what percentage of Grant Aid allocated to each category of project.

**Figure 2 - Percentage Distribution of 2012 Grant Aid by Project Category**

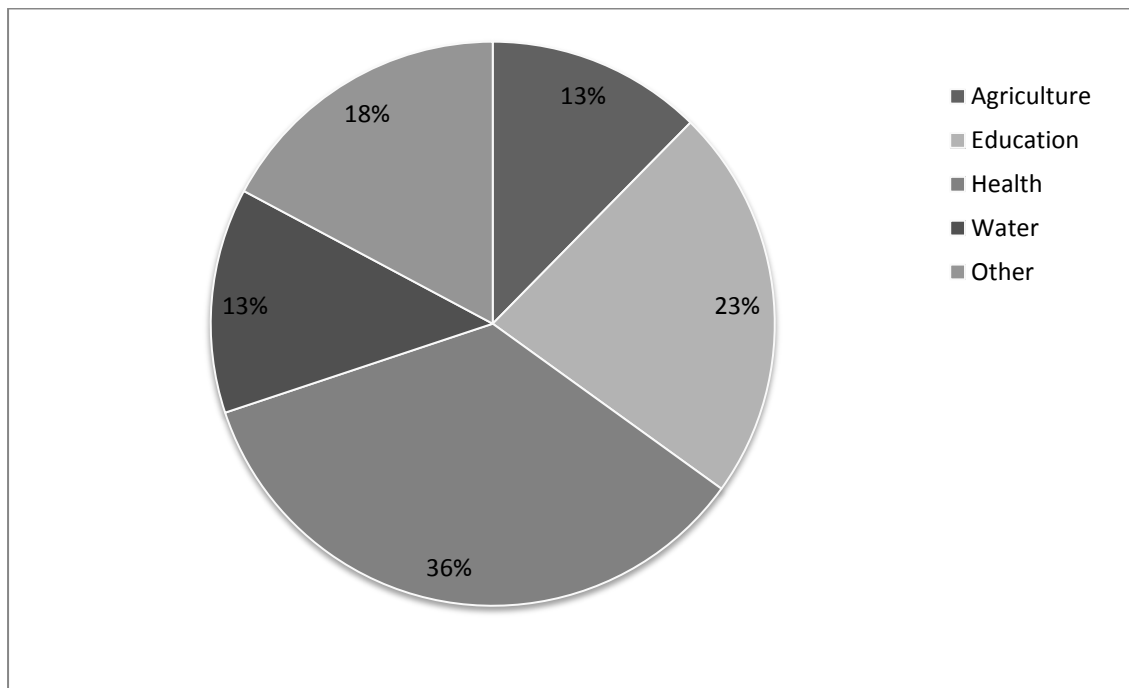


Figure 3 provides an overview of the distribution of the total amounts of Grant Aid requested and the value of awards made by the Commission by country.

Figure 3 - Distribution of 2012 Grant Aid requests and awards by country

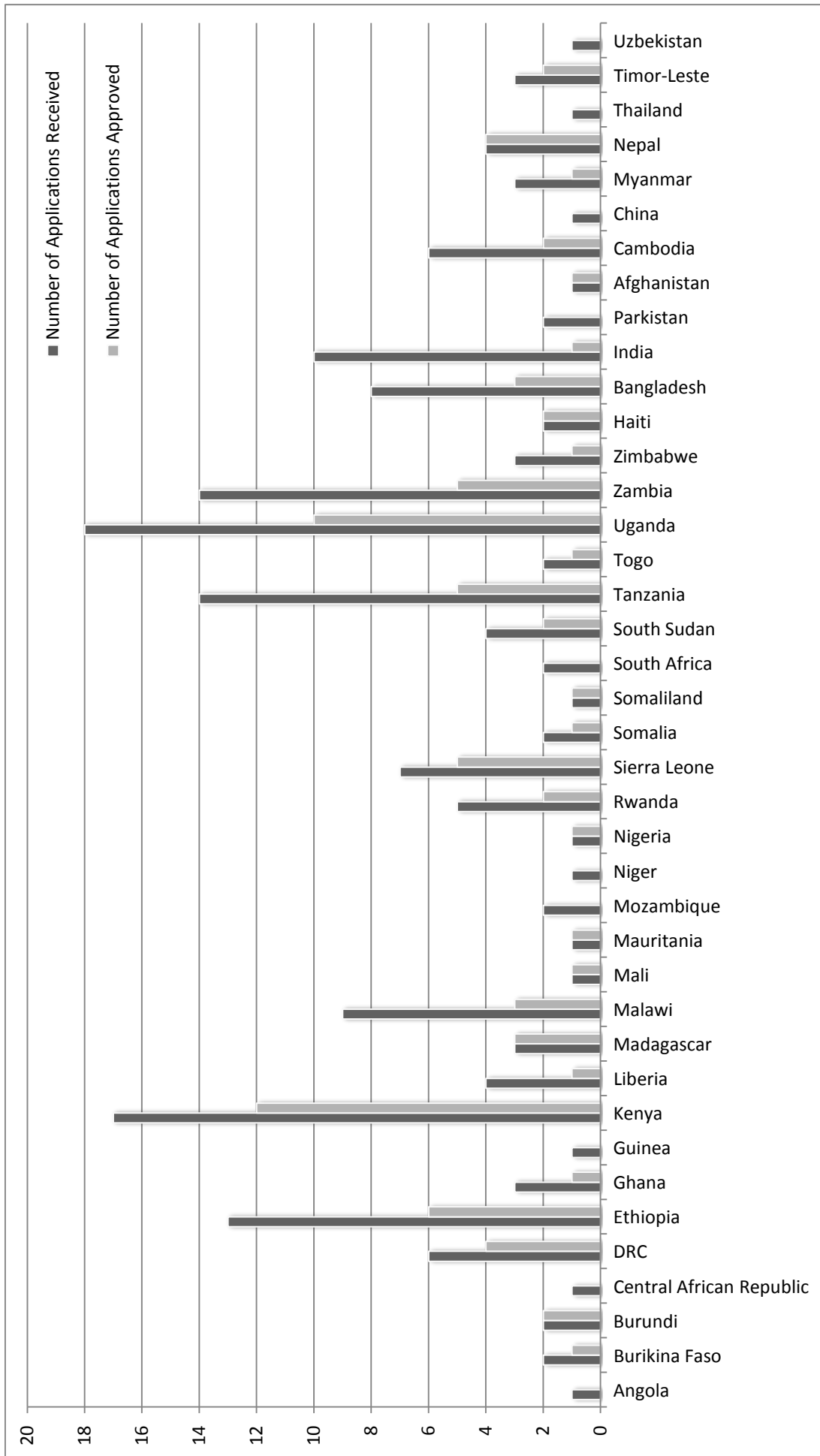
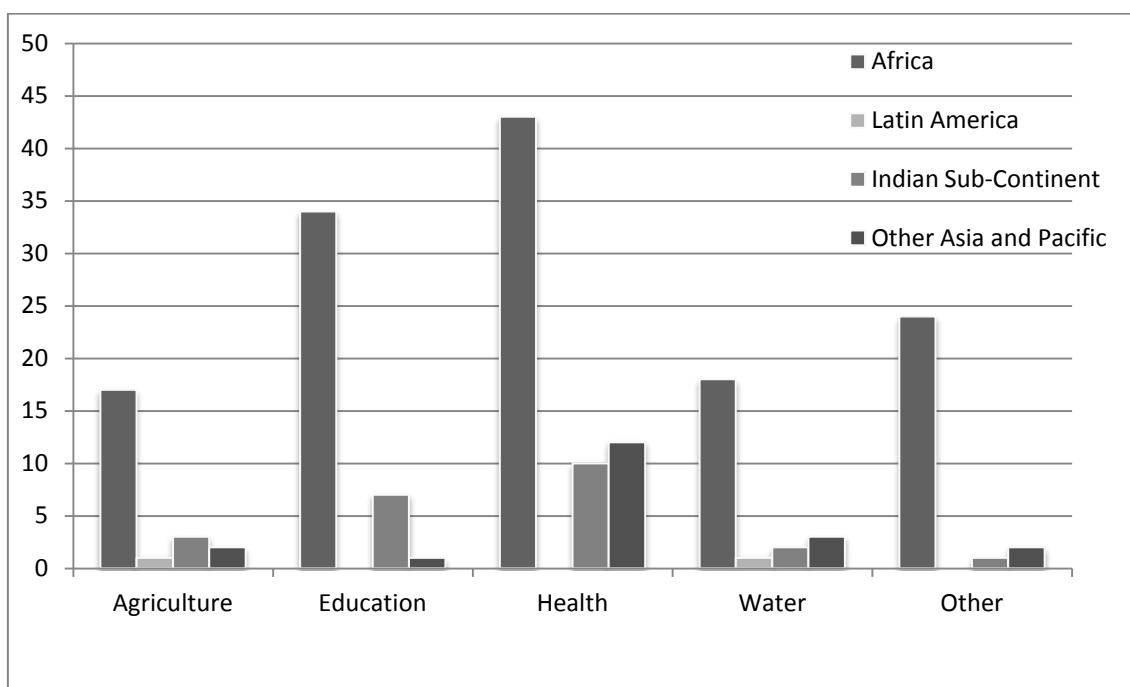


Figure 4 provides an overview of the requests for Grant Aid by project type against the projects which received funding from the Commission.

**Figure 4 - Distribution of 2013 Grant Aid by Region and Project Category**



## 5. 2013 Grant Aid Awards – Updates on projects funded in 2013

An integral aspect of all Grant Aid awards is a requirement for the charities to provide two reports. This is an obligatory requirement for every Grant Aid award and non-compliance with the reporting requirements will result in the Commission not accepting any further applications for funding from the charity until all outstanding reports have been submitted.

The first report must be submitted part way through the project. As most projects are delivered over a 12 month period, this report is generally submitted approximately six months after the commencement of the project.

The interim reports provide an overview of the progress of the project. The charity is required to indicate how work on delivering the project is progressing against the objectives set out in its application for funding and must include details of how and how much of the Grant Aid award has been spent. Where feasible, the Commission encourages a charity to include photographs of the project and also to address how the delivery of the project is benefiting the community. The Commission recognises that for construction projects such benefits may not be apparent during the construction stage.

The second report must be submitted on completion of the project. This report must include an overview of the full delivery of the project and how the overall objectives of

the project have been achieved. The Commission also requires the charity to provide a budget showing the final costs against the approved budget.

The report must also address how the project has and will continue to benefit the community. This should include reference to both direct and indirect beneficiaries and these numbers should be referenced against the anticipated numbers of direct and indirect beneficiaries set out in the approved application. If the number of beneficiaries is different from the approved application, the report should explain why the differences have arisen.

Copies of the final reports for each of the projects funded in 2013 can be found on the Commission's website – [www.gov.gg/overseasaid](http://www.gov.gg/overseasaid).

A number of the charities receiving funding in 2013 have already submitted their first report setting out the progress of the project. The following projects are reviewed in a little more detail than the outline information provided in Appendix 1:

Charity	Project Category	Country	Project Outline	Amount of Grant Aid Awarded
Oxfam	Agriculture	Haiti	Food security and agricultural productivity	£39,904
ActionAid	Education	Sierra Leone	Enhancing Primary Education for Children in Bumpe	£40,000
Voluntary Service Overseas	Health	Cambodia	Improving reproductive health care services in Mondulkiri and Stung Treng provinces of Cambodia	£40,000
New Ways	Water	Kenya	Construction of extension to Rock Catchment Dam at Ekopus to provide increased capacity to permanent water resource	£40,000
Mines Advisory Group	Other	Democratic Republic of the Congo	Humanitarian Mine Action Support , South Equateur, Maniema, Katanga and Province Orientale	£39,059

#### ***Oxfam - Food security and agricultural productivity in North-East Haiti***

The aim of this project is to improve the food security in the North-East area of Haiti through education in agricultural management to assist the farming communities to increase crop resilience to flooding, drought and other natural disasters. The project is focusing on the following activities:

- Cleaning and rehabilitating (including repaving) 3,500m of irrigation canals  
Drilling four additional wells
- Developing and distributing rain gauges to 75 farmers (50 vegetable farmers and 25 rice farmers) to help them predict rainfall patterns
- Training the same 75 farmers in disaster risk reduction and adaptation to climate change and enabling them to share what they have learnt with others in their communities
- Conducting community campaigns to raise awareness of the effects of climate change and how to adapt, benefiting approximately 9,000 people.



**Water pump being installed in project area in Duhaut to support irrigation**

In its interim report, Oxfam highlighted the following outcomes during the first six months of the project programme:

*“The key successes thus far are the positive influence of farmers working together, a better understanding of the impact of climate change on agricultural production, the transfer of farming methods compatible with the protection of the environment and the change in mentality of farmers who were previously reliant on rain fed agriculture but who are now using irrigated agriculture techniques thanks to the wells.*

*For beneficiaries, the project will help to ensure food availability and household financial autonomy, encourage the development of women and collective leadership in the area and facilitate economic empowerment of women. The project is on track to achieve its original aim by the end of March 2014.”*

### **ActionAid - Enhancing Primary Education for Children in Bumpe, Sierra Leone**

The aim of this project is to support 253 children in Bumpe, in the Kono District in eastern Sierra Leone to access a safe school environment with improved water and sanitation facilities. The project will included the building a new school in Bumpe, new latrines and a well within the school to help improve the health of the children.



**Construction of the new school  
nears roof height**

**Newly constructed well awaits  
connection of pump before being  
commissioned**

In its interim report, ActionAid confirmed that the building of the new concrete school building is well underway. The main shell of the school is completed with four rooms, including space for the head teacher's office and storage and the roof was just about ready to be added along with the final finishes to the building work. In addition work on constructing new latrines was well advanced and the well was awaiting the final fitting of the pump and so it was anticipated that a supply of clean water would be available in the very near future.

ActionAid's report also provided an insight of the difference the project will make to the lives and futures of the children who will be attending the newly constructed school.



Mariama is seven years old. She is in class three and wants to be a nurse in future. Mariama wanted to leave the school because of its poor state of repair.

Mariama said:

*".. the school is not good for learning, and there are always too many children in lessons so it is hard to concentrate and do well in tests ...I am sure that all this work will change the entire school – thanks to ActionAid and the people of Guernsey for making this a reality. I will no longer look for an alternative school since I have hope and confidence that my new school will be much better".*

***Voluntary Service Overseas - Improving reproductive health care services in Mondulkiri and Stung Treng provinces of Cambodia***

This project aims to reduce gender inequities in reproductive health care services in Mondulkiri and Stung Treng provinces in Cambodia through the removal of barriers to essential health services, and by ensuring reproductive health services (infrastructure and equipment) meet minimum operating standards.

The project has focused on improving the Stung Treng and Senmonorom Referral Hospitals and in six remote health centres. The poor equipment and environment is a major barrier to the village midwives trying to provide quality healthcare and to the marginalised and poor women trying to access it. This project will complement and enhance VSO's current efforts in these provinces.



**Typical health care facilities prior to the rehabilitation work funded by the Commission**

In its interim report, VSO reported that work on four of the six health centres to be renovated using funding from the Commission had been completed and it anticipated that work on the two remaining centres would be completed by the end of 2013. The work had included structural improvements and the provision of new beds and mattresses and medical equipment including ecography machines, oxygen condensers and gynaecological examination equipment.

VSO also reported that the drilling of a well at Samaki health centre had encountered difficulties because of an absence of a useable source of water under the ground in this place. As a result a new site for the well was being investigated and it was anticipated that the well would be drilled by the end of 2013, approximately five months behind schedule as set out in the project application.

***New Ways - Construction of extension to Rock Catchment Dam at Ekopus to provide increased capacity to permanent water resource***

New Ways is a small charity that works in Kenya, Ethiopia and Mozambique. It was founded in 1994 by Albert Salvans, a Catholic priest working in London, with the aim of supporting development work in Africa, particularly basic nutrition, healthcare, agriculture, water infrastructure and education.



The charity's work focuses on building water resource infrastructure including rock catchment dams, shallow wells and boreholes and the provision of hand pumps or wind pumps to the boreholes to get the water to the surface and help with agriculture. The funding provided by the Commission in 2013 will enable New Ways to extend a rock dam original built in 2008 by approximately 4 metres and so double the capacity of the dam from 12 million litres to nearly 25 million litres. The additional water catchment should ensure a year round supply for a population of some 4,250 additional members of the local communities, settled at Napeikar and Kokuro, and living in the traditional nomadic pastoralist manner in the Kacheriangor mountain range, in the north western corner of Kenya.



**Construction work on the extension to the dam in progress**

In October 2013, New Ways advised the Commission that work on the extension to the dam had been completed and the newly extended dam was already providing a sustainable water source,

*"At the beginning of April a supervisor and four masons employed on a permanent basis by our local partner arrived at the site, accompanied by 25 local men and women who were employed to assist in the building of the extension. The mission tractor continued supplying sand and stones, construction work began; at this point some rain water remained in the dam, but after two months this reserve was depleted, meaning the tractor usage alternated between transporting of construction materials and bringing a water tanker every day."*

New Ways report concluded by stating,

*"The previous supply of water was put to vital use in providing drinking water for the local people and helped improve the hygienic and sanitary standards; with this increased capacity, the dam can continue to serve these important roles, now to an enhanced degree. This now even more reliable water source ensures that an essential resource needed to provide a good quality of life is within reach of all the area's residents, and means that travelling elsewhere to find water, which has been proven to potentially result in dangerous encounters with other ethnic groups, is not necessary."*



**The completed extended dam showing water already starting to collect at the base of the dam wall**



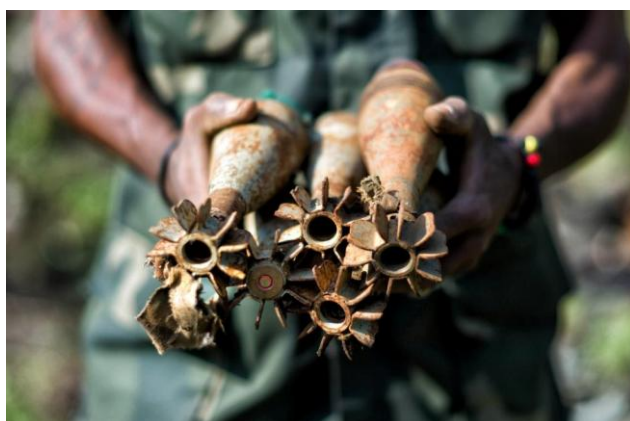
### **Mines Advisory Group – Humanitarian mine action support in the Democratic Republic of the Congo**

The aim of the project is to increase the productivity of Mines Advisory Group (MAG) teams clearing land contaminated by landmines, cluster munitions and other items of unexploded ordnance through the provision of specialist detectors, in order to reduce the threat of death or injury to communities, create safe spaces for humanitarian assistance and facilitate socio-economic development in to Katanga, North and South Equateur and Kasai Occidental.

The funding enabled MAG to purchase additional specialist mines' clearance equipment which would increase the efficiency of the clearance of deadly explosive weapons, with local communities benefitting from the faster release of safe land.

During the early stages of the project MAG advised the Commission,

*"... due to the deterioration of the security situation in certain provinces in the DRC, namely Orientale, the intended operational areas included within the original proposal requires some amendment. On speaking with the United National Mine Action Coordination Centre and in line with our humanitarian impact of operations the new province was selected and will mean there is no change to how the equipment is used or the impact the clearance will have."*



**Examples of some of the unexploded ordnance cleared using the equipment purchased with funding from the Commission**

In light of the reasons for the changes to the approved project, the Commission supported the proposed changes and noted in the interim report that the majority of the specialist equipment had been secured and was already being used in the area to make the hazardous task on mine clearance a little less dangerous.

## **6. Assessment of Grant Aid Applications and the Administration of Awards**

The Commission's procedures for assessing Grant Aid applications and how it administers awards are fully set out in its guidance notes. These notes are available from the Commission's website and are emailed to all the charities on the Commission's mailing list prior to the commencement of a new funding round.

Prior to the Commissioners reviewing and assessing each application for funding, a series of compliance checks are made on the charity seeking funding. These include checking that the charity is registered with one of the UK Charity Commission and that there are no concerns recorded on the relevant Charity Commission's website concerning the operation and management of the charity. In particular, the Commission checks to ensure that the charity is fully complying with the relevant regulatory regime which covers the submission of audited accounts and compliance with Charities Act 2011. Further, the Commission also checks to ensure that the application falls within the charity's stated charitable purposes. If an application does not satisfy these compliance checks the Commission will reject the application.

The Commissioners review each application for funding and each Commissioner makes his or her own assessment about whether or not to support the application. The applications are then reviewed at a series of funding meetings where the Commissioners discuss each application and reach a consensus view regarding whether or not to support an application.

The Commissioners assess each application against the following criteria:

- (i) *Project location* – including position on the UN Human Development Index; the political situation in the country, particularly where the government is unstable or repressive; whether the country is subject of any UN or other international sanctions, the country's human rights record, etc.
- (ii) *Project objectives* – including how the project will benefit the community; how many people will benefit, directly or indirectly, from the funding; the sustainability of the project, without reliance on further overseas aid funding; the reasonableness of the time frame for delivering the project; whether the needs of the beneficiaries have been fully identified; whether all logistical issues have been considered and planned for; whether the project has been well thought out.
- (iii) *Project budget* – including assessing the reasonableness of the proposed spending on the project; the cash flow projections; the level of detail; the cost-effectiveness of the project; whether the proposed spending appears to

support the objectives of the project; the level of any administrative costs, including travel expenses and monitoring and evaluation costs.

- (iv) *Other issues* – including whether political instability in the region where the project is to be based may mean that the project cannot proceed and any issues which may have wider public concern to Guernsey

As already noted in the Annual Report, the requests for funding are significantly higher than the Commission's available budget. This means that in some cases projects which are assessed as meriting funding have to be refused because the Commission simply does not have the funds available to support every project the Commissioners may assess as satisfying its funding criteria.

Following each funding meeting that charities are notified of the outcome and are able to request a summary of the reasons why a particular application was supported or rejected.

Where an application is successful, the charity is required to complete an agreement which sets out the terms on which the award is made, the Commission's compliance procedures. The charity is also required to advise the Commission when it anticipates the project will commence. For example, in some cases a project may have to wait until the rainy or dry season before work commences.

The Grant Aid award is generally made in two equal instalments. The first instalment is made approximately two to three weeks before the project commencement date and the second instalment once the interim report (usually submitted six months after the project start date) has been received and reviewed by the Commission.

## 7. Compliance with Grant Aid Awards

As part of its review of policies and procedures the Commission fully reviewed the reporting requirements and prepared detailed guidance for all charities setting out how the Commission monitors the delivery of projects funded through its Grant Aid Awards and the sanctions it may impose should a charity fail to comply with the reporting requirements (see Appendix 5).

<b>Table 2</b>	<b>Grant Aid Projects</b>	<b>Charities</b>
Full compliance	46 (72%)	35 (72%)
Report overdue but satisfactory explanation provided after first chasing email	11 (17%)	9 (19%)
Report overdue but satisfactory explanation provided after second chasing email	5 (8%)	2 (4%)
Report overdue and response only provided after formal non-compliance letter	2 (3%)	2 (4%)

The Commission is pleased to report that most charities either complied fully with the reporting requirements or immediately responded to an email chasing an overdue report. Table 2 (above) provides an overview of how charities receiving Grant Aid awards have adhered to the reporting requirements.

In 2013, the Commission noted that two charities had failed to respond to the email requests querying the late submission of the required reports.

In one case, a very small charity had failed to submit either the interim or final reports. On closer inspection, it became apparent that the charity had a poor reporting record and a final report on a project funded in 2011 was also outstanding. After a protracted exchange of correspondence, it became clear that the charity had encountered a number of different and separate difficulties (both in India where the projects were located and with the operation of the charity itself) when trying to undertake the projects funded by the Commission. Regrettably, the charity's trustees had not kept the Commission fully briefed as to the difficulties and after careful consideration the Commissioners concluded that they were unable to consider any further applications for funding from the charity.

In another case, after a protracted exchange of correspondence between the charity and the Commission it became clear that there had been a breakdown in the channels of communication between the charity and its partner agency in Haiti. In this case, the Commissioners required the charity to return the unspent balance from the award and advised them that no further applications for funding would be accepted until the project had been successfully completed.

The Commission recognises that there are very often genuine reasons for a report being delayed and this of itself is not a problem so long as the charity advises the Commission's Secretary as soon as it is aware their report will not be ready ahead of the reporting deadline. In such cases the Commission's Secretary will always work closely with the charity to agree a revised reporting timetable.

Following a review of the charities' compliance with the reporting requirements, the Commission now sends a copy of its compliance regime, including details of how and when sanctions may be applied for non-compliance, when notifying charities that a Grant Aid award has been made. It hopes that this pro-active approach will ensure that all charities will submit their reports within the specified timeframes.

## **8. 2013 Disaster Emergency Relief Awards**

In 2013, for the first time in many years the Commission received requests for disaster and emergency aid which exceeded its annual budget of £200,000.

In 2013, the DEC launched two national appeals:

- (a) March 2013 – Syrian Crisis Appeal

## (b) November 2013 – Philippines Typhoon Appeal

The Commission made the following donations to the two DEC appeals:

**Syrian Crisis Appeal – three donations each of £25,000 in March, August and December 2013**

The civil conflict in Syria has been ongoing since 2011 and, as is inevitably the case in such situations, the impact is felt most by the ordinary people of Syria. Since the outbreak of hostilities it is estimated that over two million Syrians have fled their homes and sought refuge in the neighbouring countries of Jordan, Lebanon, Turkey and Iraq. This mass movement of people has meant that the camps established by the various aid agencies and the UN working in the region are stretched to capacity. The pressures placed on the aid agencies have meant that many families have had little option but to live in crude shelters they have built themselves, with host families in overcrowded conditions or in partially finished buildings.

Within Syria itself, the health system has effectively collapsed as hospitals and clinics have been damaged by the fighting and the facilities still able to operate have struggled to secure even the most basic of essential medical supplies and equipment. In many areas there is no access to clean water, electricity or sanitation and food supplies are at best limited and intermittent.

The DEC provided the following update in September 2013, six months after launching its appeal and sadly the situation in Syrian and the surrounding countries hosting the many refugee camps has only worsened since this update:

*“Funds donated to the DEC paid for aid to be delivered to 129,000 people in the first three months after the Syria Crisis Appeal was opened on 20 March 2013. Over 80% of the people helped were inside Syria, with aid being provided mainly by DEC member agencies working through partner organisations. Those helped have come from all affected communities and across Syria.*

*Inside Syria more than 42,000 people have received food and over 28,000 have received hygiene kits, with some receiving both as part of the same distribution supported by a DEC agency. Save the Children has used DEC funds to support a partner organisation to improve sanitation for people worst affected by the conflict. They are cleaning the streets of debris and maintaining a hospital sewage system in an area which undergoes heavy shelling and is often sealed off due to fighting.*

*Within the last three months, an additional 25,750 people inside Syria received family food parcels from the Syrian Arab Red Crescent with support from the Red Cross using DEC funds. The delivery of these parcels is ongoing and a total of 72,500 people are expected to have received help by the end of September 2013. CAFOD is working with church partners to deliver food parcels to help a*

*further 5,000 people. Other aid delivered inside Syria and paid for with DEC funds during the first three months of the response has included:*

- *Clean water and latrines for displaced people*
- *Emergency surgery for people injured in the fighting*
- *Money to help displaced people pay for temporary accommodation*
- *Support for children traumatised by the fighting*
- *Blankets, clothing and cooking sets for people who have fled their homes.”*

### ***Philippines Typhoon Appeal – one donation of £50,000 in November 2013***

Typhoon Haiyan was 300 miles across when it struck the Philippines on 8<sup>th</sup> November 2013. It was one of the most intense tropical storms to ever make landfall anywhere in the world and was accompanied by torrential rain, sustained winds of over 195mph and a storm surge of up to 30 feet that devastated coastal areas.

Within the first month, the donations received through the DEC appeal enabled DEC member agencies and their partners to provide aid to more than 1.6 million people in the Philippines. The aid provided included:

- *ActionAid* has reached 28,000 people on Bantayan Island off north Cebu, and on Leyte and in East Samar. This has included food, shelter and hygiene kits.
- *Age International* has helped 39,500 people on Leyte Island. They’ve delivered food packages, psychosocial support and shelter materials.
- *British Red Cross* working across 15 provinces via partners has given help to 725,696. Aid has included food packages, hot meals in evacuation centres and counselling.
- *CAFOD* working through partners have reached 361,790 in 13 regions, including delivering shelter kits and food.
- *Care International* is working in Ormoc, Albueria, Tolosa and Tacloban and has reached over 43,750 people. Items delivered include kitchen kits, food and shelter kits.
- *Christian Aid* through partners has given assistance to over 61,500 in areas including in Ormoc on Leyte, in East Samar. Items distributed include water, food, sleeping mats, and hygiene materials.
- *Concern* reached 3,538 in Malangabang and Baliguian. Items distributed include shelter materials and kitchen sets.
- *Islamic Relief* has helped 115,000 in Bantayan, Leyte and the Camotes Islands. Priorities have included providing food, water and shelter.

- *Oxfam* working on Cebu, Leyte and Samar has reached 218,375 people with much needed aid. This has included hygiene kits, sanitation projects, water and farming assistance for those who have lost crops.
- *Plan* working with partners has helped 24,000 in East Samar. This work has included delivering shelter kits, water, and hygiene kits. Child friendly spaces have also been created for children affected by Typhoon Haiyan.
- *Save the Children* (including *Merlin*) have provided assistance to 20,433 in Leyte, Visayas and Panay. This has been a mix of medical support with mobile clinics and distributing emergency shelter materials, household items and hygiene kits.
- *Tearfund* has helped 28,377 people in Basey, Malabu and Dulag. Items distributed include household items, water and sanitation items.
- *World Vision* has reached 106,260 people in across a number of areas including Capiz, Aklan and Cebu. Food, hygiene kits, shelter kits have all been distributed. Child friendly spaces have been set up for children affected by the storm.<sup>1</sup>

#### ***Non-DEC requests for Disaster Emergency Funding***

In addition the Commission made two donations under its exceptional policy, namely;

#### ***UNICEF – To provide food and winter supplies to refugees fleeing from the civil conflict in Syria to Lebanon***

In January 2013, the Commission received a request from UNICEF for a contribution towards its emergency response appeal to provide vital equipment and supplies that will see children and families through the worst of the winter, including warm clothing and bedding. After consulting with the DEC and noting that the DEC believed it would be unlikely to launch a national appeal in the very near future, the Commission agreed to make a donation of £25,000 to UNICEF's Syrian appeal.

In December 2013, the Commission further reviewed the ongoing situation in Syrian and the surrounding regions. It noted that there was no indication that the civil conflict was likely to be resolved and that the region was experiencing one of the harshest winters in many years. It also noted that the UN launched its largest humanitarian appeal and reported,

*"After months of conflict, the situation in Syria remains dire. Over 2.3 million Syrian refugees have now fled into neighbouring countries and thousands more are pouring across borders each day - this is one of the largest refugee exoduses in recent history. Now, a massive snowstorm has brought freezing temperatures, fierce winds and rain and snow, with hundreds of refugees struggling to stay warm and dry in their tents or makeshift shelters. UN agencies are on the ground providing urgently needed relief to millions of*

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<sup>1</sup> Source: DEC website ([www.dec.org.uk/appeals/philippines-typhoon-appeal](http://www.dec.org.uk/appeals/philippines-typhoon-appeal))

*Syrians as the bitter winter sets in - distributing stoves and fuel for heating, insulation for tents, blankets and quilts, mattresses and waterproof footwear."*



**Refugees in snow-covered UNICEF supported refugee camp in the Lebanon**

The Commission agreed to make a two further donations each of £25,000 to both the DEC and UNICEF Syrian appeals. It noted that the Department for International Development was match funding any donations received by UNICEF and so the £25,000 on behalf of the people of Guernsey would mean UNICEF would receive a total donation of £50,000.

***UNICEF – To provide humanitarian aid to children and families displaced following an upsurge in the ongoing civil unrest in the Central African Republic.***

In December 2013, UNICEF requested £25,000 for the Commission towards is emergency response appeal to provide emergency medicines, food, shelter and sanitation kits for the poorest and most vulnerable people in the Central African Republic. The application stated:

*"As a result of the escalating conflict: sanitation is limited in the camps sheltering those fleeing violence in their villages and the risk of diseases/epidemics is high. There is a shortage of food; and the most basic medical care as health facilities have been destroyed, looted or are currently operating with a very limited number of staff. There are also gaps in the supply of essential medicines including vaccines, antibiotics and malaria treatments, and there is a crucial need for child protection, food, sanitation, and water. There is a very real risk that polio and measles epidemics will be take hold in the camps as so many of the refugees have not been vaccinated against these potentially life-threatening diseases."*

In considering the request, the Commissioners were mindful that the Central African Republic is one of the world's poorest countries and is ranked 180<sup>th</sup> out of the 186 countries on the UN's Development Index. It has also noted the UN's view that in light of the resent escalation of civil conflict there is a real risk of genocide in Central African Republic without a massive scaling up in the international response to the crisis.





**Central African Republic citizens fleeing the civil conflict**

The Commissioners noted that the UN had indicated that nearly 1 million people have fled their homes and sought safety in camps provided by UNICEF and other aid agencies. They also noted the UN was calling for a scaling up of the aid response to the growing crisis in the Central African Republic if the risk of genocide is to be overcome.

UNICEF is due to report on how the funding from the Commission has been used during 2014 and an update on this award will be included in the Commission's 2014 Annual Report.

### **Unsuccessful applications for Disaster Emergency Funding**

In addition, during 2013 the Commission received the following requests for disaster and emergency relief funding under the Commission's exceptional policy:

*Pragya* – To provide disaster relief to communities in Uttarakhand, northern India following torrential rain which caused flash flooding and significant landslides.

*ActionAid* – To provide disaster relief to communities in Uttarakhand, northern India following torrential rain causing flash flooding and significant landslides.

*Practical Action* – To provide disaster relief to communities in the Southern Peruvian Andes following exceptionally heavy snowfall.

*RED International* – To provide disaster relief to communities in South West Pakistan following an earthquake registering 7.7 on the Richter Scale.

The Commission considered each of these applications against its published criteria. However, although the Commission noted the impact that each event had had on the communities concerned the criteria for funding were not satisfied.

When refusing such requests for funding, the Commission is mindful that each year aid agencies across the world respond to many natural disasters and civil emergencies in some of the world's poorest and most vulnerable communities<sup>2</sup>.

The Commission's Disaster Emergency relief budget of £200,000 per annum does not allow it to approve each request under its exceptional policy.

### ***Bailiff's Disaster Relief Fund***

Following the occurrence of Typhoon Haiyan in the Philippines, the Bailiff's Disaster Relief Fund was opened to enable Bailiwick residents to make donations for the relief effort in a collective manner.

The Commission approved a proposal by the Trustees of the Bailiff's Disaster Relief Fund that £10,000 be allocated from that Fund to Bridge2Philippines who were sending a team of relief workers, including a doctor and a nurse, to the Philippines at their own expense. Those funds were spent to purchase 22 tons of rice; food and household items including 5 gallon water carriers, plates, cutlery, cups, cooking pots, plastic containers, washing bowls, soap powder, soap, toothpaste, toothbrushes, shampoo, oil, spaghetti, pasta sauce, sardines, biscuits and powdered milk; tools to enable fishermen to repair their boats including hammers, nails, handsaws, Stanley knives, cable ties and shovels to help people clear their land.



**Typhoon Haiyan – Waiting for and receiving food aid and other basic items distributed by Bridge2Philippines**

The Commission is advised that at the time of writing this report £75,000 has been sent by the Bailiff's Disaster Relief Fund to the central Disasters Emergency Committee, in addition to the £10,000 allocated to Bridge2Philippines.

<sup>2</sup> In 2012, Caritas Internationalis, which represents over 160 humanitarian and development agencies, responded to some 44 separate emergency appeals following natural disasters and civil conflicts and as of 1<sup>st</sup> December 2013 it had responded to over 50 requests for disaster relief aid..

## 9. Looking Forward

During 2013, the Commission completed its review of its policies and procedures. These were approved by the States of Guernsey Policy Council in May 2013.

The Commission continued to develop its website and as a direct result of its greater internet presence the Commission has received requests for funding from many new aid and development agencies. By the end of 2013 over 270 charities were registered on the Commission's contact list compared with some 210 at the start of the year. As a direct result of the Commission's endeavours to raise its profile, it received nearly twice as many applications for funding than in previous recent years. In total 329 applications were made by 178 individual charities. The total amount of aid requested was a little over £14 million against a budget of just £2,660,000.

2013 was the first year the Commission invited applications for multi-year funding and some 35 percent of all applications were for multi-year projects. These applications accounted for nearly 45 percent of the total amount of Grant Aid requested. The unprecedented level of requests means that in 2014 the Commission will only be able to support between 15 and 20 percent of applications. In recent previous years, the Commission has been able to fund between 40 and 50 percent of applications.

In 2013, the Commission asked charities to indicate how they had learned about the Commission<sup>3</sup>. Table 3 provides an overview of the responses. Table 3 shows that about 20 percent of charities found out about the Commission's funding from an internet search. Further, of the charities that had previously applied to the Commission, 27 (about 15 percent) had not done since at least 2007. The introduction of an email contact list using data stored on the Commission's database appears to have "reconnected" these charities with the Commission through receiving updates about the Grant Aid scheme.

<b>Table 3</b>	<b>Number of Responses</b>	<b>Percentage</b>
Previously applied for funding	110	61%
Guernsey-based charity	4	2%
Jersey-based charity	3	2%
Personal links with Guernsey	13	7%
On the advice of a third party	11	6%
Internet search	39	22%

In light of the sharp rise in applications for funding and noting that two or three new charities contact the Commission most weeks asking to be added to its email contact list, the Commission will be further reviewing its Grant Aid policy in 2014. The purpose

<sup>3</sup> Some charities ticked more than one route of contact

of this further review will be to consider whether it should alter any aspect of its policy to improve the likelihood of success for charities applying for funding. In addition, during 2014, the Commission will also be focusing on how the develop ways of working with the private and voluntary sectors to develop ways of increasing Guernsey's contribution to overseas development as set out in the second strand of its mandate.

The Commission had hoped to commence this work during the latter part of 2013, however, this was not possible as the number of applications for Grant Aid funding in 2014 was significantly higher than anticipated. This meant that the Commission's Secretary's time was fully occupied in preparing the applications for review by the Commissioners and continuing to monitor compliance by charities with the Grant Aid awards made in 2013 and 2012.

Finally, the Commission is grateful to the States of Guernsey for its commitment to continue to provide funding for overseas development programmes and its undertaking to review the level of funding in 2017 or sooner as Guernsey's fiscal outlook improves. It is grateful that, despite the constraints that have been placed on States funding and the disparities in the distribution of wealth across the community, this commitment to assisting some of the world's poorest and most vulnerable communities continues to be regarded as important. Guernsey remains a relatively wealthy community with a range of statutory and non-statutory agencies and organisations providing additional support. The Commission is very mindful that in the countries and regions receiving Grant Aid support there is no such safety net.

## **APPENDICES**

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**Appendix 1 - Applications where 2013 Grant Aid requests were supported by the Commission**

<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Grant Aid Award</b>
ACE Africa	Agriculture	Training 65 women's groups in sustainable agricultural and nutrition practices and income generating activities in rural Siaya, Nyanza Province, Kenya	£29,325
ACORD	Water	Safe water supply in a rural area in Hodh El Gharbi district in Mauritania	£40,000
Action Water	Water	Community managed water and sanitation initiative project at Busimbi, Uganda	£30,600
ActionAid	Education	Enhancing primary education for children in Bumpe, Sierra Leona	£40,000
ActionAid	Water	Safe drinking water for pastoralists in Somaliland	£40,000
Advantage Africa	Other	Enabling orphaned and vulnerable children in Kibwezi District, Kenya	£33,227
Akamba Aid Fund	Health	Twikoli and Wikimuu water, health and education project, Kyuso District, Kenya	£15,000
Appropriate Technology Asia	Education	Sustainable livelihoods for women and girls through skills and resource development, Humla and Surkhet District, Nepal	£24,076
Appropriate Technology Asia	Health	Sustainable health and social welfare for isolated women, Humla and Surket District, Nepal	£25,121
Asecondchance	Water	Lureko water project, Kenya	£19,812
Asecondchance	Education	Young people skills centre construction project, Nairobi, Kenya	£33,016
Azafady	Health	Project Soaiegna: a community led approach to improving sanitation, Fort Dauphin Urban Commune, Anosy Region, Madagascar	£27,800
BMS World Mission	Agriculture	Improving food security and livelihoods in northern Uganda	£20,008
British Red Cross Society	Agriculture	Building long term food security and livelihood provision in Zimbabwe	£36,605
British Red Cross Society	Water	Reducing disease in Sierra Leone via improved sanitation	£39,670
British Red Cross Society	Water	Improving water and sanitation provision and practice in Afghanistan	£39,746
British Red Cross Society	Water	Safe water provision in Sierra Leone	£39,860
CARE International	Other	Strengthening community resilience to drought in Dillo and Tertale Districts, Borana Zone, Ethiopia	£39,124

Agency	Project Category	Project Outline	Grant Aid Award
Christian Aid	Agriculture	Improving Food Security in Vulnerable Communities in Haiti, Fort Liberte, Haiti	£39,516
Christian Aid	Agriculture	Improving Lives in Burundi through sunflower processing, Rutana Province, Burundi	£40,000
CIFA Trust	Water	Provision of clean water supplies in Southern Ethiopia	£25,104
CORD	Water	Sustainable access to safe drinking water and basic sanitation in Bujumbura Rural Province, Burundi	£39,290
Cyan International	Water	Improving health in rural Nepal through access to water, sanitation and biogas	£24,940
Disability and Development Partners	Education	Improving Facilities at Tulla High School, Hawassa District, Ethiopia	£36,736
Ellen Jane Rihoy Charitable Trust	Education	Endana Community School improvement project, Kenya	£40,000
Excellent Development Ltd	Water	School water tanks for schools in Kenya	£39,462
Feed the Minds	Education	Improving rural livelihoods through literacy and vocational training in Uganda	£7,898
Friends of Katete	Health	St. Francis Mission Hospital - staff accommodation, Katete, Zambia	£43,850
Funzi and Bodo Trust	Education	Funzi Island Kindergarten, Bodo Sub-District, Coast Region, Kenya	£22,000
Good News! Trust	Education	Kalandu Secondary School and Nyakia Primary School, Oyugis	£39,100
Habitat for Humanity Great Britain	Water	Improving health through water and sanitation supply in the rural community of Alakamisy Anativato, Madagascar	£40,000
Habitat for Humanity Great Britain	Water	Strengthening community access to WaSH in Bangladesh	£40,000
HelpAge International	Health	Improving access to clean water, sanitation, preventative healthcare and income generation opportunities in rural Burkina Faso - Arbolle Commune in Passore Province, Burkina Faso	£39,241
Homeless International	Water	Improving water and sanitation provision for slum dwellers in Zambia	£39,998
Hope and Homes for Children	Other	Community hub building project, Nyarugenge District, Kigali City, Rwanda	£39,683
Hope for a Child	Other	Helping families and communities rise from poverty in Malawi	£37,537

<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Grant Aid Award</b>
Humanitarian Aid Relief Trust	Health	The Health and Hope Society Centre for outreach, education and health in Myanmar	£39,450
IMPACT Foundation	Health	Establishing a nurses' training centre and improving medical provision for an underserved rural community, Meherpur, Bangladesh	£40,016
Interact Worldwide	Health	Improving maternal health and childbirth in Amolatar, Lira, Amoru, Nebbi, Yumbe, Kotido, Amudat and Ngora, Uganda	£40,000
International Childcare Trust	Education	Empowering children and teenage girls at risk, Arusha, northern Tanzania	£33,099
Just a Drop	Health	Kakuuto water and sanitation improvement project, Rakai District, Uganda	£22,484
Leonard Cheshire Disability	Other	Providing employment opportunities for disabled youths in Sierra Leone	£39,960
LEPRA	Health	Improving health outcomes for tuberculosis control through community sputum collection campaigns in Bangladesh	£32,077
Leprosy Mission	Health	Karuna ambulance project, Mumbai, Maharashtra State, India	£29,053
Leprosy Mission	Health	Slum development project, Addis Ababa, Ethiopia	£38,884
Maternity Worldwide	Health	Maternity waiting home provision in Ethiopia	£34,663
Methodist Relief and Development Fund	Agriculture	Promotion of sustainable agriculture techniques and community farming to increase food security and incomes of poor households in Northern Togo	£14,689
Mines Advisory Group	Other	Explosives remnants of war and landmine clearance - Galguduud Region, Somalia	£36,469
Mines Advisory Group	Other	Humanitarian mine action support, South Equateur, Maniema, Katanga and Province Orientale, Democratic Republic of the Congo	£38,059
Mission Aviation Fellowship	Health	Mission Aviation Fellowship - Madagascar Medical Safaris (Countrywide)	£40,000
Network for Africa	Education	Increasing income and food security through education and vocational training for 150 women and their families living in extreme poverty in Rutunga, Gasabo District, Rwanda	£21,579
NEW WAYS	Water	Extension to rock catchment dam at Ekopus, Kenya to provide increased capacity to permanent water resource	£40,000
Ngora Trust	Education	Education and protection for community recovery in Uganda	£39,300



<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Grant Aid Award</b>
Nyangombe Christian Training Centre	Health	Medical vehicle project, Mwinilunga District, N W Province, Zambia	£15,000
One World Foundation Africa	Other	Reducing the local communities' vulnerability to severe droughts and increasing accessibility and the quality of primary education in rural Kiboga district, Uganda	£39,040
Oxfam	Health	Improving nutrition for reproductive women and children under two in Mali	£39,870
Oxfam	Agriculture	Food security and agricultural productivity in Haiti	£39,904
PLAN International UK	Agriculture	Promoting livelihood opportunities for small-scale farmers in Cambodia	£39,939
PLAN International UK	Health	Creating a healthy environment for children in Timor-Leste	£39,954
Powerful Information	Agriculture	Increased food security & economic independence for rural women in Sierra Leone	£20,250
Re-Cycle	Other	Bicycles for better life prospects, various locations in four countries in Ghana, Kenya, Malawi and Zambia	£34,356
Renewable World	Health	Alleviating poverty and improving health through using hydrams to pump water in 3 remote, marginalised hill communities in Nepal, Dhading District	£26,382
Save the Children Fund	Health	Increasing access to clean water and sanitation facilities in Shinile and Jijiga Zones, Somali Region, Ethiopia	£36,907
SCIAF	Other	Livelihoods programme for women conflict survivors in the Democratic Republic of Congo, South Kivu Region	£31,720
SOS SAHEL International	Water	Sand dam construction in Tortang, South Kordofan, Sudan	£36,000
Street Child Africa	Education	Training for street girls in Bukavu, Democratic Republic of the Congo	£7,341
Target Tuberculosis	Health	"The Comunidade Project" - Treating and Preventing TB in Liquica District, Timor-Leste	£22,597
Tearfund	Health	Rural health project in Tanzania	£39,644
Transform Africa	Water	Manual borehole water supply Mityana and Mubende Districts, Uganda	£38,226
Trust for Africa's Orphans	Agriculture	Improved livelihood of poor women subsistence farmers in Dokolo District, Uganda through a market-led development.	£40,000

<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Grant Aid Award</b>
Tumaini Fund	Education	Shipping costs for container of secondhand computers for use in schools supported by Tumaini Fund in Tanzania	£4,400
Tumaini Fund	Health	To provide 2,000 mosquito nets for children orphaned because of AIDS in Kagera District, Tanzania	£4,700
Tumaini Fund	Other	Construct office accommodation for social workers working with orphans in the Kagera district of Tanzania	£20,300
UNICEF	Education	Providing essential health and education services for indigenous communities in Likouala, Democratic Republic of the Congo	£39,164
UNICEF	Health	Supporting maternal health wards in South Sudan	£39,334
UNICEF	Health	Delivering improved healthcare to Maryland County, Liberia	£39,898
Village Water	Health	Water for Life, Western Province, Zambia	£22,000
Voluntary Service Overseas	Health	Improving reproductive health care services in Monduliri and Stung Treng provinces of Cambodia	£40,000
War Child UK	Education	Solar lighting for schools in North Eastern Uganda	£40,389
WASOT- UK International	Education	Construction and renovation of 8 classrooms at Orange Primary School Muhoroni Kenya	£32,950
WaterAid	Education	Water supply, sanitation and hygiene promotion in Dembia, Ethiopia	£40,000

**Copies of the final reports for each of the projects funded in 2013 will be published on the Commission's website ([www.gov.gg/overseasaid](http://www.gov.gg/overseasaid)) once the project has been completed**

**Appendix 2 - Applications for 2013 Grant Aid where the Commission was unable to provide funding**

Agency Name	Project Category	Project Outline	Amount Requested
ACORD	Agriculture	Relaunching the production, processing and marketing of shea oil and honey, in Bossangoa, Central African Republic	£39,071
ActionAid	Health	Transforming Early Childhood Care in Rwanda	£39,920
ActionAid	Education	Quality primary education for children in Girar Jarso, Ethiopia	£40,000
Africa Educational Trust	Education	Primary education for girls in South Sudan	£9,500
AfriKids	Health	AfriKids Medical Centre in Ghana	£38,100
AIDS Care Education and Training	Health	Community based response to HIV, Goma, North Kivu Province and Vanga, Bandundu Province, Democratic Republic of the Congo	£18,806
AIDS Care Education and Training	Health	Holistic HIV and AIDS care and support project, Hyderabad, India	£29,126
Alliance Zambia	Health	Persons with disabilities awareness-raising: universal access to HIV prevention, treatment, care and support services, Zambia	£40,150
Appropriate Technology Asia	Health	Sustainable health and welfare for isolated women and children, Bageshwar District, Uttarakhand, India	£26,888
Appropriate Technology Asia	Health	Sustainable health for mountain populations in China	£37,085
Basic Needs	Health	Breaking the Cycle of poverty for people affected by HIV / AIDS and mental health illness, Kinondoni, Ilala and Temeke, Tanzania	£39,210
Book Aid International	Education	Nambi Sseppuuya Resource Centre in Uganda	£34,605
British Red Cross Society	Health	Reducing the risk of death/ poor health for mothers and children in Mtnmar	£20,341
Build IT International	Education	Community schools building programme, Kapiri, Central Province	£40,240
Cambodia Trust	Other	Community-based rehabilitation (to reduce poverty amongst disadvantaged people with disability through access to education, skills training and employment in Zambia)	£14,000
Cambodia Trust	Health	Reducing poverty for people with disabilities through physical rehabilitation in Cambodia	£16,000
Cecily's Fund	Education	Founding Futures: Stage Two (focus on sustainability) in Zambia	£30,783

Agency	Project Category	Project Outline	Amount Requested
Chello Foundation	Education	Construction of secondary school boarding facilities for orphaned and vulnerable girls in Magoti School, Nsanje, Malawi	£39,841
Child in Need Institute	Health	Supporting children and mothers for the first 1000 days in India	£39,248
ChildHope UK	Education	Floating education and healthcare project for monsoon-affected rural communities in Bangladesh	£34,244
ChildReach International	Health	Comprehensive school health programme – Moshi, Kilimanjaro region, Tanzania	£40,000
Christian Aid	Water	Strengthening vulnerable communities in burma through housing and safe water, Kunchangon Township, Myanmar	£39,655
Christian Aid	Health	Tackling Malaria and Improving Health in Zambia, Sikongo and Kasungula, Zambia	£39,955
Christian Engineers in Development	Health	Kisya - Kagaana gravity water supply and improved sanitation, Rukungiri, Uganda	£41,500
Christian Resource Ministries	Water	The construction of extra living accommodation and sanitation for the children in the form of a dormitory and pit latrines at Maoni Orphanage, Blantyre, Malawi	£40,000
Concern Universal	Agriculture	Cross-border transfer of vegetable farming techniques, Jamalpur (Bangladesh) and Assam State (India)	£31,200
Concern Worldwide	Agriculture	Farmer Field Schools in Uganda	£40,000
Concern Worldwide	Agriculture	Cross-border transfer of vegetable farming techniques, Jamalpur (Bangladesh) and Assam State (India)	£40,000
CORD	Health	Food for change for positive women in Cambodia	£40,103
CURE International UK	Health	Pre- & post-surgical nourishment for children & families in developing nations in Niger and Zambia	£40,000
Disability and Development Partners	Other	Carpentry workshop - income generation and training / jobs for young deaf adults, Bujumbura City, Burundi	£32,141
Emmanuel International	Agriculture	Plantain cultivation for cash and subsistence in Tanzania	£34,311
EveryChild	Other	Community empowerment for children in Ethiopia	£39,666
Feed the Minds	Other	Helping young women and families generate income and combat harmful traditional practices in Sierra Leone	£11,350

<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Amount Requested</b>
Find Your Feet Ltd	Other	Empowering tribal Tharu women living in Nepal to build a future free from poverty, hunger and discrimination	£34,851
GOAL50	Other	To raise £160k (£120k building costs & £40k operational costs) to enable the purchase / building of an orphanage and day-care centre in Heideveld and to provide operational costs for the orphanage in the first year in South Africa	£40,000
Health Poverty Action	Health	Purchase of ambulance for project to improve the health of women and children in difficult environments, Dollo Ado (Ethiopia), Mandera West and Central (Kenya)	£40,000
HealthProm	Health	Reducing newborn mortality and sickness in Uzbekistan	£16,354
Hope Foundation	Education	Securing a brighter future for santal children in West Bengal through education, Birbhum District, India	£13,342
Huruma Rehabilitation Programme	Other	Increased income for widowed women in Mikindani town in Mtwara region, Tanzania	£12,620
IMPACT Foundation	Health	Expanding a Mobile Eye and Ear Care Rural Outreach Service, Embu, Kenya	£33,400
IMPACT Foundation	Health	Improving ear, nose and throat services in rural Kandal Province, Cambodia to prevent needless hearing loss	£34,458
Interact Worldwide	Health	Preventing HIV transmission from mother to child in Kalu, Artuma Fursi, Kemise, Kombolcha, Dessie, Halaba, and Hossana, Ethiopia	£39,817
Interact Worldwide	Education	Providing learning centres for young people, Blantyre, Mulanje, Lilongwe and Karonga, Malawi	£40,700
International Childcare Trust	Education	Collective action for protecting children at risk, Bolangir, Orissa, India	£30,625
International Childcare Trust	Education	Support to women and children in difficult circumstances, Kenema, Eastern Province, Sierra Leone	£39,970
Karen Hill Tribes Trust	Agriculture	Provision of 5 Irrigation Systems, Mae Hong Son Province, Thailand	£30,000
Karuna Trust	Other	Child rights to liberty, education and health project, Maharashtra, India	£23,199
Lawrence Barham Memorial Trust	Education	St. Matthew's Secondary School, Anglican Church of Rwanda, Mont Cyangugu, South Western Rwanda	£30,000

<b>Agency</b>	<b>Project Category</b>	<b>Project Outline</b>	<b>Amount Requested</b>
Leprosy Mission	Health	Livelihoods for people affected by leprosy, Ngombe-Matadi, Kivuvu, Boma and Inga Districts, Bas Congo Province, Democratic Republic of the Congo	£30,243
Malaika Kids UK	Education	Funding is for the care of 20 additional children for one year in the village in Tanzania	£20,000
Mangu Integrated Community Project	Health	Livelihood intervention for alcohol and drug abuse affected households in Mangu Location Gatundu North District, Kenya	£39,654
MaterCare International	Health	To provide equipment for the kitchen and laundry of isiolo maternity hospital, as well as providing new means of transport, Isiolo District, Kenya	£39,553
Meningitis Research Foundation	Health	Action Meningitis – triage in primary health centres using health technology in Malawi	£26,900
Mental Disability Advocacy Center	Education	Vocational training and employment accessibility project in Tanzania	£39,584
Mercy Ships	Health	Guinea Smiles, tackling the pain and disability caused by dental disease - nationwide, Guinea	£36,000
MERLIN	Health	Strengthening access and availability of reproductive health services in under-served areas in Grand Bassa County, Liberia	£40,000
MERLIN	Health	Renovation of Nimule Hospital's Maternal and Child Health Clinic in South Sudan	£41,810
MERLIN	Health	Nimule, Eastern Equatoria State, Somalia	£42,171
Mines Advisory Group	Other	Mine risk education and data collection in Moxico, Angola	£39,604
Mondo Challenge Foundation	Other	Improving the income and food security of families affected by HIV in rural Tanzania	£27,240
Opportunity International UK	Education	Empowering people through financial education, Arusha and Kilimanjaro, Tanzania	£34,310
Opportunity International UK	Education	Youth Apprenticeship Programme, Tamale, Northern Region, Ghana	£38,000
ORBIS Charitable Trust	Health	Strengthening cataract, trachoma and refractive error services in the West Gurage zone in south west Ethiopia	£37,451
Oxfam	Education	Providing clean water through solar power in Bangladesh	£37,502

Agency	Project Category	Project Outline	Amount Requested
Oxfam	Agriculture	Copperbelt, Zambia smallholder agricultural and market support	£39,754
PartnerAid	Water	Baluchistan water supply and sanitation project in Pakistan	£36,000
PLAN International UK	Education	Improving education for children in Malawi	£39,528
PLAN International UK	Water	Promoting children's rights to water and sanitation in Togo	£39,740
Poverty Alleviation Trust	Education	A once in a lifetime rural primary school accessibility project for children living in disadvantaged circumstances, Kiruhura District, Uganda	£39,000
Pragya	Health	Women's initiatives for health and nutrition in rural Nepal	£39,491
Railway Children	Other	Rehabilitation and reintegration of children living on the streets in Moshi and Arusha, Tanzania	£40,000
Red Cross Children's Hospital Trust	Health	Breathe Easy, Red Cross Children's Hospital, Western Cape, South Africa	£37,260
Reform Corporation	Agriculture	Agricultural: sustainable livelihood for ex child soldiers in Liberia	£10,400
Reform Corporation	Other	Empowering people with disabilities through gainful employment or self-employment in Zimbabwe	£22,300
Relief Education Development International	Education	Schools assistance project, Sirajgani, Bangladesh	£22,000
RETRAK	Agriculture	Food aid for vulnerable children and communities in the drought affected region, Bale Zone, Oromia, Ethiopia	£25,516
Rwanda Restored	Education	Gihogwe secondary school, Kigali, Rwanda	£40,000
Save the Children Fund	Education	Building inclusive education for children with disabilities, Maputo, Gaza, Sofala, Manica, Nampula and Zambezia Provinces, Mozambique	£40,000
Save the Children Fund	Health	Improving children's health in schools in bangladesh, Rangpur, Rajshahi, Chittagong and Sylhet Divisions, Bangladesh	£40,000
SCIAF	Other	Peace-building, civic education and awareness raising in Lango, Northern Uganda	£23,060
SCIAF	Other	Integrated community-based development project in Hamer District of South Omo Zone, Ethiopia	£40,000

Agency	Project Category	Project Outline	Amount Requested
Send a Cow	Agriculture	Small farming businesses for vulnerable families, Western Kenya	£39,060
Sense International	Education	Improving education opportunities and learning outcomes for deafblind children in southern and western India	£18,656
SOS Children	Other	Strengthening families in Chipata, Zambia	£40,000
Stepping Stones Nigeria	Other	Oron Child Rights Centre in Nigeria	£13,192
Tearfund	Water	Burkina Faso - hygiene and sanitation project	£36,944
Tearfund	Other	Improving the socio-economic situation of people with disabilities in Nepal	£37,482
Tearfund	Other	Increasing community livelihoods options, possibilities and action in Mozambique	£40,000
Theatre for a Change	Education	Vocational skills training for female sex workers and sexually exploited girls in Malawi	£30,325
Trust for Africa's Orphans	Agriculture	Improved livelihood of poor women subsistence farmers in Nwoya District, Uganda through a market-led development	£40,000
UNICEF	Education	Improving education for disadvantaged children in Timor-Leste	£39,796
Voluntary Action for Development	Health	Integrated community managed water, hygiene and sanitation project, Wakiso District, Uganda	£40,000
Voluntary Service Overseas	Health	Promoting effective community care for PLWHA in Umguza, Zimbabwe through the provision of home based HIV and AIDS care kits, and generating income and improving health through nutritional gardens	£31,775
WaterAid	Water	Improved livelihoods of rural people through WASH in two Karluway Districts of Maryland County, Liberia	£40,000
WaterAid	Water	Lunga wetlands WASH Project in Zambia	£40,000
WaterAid	Health	Improving community health through access to safe and adequate water, sanitation and hygiene services in Hardeni of Udaypur District, Eastern Development Region Nepal	£40,000
Women and Children First (UK)	Health	Saving the lives of women and girls in Chikwawa District, Malawi through access and choice in family planning and reproductive health care services	£38,435
WorkAid	Other	Skills development - bicycle repair / workshop, Chiawa	£36,400
World in Need	Agriculture	Integrated farming project, Lira District, northern Uganda	£37,528



## Appendix 3 – Grant Aid Policy

### 1. Introduction

The Guernsey Overseas Aid Commission (the Commission) is a non-statutory, non-governmental body and was established in 2004 following the Review of the Machinery of Government.

The Commission's mandate is:

*"To distribute monies voted by the States for overseas aid making contributions by way of grants and emergency and disaster relief;*

*To develop programmes relating to the collection and distribution of funds involving the private and voluntary sectors;*

*in accordance with policies set by the Policy Council, having regard to recommendations from the Commission."*

The objectives of the Commission are to manage and administer the budget approved by the States of Guernsey for overseas aid.

The Commissioners are appointed by the States of Guernsey to make decisions about the distribution of the money voted by the States for overseas aid contributions on behalf of the people of Guernsey.

### 2. Background

Guernsey has been contributing to overseas development projects through the award of Grant Aid to approved charities and agencies since 1980. The underlying purpose of the contributions made by the Commission, on behalf of the States of Guernsey, has remained unchanged.

*"To support projects which will help to provide the basic needs of the world's least developed countries or to help the indigenous population to provide those needs."*

Basic needs includes medical and health facilities, educational programmes and facilities, housing, water and sanitation provision and the means of sustaining a living, e.g. through agriculture, horticulture or through training in sustainable employment skills.

The Commission has always sought to direct its contributions to projects which will generate a lasting and sustainable improvement in the living conditions for the communities receiving the aid. This ethos underpins how all applications for Grant Aid will be assessed and is reflected in the assessment process and criteria and can be summarised as offering a "hand up" to some of the world's least developed areas rather than simply giving them a "hand out".

### 3. The Applicant

The Commission's general policy is to only consider applications from:

- Charities registered with one of the Charity Commissions in the British Isles
- Approved humanitarian agencies (e.g. UNICEF, UNHCR, etc)

If an agency is not a British Isles registered charity or an approved humanitarian agency, it is advised to contact the Commission's Secretary prior to submitting an application for Grant Aid.

#### **4. The Location of the Project**

The Commission is a non-political, non-governmental body. It will only consider a country's political situation insofar as there may be concerns whether the project can proceed. In all cases, the Commission requires the charity to explain how any pressures which may compromise the successful delivery of the project will be overcome.

As a general rule, the Commission will give priority for funding to countries at the lower end of the UN Human Development Index. Where the country concerned is not defined as a "least developed" country, the Commission will require the charity to set out why there are exceptional reasons to support this project over one in a less developed country. Applications for projects in the Federal Republic of Brazil, the Russian Federation, the Republic of India and People's Republic of China (sometimes referred to as BRIC countries), the CIVETS countries (Colombia, Vietnam, Egypt, Turkey and South Africa) and other countries with emerging economies will be afforded a lower priority than less developed countries.

The Commission does not accept applications for Grant Aid for projects in European countries.

#### **5. The Project**

The Commission's Grant Aid policy has always focused on projects which will deliver basic humanitarian aid to improve a community's basic living needs and conditions.

Where an application appears to fall outside the Commission's general policy, the charity should contact the Commission's Secretary, before submitting the application, to discuss whether or not the project is likely to fall within the scope of projects for which Grant Aid may be awarded.

The Commission does not provide Grant Aid as a core funding of the charity's administration or day-to-day operation, nor salaries of staff employed by the charity including any staff who may be working on the project either in the local area or within the charity's organisational basis, staff training or development or towards the costs of running or attending seminars or conferences.

As a general rule, the Commission will not fund short-term projects as one of the primary purposes of its Grant Aid awards is to fund projects that make a sustainable improvement to the basic needs of very poor communities over a longer period without an ongoing reliance on overseas aid funding.

The Commission may also reject an application where it believes that the project may result in conflict between e.g. neighbouring communities, etc or would otherwise disadvantage other nearby or neighbouring communities.

## **6. The Grant Aid Award**

### **(a) *Level of Awards***

Currently the Commission only funds annual projects, i.e. the project must be commenced during the relevant funding year and completed within twelve months of the project's start date. The limit for any award is £40,000.

### **(b) *Number of applications per annum***

As a general rule the Commission limits the number of applications a single charity may make in a particular funding year to two applications.

### **(c) *Period of an award***

The Commission's general policy is to fund annual projects, i.e. the project should be commenced and completed within the twelve months following the making of the award.

### **(d) *Payment of Awards***

It is the Commission's general policy is to pay annual awards in two instalments. The first instalment will be released three to four weeks before the project is due to commence subject to receipt of the completed agreement form which will be sent to the charity when the Commission confirms that an award has been approved.

The first payment will generally be for 50 percent of the Grant Aid award. The second instalment will be made on receipt of the interim report, subject to the Commission being satisfied that the project is being delivered in accordance with the approved application proposal.

## **7. Evaluation of Applications**

The Commission receives a large number of applications for Grant Aid funding (in 2013 the commission received over 350 applications) and the amount of funding sought is significantly more than the Commission's budget (in 2013 the amount of funding requested was just over £14 million). On average the Commission is unable to support about one fifth of applications.

Each project is considered on its own merits and balanced against the various criteria. No weighting is applied to any of the individual criteria and there is no scoring system. In many cases, the Commission has no option other than to reject an application because it simply does not have the budget to support all the projects it might wish. The Commission's procedure for evaluating applications for Grant Aid is in four parts:

- *Charity or agency checks* – including compliance with Charity Commission regulations, the charity's fund raising history, the proportion of the charity's income spent on income generation and governance; where previous Grant Aid awards have been made, the compliance with the Commission's monitoring and reporting requirements; in addition, the Commission may contact the Jersey or Isle of Man Overseas Aid Committees as a further probity check.

- *Project location checks* – including position on OECD Development Co-operation Directorate List of Least Developed Countries and UN Human Development Index, the political situation in the country, particularly where the government is unstable or repressive, whether the country is subject of any UN or other international sanctions, the country's human rights record, etc.
- *Project objectives checks* – including looking at the projects objectives, how it will benefit the community, how many people will benefit, directly or indirectly, from the funding, the sustainability of the project without reliance on further overseas aid funding, the reasonableness of the time frame for delivering the project, whether the needs of the beneficiaries have been fully identified, whether all logistical issues have been considered and planned for, whether the project has been well thought out etc.
- *Project budget checks* – including assessing the reasonableness of the proposed spending on the project, the cash flow projection, the level of detail, the cost-effectiveness, whether the proposed spending appears to support the objectives of the project, the level of any administrative costs, including travel expenses and monitoring and evaluation costs, etc. Where a project involves a shared or co-funded agreement this should be clearly explained, including the timescales for confirming such agreements.

In addition, the Commission may take into consideration any issues which may have wider public concern to Guernsey.

The Commission reviews all the applications and, where the application has satisfied the general application procedure, the projects are assessed against the above general criteria.

## **8. Notification of Decisions**

Due to the large number of applications received, the Commission is unable to consider all applications at the same time. The Commission will advise the charities of its decision as soon as it is able following determination. In some cases, the Commission may defer an application to request additional information or clarification of some aspect of the application.

### **(a) Successful applications**

Where an application is approved the charity will be asked to confirm that the project is still able to proceed as set out in the application and the anticipated start date. The charity is also required to sign a simple agreement which sets out the amount of the award, the purpose for which the award is made and the reporting requirements. The Commission will not release the Grant Aid award until the signed agreement has been received.

### **(b) Unsuccessful applications**

Where an application is rejected the Commission will use its best endeavours to provide feedback to the unsuccessful applicants. In many cases, the reason for refusing an application is simply because the Commission's budget is not able to support all applications that satisfies the general criteria and may merit funding.

The Commission will, in general terms, advise the charity as to any aspects of the unsuccessful application which were unclear, lacking in detail or not within the general funding criteria.

## **9. Monitoring and Evaluation of Grant Aid Awards**

The monitoring and evaluation of Grant Aid awards is a fundamental aspect of the Commission's work. The Commission will set out the reporting time frame when confirming a Grant Aid award and this will be adjusted as necessary depending on the nature of the project receiving funding. The Commission requires two reports to be submitted.

The first obligatory report is the Interim Report. As a general rule this report should be submitted between six and eight months following the release of the Grant Aid award by the Commission. This report will serve to trigger the release of the second instalment of the Grant Aid award, subject to the Commission being satisfied that the project is progressing in accordance with the approved application.

The second obligatory report is the Final Report. As a general rule this should be submitted within two months of completion of the project or no later than fourteen months after the payment of the first Grant Aid instalment, whichever is the sooner.

The Commission recognises that local circumstances may have an impact on the feasibility of reporting within the above general timescales. It is therefore happy to accept reports outside the general timescales, subject to the charity contacting the Commission's Secretary prior to the date on which the report is due and setting out the reasons for the delay.

### **(c) *Interim Report***

The interim report must provide a concise overview of the progress of the project and include reference to the overall objectives of the project and the spending against the approved budget. Where feasible, the interim report/s must also address how the delivery of the project is benefiting the community. The Commission recognises that where a project involves the construction of a new facility such direct or indirect benefits may not be apparent during the construction stage.

### **(d) *Final Report***

The final report must provide a concise overview of the full delivery of the project and this must reflect to the overall objectives of the project and the final costs against the approved budget. It must also address how the project has and will continue to benefit the community and include reference to both direct and indirect beneficiaries. If the number of beneficiaries is different from the approved application, the report must explain why the differences have arisen.

### **(e) *Other reporting requirements***

In addition to the obligatory reporting requirements set out above, the Commission requires funded charities to notify it of any material changes in circumstances, without delay, which may impact on how the project is delivered. Such reports must clearly outline,

- What has changed
- What steps the charity has taken to mitigate the change in circumstances
- How the charity proposes to overcome the change in circumstances
- What impact the change of circumstances will have on the costs of the project
- The length of any delay to the overall project timetable.

Where the change in circumstances will have an impact on the approved project budget a revised budget must be included with the report. Further, the charity must ensure that no further money is spent on the project until it has received confirmation from the Commission that the revised project has been approved. The Commission reserves the right to require a charity to return all or part of the Grant Aid award where it is satisfied that it would be appropriate and reasonable to do so.

**(e) *Non-compliance with the reporting requirements***

As stated above, the reporting is a fundamental requirement for all Grant Aid awards. Therefore, non-compliance is viewed very seriously by the Commission.

The Commission has a range of sanctions available to it, including:

- Agreeing a revised reporting deadline with the charity where it is satisfied that non-compliance was due to factors outside the reasonable control of the charity
- Issuing a warning notice to a charity, advising that a breach has occurred and may be taken into consideration when considering future applications over a specified period
- Requiring the charity to return some or all of the Grant Aid award
- Automatically rejecting future applications from the charity for a specified period.

In all cases where the Commission believes some action must be taken, the charity will be provided with reasons for the Commission's decision and given an opportunity to ask for the decision to be reviewed, varied or quashed.

**(f) *Return of unspent balances***

If the project is achieved under budget the Commission requires all unspent balances to be returned to the Commission without delay and in any case no later than the date for submission of the final report, i.e. generally no later than twelve months after the original award was made.

As a general rule, the Commission will not consider applications to divert unspent balances into alternative projects. Any such applications will be considered in the same way as other stand alone applications. The reason for this rule is because the Commission is very mindful that it receives significantly more applications for Grant Aid than it can fund and currently rejects about 80 percent of all applications.

**(g) *Non-delivery of approved projects***

If for any reason a charity is unable to proceed with a project for which funding has been granted, the charity must notify the Commission's Secretary without delay. The charity must also ensure that no further monies from the approved award are spent and provide a report setting out:

- Why the project cannot proceed as approved
- How far the project had progressed
- How much of the Grant Aid award has been spent and on what.

The report must also address whether the problems are such that the project is unlikely to be able to proceed at all or the anticipated length of any delay in completing the project. The

report must include a comparative budget, showing how much money and on what has already been spent against the approved budget.

As a general rule, the Commission will require a charity to return any unspent balances without delay. The Commission will re-release any returned money, if, during the funding year, the charity is able to confirm with the Commission that the situation has further changed and the project can now proceed as originally approved.

**(h) *Non-compliance with funding agreements***

In addition to the above internal sanctions which the Commission may impose for non-compliance with its audit, financial management and reporting requirements, the Commission may also notify the Charity Commission with which the charity is registered of the breach and its actions to rectify the position. In these circumstances the Commission will have pre-warned the charity of its intention to do so and will copy the report to the charity.

**10. *UN or other international sanctions***

The Commission is very mindful that UN and other international sanctions are not applied lightly and are only applied after careful scrutiny and debate within the UN, etc. Such sanctions will have also been widely publicised through the international media and have been the subject of wide public and political debate.

The Commission is conscious that there may be “unintended consequences” following the imposition of sanctions. Such unintended consequences can include a significant impact on the daily lives of country’s population, particularly the poorest and most vulnerable members of the population. As a result there may be a heightened need for humanitarian aid.

The Commission is also mindful that such sanctions may be varied or removed and indeed imposed between the date on which the Commission may consider a Grant Aid application and the commencement of the project.

For this reason it will not automatically refuse applications where UN or international sanctions may be in force and requires the charity to explain how such sanctions may impact on the need for and the delivery of the project when submitting their application. The application must show a clear understanding of the scope and impact of any sanctions and on the community which will benefit from the proposed project.

The Commission will always take advice from the States of Guernsey’s External Relations Group. The final decision whether or not to accept an application will always rest with the Commission, however the advice from the External Relations Group will be central to informing the Commission’s decision.

**This policy document should be read in conjunction with the Commission’s Guidance Notes for Charities applying for Grant Aid Funding**

*Guernsey Overseas Aid Commission  
March 2014*

## **Appendix 4 – Disaster Emergency Relief Policy**

The Commission's general policy in respect of Emergency Disaster Relief awards is to supporting appeals launched by the UK Disaster Emergency Committee following a natural disaster or humanitarian crisis.

Disaster emergency aid funding will normally be provided for one of more of the following activities:

- Provision of water, sanitation, health services and emergency feeding programmes to disaster affected areas
- Provision of emergency shelter and clothing
- Distribution of emergency supplies
- Refugee protection and support activities
- Projects which address the rehabilitation of physical and institutional infrastructure following major emergencies.

In most cases, these awards will be to a maximum of £50,000 per disaster or emergency.

The Commission will exceptionally consider applications for individual charities for such awards. In assessing all such applications, the Commission will contact the DEC for advice and guidance as to the nature and extent of the disaster or emergency, the most pressing needs for humanitarian aid and details of other sources of aid being directed to the affected region. Similarly, the Commission will seek advice and guidance from the Policy Council External Relation Group on issues relating to international sanctions and other international relationship considerations which may arise.

In addition, when considering such applications the Commission will have regard to whether:

- The Commission has already given emergency aid to the DEC in respect of a particular emergency.
- Any public appeal launched by the applicant charity in response to the disaster or emergency has been well publicised.
- The applicant charity is either one of the DEC member agencies or a major UK-registered charity
- The applicant charity is already working in the region affected by the disaster or emergency and so is able to mobilize key staff and resources immediately.
- The applicant charity has relevant experience in responding to the particular disaster or emergency and the resources to respond effectively to the particular event.
- Any issues which may have wider public concern to Guernsey

As a general rule, the Commission is unlikely to make an award to an individual charity if the DEC advises that a national public appeal is likely to be launched within the near future.

*Guernsey Overseas Aid Commission  
June 2013*



## **Appendix 5 - Procedures for Monitoring Grant Aid Awards and Addressing Non-compliance**

In October 2013, the Commission undertook a full review of its policies and procedures. The review included revising and confirming the procedure for:

- Releasing Grant Aid awards
- Monitoring charities' compliance with the Commission's mandatory reporting requirements
- Recovering unspent balances which may arise when a project is delivered under budget or where a project is unable to proceed for whatever reason.

The procedures set out below have been in place since October 2013, unless otherwise stated:

### **1. Procedure prior to making a Grant Aid Award**

- (a) Compliance and probity checks made on all applicant charities via the Charity Commission with which they are registered.
- (b) Where a charity has previously be awarded a Grant, compliance checks with the Commission's mandatory reporting requirements and the delivery of the project against the approved proposal.
- (c) Annotated schedule of all Grant Aid applications prepared for the Commissioners prior to the commencement of the funding round, including:
  - Green, amber and red colour coding flags included on schedule of applications to identify any issues of non-compliance with the Commission's reporting requirements and any other concerns identified from the probity checks
  - Charities applying for the first time also identified.
- (d) The charities' registration numbers are provided to assist the Commissioners when checking the charities' status for themselves.

### **2. Procedure prior to the release of an approved Grant Aid Award**

- (a) When notifying a charity that an application has been approved for funding a simple agreement is sent which sets out the amount of the grant, the approved project and the reporting requirements.
- (b) Funding is only released on receipt of the return of the signed agreement subject to confirmation that any co-funding for the project is in place.
- (c) Funding is paid 4 to 6 weeks before the start date for the project.
- (d) With effect from 2014, funding will be released on a staged payment basis

- (e) For most single year awards<sup>4</sup>, two-stage payments will be made:
- First payment – 4 to 6 weeks before the commencement of the project and on receipt of the signed agreement
  - Second payment - on receipt of an interim progress report
- (f) For multi-year awards the stage payments will depend on the nature and duration of the project and the total amount of funding, but in all cases an interim update report will be required before further stage payments are released.

### **3. Procedure following release of Grant Aid funding**

- (a) Confirmation of reporting deadlines are sent to the charity.
- (b) Compliance with reporting requirements is pro-actively monitored.
- (c) A charity may request an extended reporting period without risk of any non-reporting sanctions being applied, subject to the request being,
- Made prior to the reporting deadline
  - Accompanied by clear explanation showing why the standard reporting deadlines cannot be achieved.
- (d) First chaser email sent if a report is more than 2 weeks overdue.
- (e) Second email is sent if the report remains outstanding and no satisfactory response has been received from the charity after a further 2 weeks has elapsed; this email outlines the sanctions which the Commission may impose for non-compliance<sup>5</sup>.
- (f) Third email is sent after a further 7 days unless the outstanding report is received or the charity has provided a satisfactory explanation for the late submission and a revised reporting framework agreed; this email advises the charity that the Commission Secretary will be recommending the Commissioners impose sanctions on the charity, including requesting that some or all of the funding be returned and suspending the charity from applying for further awards for at least one year.
- (g) If there is no response within 7 days of the third email, a letter is sent to the charity requesting that the funding be returned within 28 days and advising them of the terms of their suspension from applying for future funding.

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<sup>4</sup> The Commission may make a full award at the start of a project if it is satisfied that there are good reasons for doing so, e.g. the award is relatively low, the nature of the project requires most of the award to be paid at the outset, etc

<sup>5</sup> The Commission non-compliance sanctions include:

- Agreeing a revised reporting deadline with the charity where it is satisfied that non-compliance was due to factors outside the reasonable control of the charity
- Issuing a warning notice to a charity, advising that a breach has occurred and may be taken into consideration when considering future applications over a specified period
- Requiring the charity to return some or all of the Grant Aid award
- Automatically rejecting future applications from the charity for a specified period
- Reporting the charity's non-compliance to the relevant Charity Commission with a request for the Commission to investigate the charity.

#### **4. Procedure for recovery of Grant Aid awards following non-compliance**

- (a) Where the Commission does not receive any response to the letter outlined in 3(f) above, it will take legal advice from St. James Chambers regarding proceedings to recover the money.
- (b) The Commission will also advise the Policy Council about the non-compliance; the report will include an assessment of the likelihood of recovering the money and the cost of civil proceedings.
- (c) If advised the civil proceedings to recover the money are in the public interest, the Commission will, subject to any directions from the Policy Council, will send a final letter to the charity confirming its intention to issue civil proceedings.
- (d) At the same time the Commission will report the matter to the Charity Commission with which the charity is registered and ask for the Charity Commission to investigate the charity's operations.

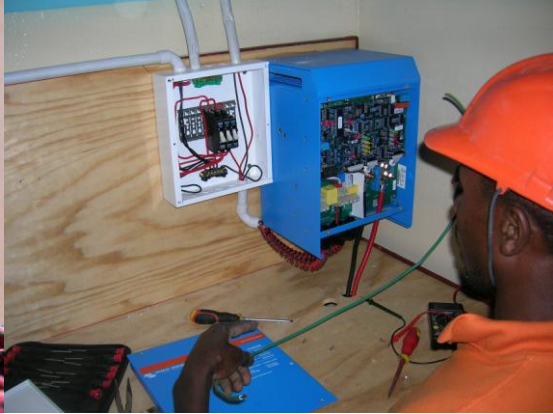
#### **5. Procedure for return of unspent balances**

- (a) All Final Reports must include a closing budget showing how the Grant Aid award was spent. The budget should also explain any variances from the approved budget which accompanied the application.
- (b) The Commission's general policy is to require all unspent balances to be returned to it without delay.
- (c) The Commission may allow a charity to retain an unspent balance where:
  - The amount is less than 1% of the Grant or £4,000 whichever is the lesser amount
  - The proposed use of the unspent balance is directly related to the original project
  - The proposed use for the unspent balance would either directly benefit the originally identified beneficiaries or increase the number of direct beneficiaries
  - The charity has fully complied with the Commission's reporting requirements in respect of all Grant Aid awards made within the preceding two years
  - The proposed use of the unspent balance accords with the Commission's underlying aims and objectives
- (d) Where the Commission does not agree to a charity retaining an unspent balance, the money must be returned to the Commission within 28 days of notification of the decision.
- (e) In the event that an unspent balance was not returned the procedure set out in 4 above would be followed.

*Guernsey Overseas Aid Commission  
October 2013*



**British Red Cross**  
Building sustainable livelihoods for vulnerable women in Tokmok, Kyrgyzstan



**Cecily's Fund**  
Solar power installation at Bwafwano Community School, Zambia



**Village Water**  
Water, sanitation and hygiene improvement programme in Kalabo District, Western Province, Zambia  
(the village well before and after project funded by the Commission)



**CARE International**  
Improving farming and food security in Ermera District, Timor-Leste (home garden in Atsabe)



**HelpAge International**  
Improving farming in Battambang and Banteay Meanchey, Cambodia  
(hand tractor purchased with part of the grant aid)