



BILLET D'ÉTAT

WEDNESDAY, 24th SEPTEMBER, 2014

XX
2014

Volume 1

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BILLET D'ÉTAT

TO THE MEMBERS OF THE STATES OF THE ISLAND OF GUERNSEY

I hereby give notice that a Meeting of the States of Deliberation will be held at **THE ROYAL COURT HOUSE**, on **WEDNESDAY**, the **24th SEPTEMBER, 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

15th August 2014

**THE FINANCIAL SERVICES OMBUDSMAN (BAILIWICK OF GUERNSEY)
LAW, 2014**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Projet de Loi Ordinance entitled “The Financial Services Ombudsman (Bailiwick of Guernsey) 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

This Law establishes the Office of the Financial Services Ombudsman (“OFSO”), which will provide an independent dispute resolution service to settle complaints between customers (such as individual consumers, small business and charities) and financial services providers (including banks, insurance brokers, and credit providers) in the Bailiwick of Guernsey.

The service provided by OFSO will allow Ombudsmen to investigate and determine complaints effectively and expeditiously, based on what is fair and reasonable in all the circumstances and, if a complaint is upheld, the Ombudsman can make awards to make good financial loss incurred by a customer.

Complainants will not be required to pay fees before their complaint is considered by an Ombudsman as the scheme will be financed by financial services providers.

Further subordinate legislation will exclude specified financial services providers from the service.

**THE BANKING DEPOSIT COMPENSATION SCHEME (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 Banking Deposit Compensation Scheme (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 Banking Deposit Compensation Scheme (Bailiwick of Guernsey) Ordinance, 2008 including by widening and clarifying the definition of “eligible depositors” to include charities, permitting further information sharing between the Deposit Compensation Scheme Board and the Guernsey Financial Services Commission and making a number of technical amendments identified by the Deposit Compensation Scheme Board which clarify the procedures to be followed where a declaration of default is made and the effects of such a declaration.

THE INCOME TAX (GUERNSEY) (APPROVED INTERNATIONAL AGREEMENTS) (AMENDMENT) ORDINANCE, 2014

The States are asked to decide:-

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

EXPLANATORY MEMORANDUM

This Ordinance:

- a) amends the definition of “approved international agreement” in section 75C(4) of the Income Tax (Guernsey) Law, 1975 (“**1975 Law**”) to include international conventions that provide for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax,
- b) specifies, pursuant to section 75C of the 1975 Law, the agreements providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax, made between the States of Guernsey and the Governments of the Republic of Austria, the Kingdom of Belgium, the Principality of Liechtenstein, and Montserrat and which were signed during the period from April to June 2014, and
- c) specifies, pursuant to section 75C of the 1975 Law, the Joint Council of Europe and the Organisation for Economic Co-Operation and Development Convention on Mutual Administrative Assistance in Tax Matters (which includes the 2010 Amending Protocol) as an agreement providing for the obtaining, delivery, making available, furnishing and/or exchanging of documents and information in relation to tax which is governed by international law and which was extended to Guernsey by the United Kingdom in April 2014.

THE ALDERNEY eGAMBLING (OPERATIONS IN GUERNSEY) (AMENDMENT) ORDINANCE, 2014

The States are asked to decide:-

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

EXPLANATORY MEMORANDUM

This Ordinance clarifies the existing position regarding temporary eGambling licences within section 1 of the Alderney eGambling (Operations in Guernsey) Ordinance, 2006 so that it is clear that organising, promoting or effecting gambling transactions by a Temporary eGambling licensee is not unlawful gambling.

ORDINANCES LAID BEFORE THE STATES

**THE CRIMEA AND SEVASTOPOL (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, Crimea and Sevastopol (Restrictive Measures) (Guernsey) Ordinance, 2014 made by the Legislation Select Committee on the 10th July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and, subject to certain modifications, gives effect in Guernsey to Council Regulation (EU) No. 692/2014 of the 23rd June, 2014, concerning restrictive measures in view of the situation in the Crimea and Sevastopol.

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 10th July, 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 AFGHANISTAN (RESTRICTIVE MEASURES) (GUERNSEY)
(AMENDMENT) ORDINANCE, 2014**

In pursuance of the provisions of the proviso to Article 66 (3) of the Reform (Guernsey) Law, 1948, as amended, The Afghanistan (Restrictive Measures) (Guernsey) (Amendment) Ordinance, 2014 made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and amends the Afghanistan (Restrictive Measures) (Guernsey) Ordinance, 2011 (“the 2011 Ordinance”). In particular, it inserts provision requiring a financial services business to inform the Policy Council if it knows, or has reasonable cause to suspect, that a person is a designated person or has committed an offence under the 2011 Ordinance by infringing certain articles of the EU Regulation which are implemented in Guernsey by the 2011 Ordinance. The obligation arises where the information, on which the knowledge or reasonable cause for suspicion is based, came to the business in the course of carrying on its business. A designated person means a person included in the list provided for by article 2 of the EU Regulation.

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 21st July, 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 UKRAINE (RESTRICTIVE MEASURES) (GUERNSEY) (AMENDMENT) 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) (Amendment) Ordinance, 2014 made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and amends the Ukraine (Restrictive Measures) (Guernsey) Ordinance, 2014 (“the 2014 Ordinance”). It inserts a standard clause into the 2014 Ordinance applying certain provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 to the detention of a person for an offence, and in relation to offences, penalties and proceedings for offences, under the 2014 Ordinance.

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 21st July, 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) (AMENDMENT) 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) (Amendment) Ordinance, 2014, made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and amends the Territorial Integrity etc. of Ukraine (Restrictive Measures) (Guernsey) Ordinance, 2014 (“the 2014 Ordinance”). It inserts a standard clause into the 2014 Ordinance applying certain provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 to the detention of a person for an offence, and in relation to offences, penalties and proceedings for offences, under the 2014 Ordinance.

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 21st July, 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) (AMENDMENT) 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) (Amendment) Ordinance, 2014, made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and amends the Central African Republic (Restrictive Measures) (Guernsey) Ordinance, 2014 (“the 2014 Ordinance”). It inserts a standard clause into the 2014 Ordinance applying certain provisions of the Customs and Excise (General Provisions) (Bailiwick of Guernsey) Law, 1972 to the detention of a person for an offence, and in relation to offences, penalties and proceedings for offences, under the 2014 Ordinance.

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 21st July, 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 SUDAN (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 Sudan (Restrictive Measures) (Guernsey) Ordinance, 2014, made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and, subject to certain modifications, gives effect in Guernsey to Council Regulation (EU) No. 742/2014 of the 10th July, 2014, concerning restrictive measures in view of the situation in Sudan.

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 21st July, 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 SOUTH SUDAN (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 South Sudan (Restrictive Measures) (Guernsey) Ordinance, 2014, made by the Legislation Select Committee on the 21st July, 2014, is laid before the States.

EXPLANATORY MEMORANDUM

This Ordinance is made under the European Communities (Implementation) (Bailiwick of Guernsey) Law, 1994 and, subject to certain modifications, gives effect in Guernsey to Council Regulation (EU) No. 748/2014 of the 10th July, 2014, concerning restrictive measures in view of the situation in South Sudan.

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 21st July, 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 NO. 4) 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. 4) Regulations, 2014 made by the Social Security Department on 27th May 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 27th May 2014.

THE AIR NAVIGATION (RESTRICTION OF FLYING) (BAILIWICK OF GUERNSEY) AIR DISPLAY REGULATIONS 2014

In pursuance of Section 178(4) of Aviation (Bailiwick of Guernsey) Law, 2008, The Air Navigation (Restriction of Flying) (Bailiwick of Guernsey) Air Display Regulations 2014, made by the Director of Civil Aviation - Commerce and Employment Department on 17th June 2014, are laid before the States.

EXPLANATORY NOTE

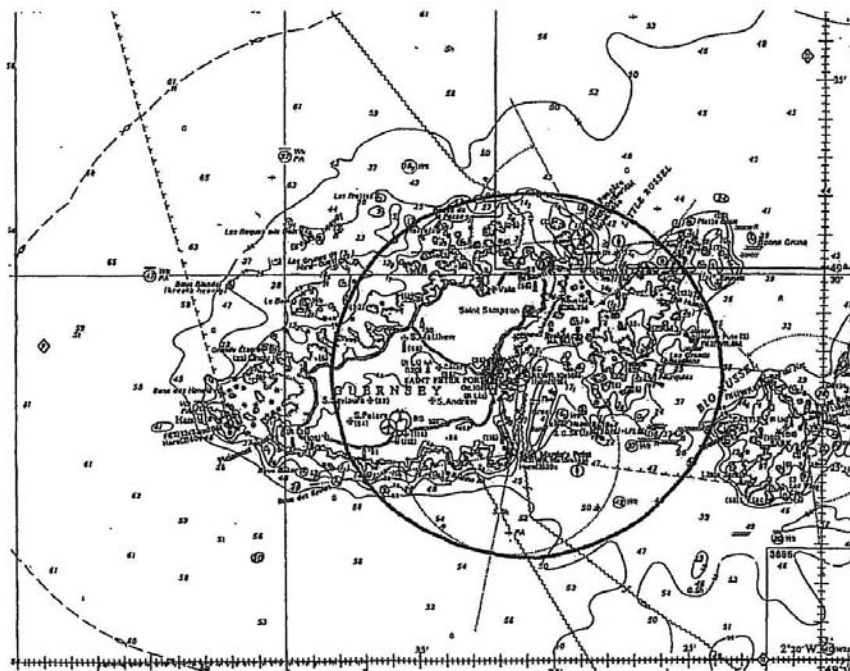
These regulations prohibit (subject to the granting of exemptions) all flights within four and a half miles of position:

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W 002 31 27.0479

between 0950 and 1225 hours UTC on the 11th September, 2014 by reason of an air display. They impose other restrictions on flying and the use of Guernsey Airport in order to enable the display to be undertaken safely.

A chart for illustrative purposes is included.

GUERNSEY BATTLE OF BRITAIN AIR DISPLAY **RESTRICTED AREA**



**ANIMAL WELFARE (GUERNSEY) ORDINANCE, 2012 (COMMENCEMENT)
ORDER, 2014**

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Guernsey) Ordinance, 2012 (Commencement) Order, 2014, made by the Commerce and Employment Department on 20th May 2014, is laid before the States.

EXPLANATORY NOTE

This Order brings into force the Animal Welfare (Guernsey) Ordinance, 2012, on the 1st July, 2014, with the exception of Part VI (Regulation of Activities Involving Animals) which is only partially brought into force to provide for the licensing of the activity of slaughtering animals, stunning animals prior to slaughter and keeping animals whilst awaiting such slaughter and stunning. The remaining licensing and other provisions (regulating shows, exhibitions, competitions etc.) of Part VI, and certain related transitional provisions, will be brought into force at a later date.

**ANIMAL WELFARE (SLAUGHTER, KILLING, EUTHANASIA ETC.)
(PRESCRIBED ANIMALS) REGULATIONS, 2014**

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Slaughter, Killing, Euthanasia Etc.) (Prescribed Animals) Regulations, 2014, made by the Commerce and Employment Department on 20th May 2014, are laid before the States.

EXPLANATORY NOTE

Section 10(1) of the Animal Welfare (Guernsey) Ordinance, 2012 (“the Ordinance”) provides for exceptions to certain animal welfare offences in relation to –

- the slaughter or killing of any animal prescribed as food for mankind or as an animal product,
- the hunting, capture or killing of any animal prescribed as a game animal, and
- the euthanising of livestock and other animals prescribed which are new born animals surplus to requirements or animals at the end of their economic lives,

providing that the same are carried out in accordance with requirements as to the methods, techniques, equipment or devices etc. to be used. It is an offence to contravene such requirements and may also result in an animal welfare offence being committed under section 1 or 7 of the Ordinance.

These Regulations prescribe the animals referred to above. The requirements relating to slaughter, killing and euthanasia etc. are set out in the Animal Welfare (Requirements for Slaughter, Killing, Euthanasia Etc.) Order, 2014.

These Regulations came into force on the day of 1st July, 2014.

ANIMAL WELFARE (REQUIREMENTS FOR SLAUGHTER, KILLING, EUTHANASIA ETC.) ORDER, 2014

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Requirements for Slaughter, Killing, Euthanasia Etc.) Order, 2014, made by the Commerce and Employment Department on 17th June 2014, is laid before the States.

EXPLANATORY NOTE

This Order sets out the requirements which must be complied with when –

- slaughtering or killing an animal prescribed as food for mankind or an animal product by the Animal Welfare (Slaughter, Killing, Euthanasia Etc.) (Prescribed Animals) Regulations, 2014 (“the Regulations”); the requirements are set out in article 1(1) and Part I of Schedule 1 to this Order,
- hunting, capturing or killing an animal prescribed by the Regulations as a game animal; the requirements are set out in article 1(2) and Part II of Schedule 1 to this Order,
- the euthanising of –
 - specified animals owing to illness, injury, infirmity or age, and
 - specified livestock or other animals, prescribed by the Regulations, which are new born animals which are surplus to requirements or animals at the end of their economic lives,

the requirements are set out in article 2 and Schedule 2 to this Order, and

- taking from the wild, capturing, controlling or killing a dangerous animal. The requirements are set out in article 3 and Schedule 3 to this Order.

It is an offence to contravene a requirement of this Order under section 10(4) of the Animal Welfare (Guernsey) Ordinance, 2012 and such a contravention may also result in an offence being committed under section 1 or 7 of the Ordinance.

This Order came into force on the 1st day of July, 2014.

**ANIMAL WELFARE (PROHIBITED OPERATIONS) (AMENDMENT)
REGULATIONS, 2014**

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Prohibited Operations) (Amendment) Regulations, 2014, made by the Commerce and Employment Department on 20th May 2014, are laid before the States.

EXPLANATORY NOTE

These Regulations amend Schedule 1 to the Animal Welfare (Guernsey) Ordinance, 2012. The Schedule sets out operations on animals the carrying out of which is an offence unless carried out as emergency first aid or by a recognised veterinary surgeon for the purpose of treating disease or injury.

Tail docking of dogs is such a prohibited operation. These Regulations amend the Schedule to provide an exception for tail docking of certain breeds of dog that are commonly used for hunting (Springer Spaniel, Cocker Spaniel or Field Spaniel or the progeny of cross breeding between any of the said breeds of Spaniel), provided that-

- (a) the operation is carried out by a veterinary surgeon when the dog is less than 7 days old and the dog is identified at the time of the operation, by means of a microchip, as having met the requirements of the exception,
- (b) the owner is the holder of a valid hunting permit and he has provided that permit, or a certified copy, to the veterinary surgeon prior to the operation being carried out, and
- (c) the veterinary surgeon certifies (on a form provided by the Commerce and Employment Department) that the requirements of the exception will be met, and sends a copy of the same to the Department, before the operation is carried out.

These Regulations came into force on the 1st July, 2014.

**ANIMAL WELFARE (DESIGNATION AND CONTROL OF PEST ANIMALS)
ORDER, 2014**

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Designation and Control of Pest Animals) Order, 2014, made by the Commerce and Employment Department on 17th June 2014, is laid before the States.

EXPLANATORY NOTE

This Order designates the animals that are pest animals for the purposes of the Animal Welfare (Guernsey) Ordinance, 2012 (see article 1 and Schedule 1 to this Order) and prescribes the control measures which may be used to control such pest animals and the requirements applying to the carrying out of such measures.

The control measures and related requirements for specified kinds of rats and mice which are designated as pest animals are set out in article 2(1) and Schedule 2, those for carrion crows and magpies in article 2(2) and Schedule 3 and those for feral pigeons in article 2(3) and Schedule 4.

The Order specifies that where pest animals are controlled they must be controlled using one of the control measures set out in the Order in relation to those pest animals and in compliance with the requirements applying to that control measure (article 2(4)).

It is an offence to contravene a requirement of this Order under section 14(4) of the Animal Welfare (Guernsey) Ordinance, 2012 and such a contravention may also result in another offence being committed under the Ordinance in particular under section 1 or 7. This Order came into force on the 1st day of July, 2014.

ANIMAL WELFARE (WELFARE CODES) ORDER, 2014

In pursuance of section 79(1)(c) of the Animal Welfare (Guernsey) Ordinance, 2012, the Animal Welfare (Welfare Codes) Order, 2014, made by the Commerce and Employment Department on 20th May 2014, is laid before the States.

EXPLANATORY NOTE

This Order, which comes into force on 1st July, 2014 brings into operation animal welfare codes in respect of pet and working dogs, pet cats, pet rabbits, pet hamsters, pet rats, pet mice, pet gerbils, pet guinea pigs, pet birds, pet reptiles and amphibians and calves reared out of doors.

The Animal Welfare codes provide practical guidance on meeting the duty of care to the animal concerned under section 8 of the Animal Welfare (Guernsey) Ordinance, 2012. Failure to comply with a provision of a Code may be relied upon as tending to establish liability for contravention of the duty of care which is an offence under the Ordinance. The codes came into effect on 1st July, 2014.

THE COMPANIES (REGISTRAR) (FEES) REGULATIONS, 2014

In pursuance of Section 537 of the Companies (Guernsey) Law, 2008, The Companies (Registrar) (Fees) Regulations, 2014, made by the Commerce and Employment Department on 1 July 2014, are laid before the States.

EXPLANATORY NOTE

These regulations prescribe the fees payable to the Registrar of Companies in respect of the performance of his functions under the Companies (Guernsey) Law, 2008, as amended. These regulations came into effect on 1st July 2014.

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (LEGAL PROFESSIONALS (ACCOUNTANTS AND ESTATE AGENTS) (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2014

In pursuance of sections 49A and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Legal Professionals, Accountants and Estate Agents) (Bailiwick of Guernsey) (Amendment) Regulations, 2014, made by the Policy Council on 28th July 2014, are laid before the States.

EXPLANATORY NOTE

These Regulations update the definition of terrorist financing in the principal regulations to reflect changes to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, and bring the definition into line with international standards. These regulations came into effect on 29th July, 2014.

THE CRIMINAL JUSTICE (PROCEEDS OF CRIME) (FINANCIAL SERVICES BUSINESSES (BAILIWICK OF GUERNSEY) (AMENDMENT) REGULATIONS, 2014

In pursuance of sections 49 and 54 of the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, the Criminal Justice (Proceeds of Crime) (Financial Services Businesses (Bailiwick of Guernsey) (Amendment) Regulations, 2014, made by the Policy Council on 28th July 2014, are laid before the States.

EXPLANATORY NOTE

These Regulations update the definition of terrorist financing in the principal regulations to reflect changes to the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999, and bring the definition into line with international standards. These regulations came into effect on 29th July, 2014.

POLICY COUNCIL

THE CO-ORDINATION OF RELATED ECONOMIC AND SOCIAL POLICY PROJECTS

1 EXECUTIVE SUMMARY

- 1.1 The purpose of this Report is to advise the States of the relationships between the work being undertaken in respect of the Personal Tax, Pensions and Benefits Review (PTR), the Social Welfare Benefits Investigation Committee (SWBIC), the Supported Living and Ageing Well Strategy (SLAWS), and investigations into a Living Wage statistic and the measurement of poverty and income inequality.
- 1.2 The States is not asked to make any decisions regarding this Report, other than to note that, although the Policy Council is making concerted efforts to coordinate them effectively, fully synchronising the timetables of these various initiatives would be impractical. As a result, the States is likely to be asked to make decisions on certain aspects of each without necessarily having full information on all the related matters.
- 1.3 The Report also highlights that, in the absence of a prioritised Government Service Plan (GSP), each of these projects is beset with resourcing issues to enable them to progress in timely fashion; and that a lack of resources is also hindering the development of the GSP itself.

2 BACKGROUND

- 2.1 The States has separately set in train simultaneous investigations into matters that have considerable synergies and overlaps in content and intent; namely:
 - the Personal Tax, Pensions and Benefits Review (PTR) – led by the Treasury and Resources and Social Security Departments, but heavily reliant on staff working for the Policy Council;
 - the Social Welfare Benefits Investigation Committee (SWBIC) – a special investigation committee chaired by Deputy Le Lievre comprising representatives of Treasury and Resources, Social Security and Housing, plus one other member not representing any of these Departments. This is being supported by staff working for the Policy Council, Social Security and Housing;
 - the Supported Living and Ageing Well Strategy (SLAWS) – overseen by the Policy Council's Social Policy Group, but being progressed by a Working Party chaired by Deputy Harwood, with political representatives from Health and Social Services, Housing, Social Security and Treasury and Resources. Primarily this is being supported by staff from the Policy Council;

- an investigation into a Living Wage statistic – this is being led by a Policy Council working party chaired by the Deputy Chief Minister, with political representation from the Commerce and Employment and Social Security Departments. It is supported by staff from the Policy Council and the two Departments;
- investigations into the measurement of poverty and income inequality – these are being overseen by the Policy Council’s Social Policy Group and supported by Policy Council staff.

2.2 Taken together, these initiatives represent a considerable body of policy work with similar themes and objectives. For example, various aspects of these discrete policy projects could form the basis for a *de facto* Anti-Poverty Research Programme, even though they were not conceived as such and are not currently resourced or timetabled to be managed as a programme.

2.3 The purpose of this Report is, therefore, to highlight these synergies and to provide the States with a progress report on how each of them is being taken forward.

3 THE POLICY PROJECTS

3.1 The Review of Personal Tax, Pensions and Benefits

3.1.1 In March 2012, the Policy Council published a report on the ‘Potential Long Term Implications of Demographic and Population Change on the Demand for and Costs of Public Services’ (see: www.gov.gg/article/5790/reports). The report stated that: *“What is apparent from the projections is that either revenue must rise as a share of GDP, or projected spending must fall – or some combination of the two outcomes must be achieved to ensure the States remains in balance in the projected period.”*

3.1.2 This report, and others like it, has set the context for the current Review of Personal Tax, Pensions and Benefits (PTR), which seeks to ensure that the Islands of Guernsey and Alderney have a stable and secure income through tax and social insurance contributions from which to generate public revenue over the long-term to run and manage public services.

3.1.3 The Treasury and Resources and Social Security Departments are jointly responsible for directing the review process. During the early stages of political discussion about the PTR project, they agreed that the long-term sustainability of the tax, pensions and benefits regimes should be its key objective.

3.1.4 At the time of writing, the two Departments have just published their interim report, ‘Principles and Issues’ (see: www.gov.gg/ptr). This explains the objectives of the review in terms of achieving sustainability, efficiency and fairness and the five themes that have emerged from the public consultation:

1. The tax and benefits system should incentivise people to work and support themselves;

2. People should be encouraged to take responsibility for their financial well-being in later life;
3. The tax and benefits system should be, as far as possible, simple and easy to understand;
4. The personal tax system needs to be competitive in comparison with other jurisdictions;
5. The States has a duty to ensure that expenditure is controlled and public money is used efficiently.

3.1.5 Having examined all the issues in some detail, the report sets out various options for change in the context of the economic and demographic challenges that Guernsey faces.

3.1.6 Of particular relevance to this Report is that the PTR has highlighted issues regarding the sustainability of expenditure on social welfare and long-term care benefits, the cost of which is a substantial and growing component of the States' annual expenditure, with major implications for a review of fiscal and economic policy. With this in mind, the 'Principles and Issues' document explicitly cross-references the work being undertaken on SLAWS and by SWBIC. However, on the current timetable, the detailed recommendations of the PTR review will be presented to the States in late 2014, ahead of consideration of any report on SLAWS and before SWBIC is mandated to report on its findings and recommendations.

3.2 A Review of Social Welfare Benefits

3.2.1 In November 2013 (Billet d'État XX, October 2013), the States considered proposals from the Social Security Department to modernise the Supplementary Benefit system to create a single, comprehensive social welfare benefits system incorporating relevant aspects of the statutory Rent Rebate Scheme for social housing tenants of the Housing Department and the Guernsey Housing Association.

3.2.2 The States recognised that modernisation was desirable but the model proposed by the Social Security Department failed to secure majority support. Instead, the States decided to establish a special States Committee, the Social Welfare Benefits Investigation Committee (SWBIC), to consider the matter afresh. The Committee, which was required to include a specific cross-departmental membership, was given the following mandate:

- "a) To examine all aspects of the Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004 in order to assess the appropriateness or otherwise of the legislation and associated policies in view of the economic and social changes since their inception;*
- b) To develop a single, comprehensive social welfare benefits model to replace the Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of the States Housing (Tenancies, Rent and Rebate Scheme)*

(Guernsey) Law, 2004, which single, comprehensive model shall be capable of fulfilling and balancing the social and fiscal objectives of the States;

- c) To ensure that during the formulation of a single, comprehensive social welfare benefits model, and in order to develop an objective rationale for the determination of assistance that is both socially just and financially sustainable, detailed consideration is afforded to the circumstances of, inter alia, the aged, the sick, the disabled, families on low incomes, families with three or more dependent children and persons with no further reasonable expectation of employment due to age or ill health;*
- d) To ensure that during the formulation of a single, comprehensive social welfare benefits model consideration is afforded to the policy letters of the Social Security Department laid before the States in Billet d'État V of 2012 and Billet d'État XX of 2013 and the letters of comment attached to those policy letters by other committees of the States."*

3.2.3 The States also resolved:

- "31. That during the course of its deliberations the Social Welfare Benefits Investigation Committee shall consult with the full membership of the Housing Department, Social Security Department and Treasury and Resources Department.*
- 32. That the Social Welfare Benefits Investigation Committee shall have regard to the findings and emerging recommendations of the Personal Tax, Pension and Benefit Review.*
- 33. That by March, 2015 the Social Welfare Benefits Investigation Committee shall lay before the States a policy letter proposing the introduction as expeditiously as possible of a single, comprehensive social welfare benefits model to replace the Supplementary Benefit (Guernsey) Law, 1971, as amended, and relevant aspects of the States Housing (Tenancies, Rent and Rebate Scheme) (Guernsey) Law, 2004 together with, after full consultation with the Treasury and Resources Department, recommendations which identify possible sources of funding for any additional expenditure likely to be incurred by the new single, comprehensive social welfare benefits model."*

3.2.4 The Policy Council is advised that, after a difficult start due to an absence of appropriate senior officers to support its work, SWBIC has been making effective progress with this major and complex review, establishing the issues that need to be addressed and the principles that will underpin a redesigned welfare system.

3.2.5 However, as with previous such reviews, it has become apparent to the Committee that the fundamental factor to be established in designing a new welfare benefits system is the level of benefits to which claimants will be entitled. Setting benefit levels requires an informed political judgement to be made about the income necessary to pay for a basic but adequate standard of living in Guernsey; but, as

will be expanded upon below, the States has yet to adopt a measurement of poverty by which to benchmark such a judgment.

3.2.6 With this mind, the Policy Council has been advised that to make sure that it has majority support (and to minimise the amount of abortive work that might otherwise be done if the States were to reject its favoured approach), SWBIC is intending to report to the States in two stages. The first report, which is to be presented on or before the date required by the Resolution quoted above, is intended to set out an outline of the proposed new scheme and the reasoning behind it. If this report is endorsed, a second, more detailed report will follow, which will include proposals for managing the transition between the current and proposed benefits systems.

3.2.7 The Policy Council supports this approach as, in terms of policy co-ordination, a two-stage report also has the advantage of enabling an earlier appreciation of the interrelationship between the likely overall cost of modernising welfare benefits as recommended by SWBIC, and the revenue available to fund it through the reform of personal taxation and benefits. It will also hopefully allow further work to be undertaken on measurements of poverty and income inequality to inform final decisions on a new welfare system.

3.3 Supported Living and Ageing Well Strategy

3.3.1 The establishment of a 'Supported Living and Ageing Well Strategy' (SLAWS) was identified as one of four core priorities for corporate action in the Social Policy Plan for 2013-2017.

3.3.2 Work in this area of considerable scope and importance has not arisen in response to any specific States Resolution but, as with the PTR, from the awareness that the Island's ageing population represents a major economic, fiscal and social policy challenge. However, although addressing the accommodation, health and social care needs of older people is a massive undertaking in its own right, in giving unanimous approval to the Disability and Inclusion Strategy in November 2013 (Billet d'État XXII, November 2013), the States agreed that reviewing the services available for younger adults with long-term care and support needs should also be progressed as part of SLAWS.

3.3.3 As noted earlier, the Policy Council has established a SLAWS Working Party: this has been mandated by the Social Policy Group to answer the following questions:

- What care, support and supported accommodation services are needed?
- Who should provide them?
- **How should they be paid for?**

3.3.4 In seeking to answer these questions, the Working Party has defined its Objectives and Principles as follows:

Objectives

- a) To reduce, where possible the incidence of adults (18+) having enduring care support or supported accommodation needs.
- b) To improve outcomes for all adults (18+) with an enduring care, support or supported accommodation needs.
- c) To protect the health and well-being of the carers of those with care and support needs.

Principles (*in no particular order*)

- To promote improve and protect individuals' health, wellbeing and dignity.
- To ensure there are opportunities for independence and choice.
- To enable fair access to appropriate care and support and suitable housing.
- To establish a partnership culture whereby the public, private and third sectors, service users and their carers can each contribute to service delivery and development, and share information appropriately.
- **To have regard to affordability and financial viability for the funders, providers and recipients of care and support services.**
- **To ensure that service provision and funding options are sustainable in the medium to long term.**
- To ensure safe, quality care and ensure standards through appropriate regulation.

Of particular relevance to this Report - and to the PTR - are the question and principles highlighted above in bold type.

- 3.3.5 Current expectations are that the Policy Council will present a report to the States in the final quarter of 2015, setting out a recommended 'Supported Living and Ageing Well Strategy', including consideration of how it is to be sustainably funded.

3.4 A Living Wage Statistic

- 3.4.1 The States decided to introduce a statutory Minimum Wage in 2007 (Billet d'État XXII, October 2007) and enacted the necessary legislation in 2009, which requires that Minimum Wage rates are reviewed and adjusted annually.
- 3.4.2 However, of particular relevance to this Report, the Minimum Wage in Guernsey, as elsewhere, is *not* calculated to provide an adequate income to live on. It is simply intended to prevent employers paying wage rates so low as to amount to exploitation. It is explicitly assumed that the Minimum Wage earned by any individual may need to be topped up by a variety of welfare benefits that relate to their individual household circumstances.

3.4.3 Bearing this in mind, in August last year the States considered the annual report from the Commerce and Employment Department to raise the level of the Minimum Wage (Billet d'État XV, 2013). As well as agreeing the recommended increase, the States supported an amendment placed by Deputy Langlois:

“To direct the Policy Council, with the assistance of the Commerce & Employment and Social Security Departments, to investigate the implications for, and impact upon, Guernsey of the establishment of a ‘living wage’ measurement and to report back with the conclusions of its investigation by no later than 30th April 2015”.

3.4.4 In conformity with this Resolution, the Policy Council subsequently established a political working party – ‘The Living Wage Feasibility Investigation Group’ - under Deputy Langlois’s chairmanship, with three other members drawn from the Social Security and Commerce and Employment Departments.

3.4.5 In contrast to the Minimum Wage, a Living Wage, as defined by the UK Living Wage Commission, is *“an hourly wage defined as the minimum amount of money needed to enjoy a basic, but socially acceptable standard of living”*. That Commission has recently undertaken an independent inquiry into the potential value of the Living Wage as an approach to improve the incomes of five million low paid workers in the UK and its final report, published in July 2014, recommends increased efforts to encourage the payment of a Living Wage in the public and private sectors, albeit it has stopped short of recommending the introduction of a statutory Living Wage.

3.4.6 In Guernsey, interest in the concept of a Living Wage has arisen against a background of concerns about low pay, in-work poverty and consequent welfare benefit dependency. Against a growing strand of opinion that Guernsey is an increasingly divided society where the gap between rich and poor is growing, and where the labour market works to disadvantage those local people in low or semi-skilled employment, the Living Wage Group has found evidence (some clear and factual; some only indicative) that in Guernsey:

- A substantial number of people are in Minimum Wage employment
- Amongst these will be those who live in households where overall income is lower than 60% local median income (an accepted international benchmark for measuring poverty)
- The resulting situation of in-work (relative) poverty results in the need for top-up welfare benefits to be paid in the form of Supplementary Benefit and the grant of Rent Rebates
- The cost of these benefits falls on the taxpayer who, in effect, subsidises the labour cost of employers
- This welfare burden is substantial and adds to the pressure on public finances at a time when the States are trying to return to a balanced budget
- This transfer of cost to the public purse comes at a time, post Zero-10, when many firms pay no corporate tax.

- 3.4.7 The Living Wage Feasibility Investigation Group is currently testing the strength of this evidence and consulting with a wide range of interested parties locally to establish whether the calculation of a Living Wage statistic would be beneficial or detrimental to Guernsey in social and economic terms. The Group is also in contact with the States of Jersey who are undertaking similar research.
- 3.4.8 The Policy Council expects to be able to report back to the States with its findings no later than March 2015, ahead of the States Resolution deadline.

3.5 A Standard Measurement of Poverty

- 3.5.1 Although it is not their normal practice to do so, in May 2013 the States debated the Medical Officer of Health's Annual Report (Billet d'État VIII, May 2013). The Report took 'Health Equity' as its special theme and focused on poverty as the largest preventable cause of ill-health worldwide.

- 3.5.2 The States were recommended simply to note the Report but, following debate on a number of amendments, made a number of Resolutions, among which were the following:

"2. To direct that by no later than July, 2014, and after consultation with the relevant States Departments and the Medical Officer of Health, the Policy Council, in accordance with that part of its mandate which makes it responsible for "...the co-ordination of action to enable the implementation of the States Strategic Plan..." and in order to contribute towards fulfilling the Social Policy Plan general objective of "equality of opportunity, social inclusion and social justice" (Resolution 3 on Billet d'État VI of 2013), shall report to the States of Deliberation setting out its considered response to Recommendation 2 of the Medical Officer of Health's 113th Annual Report, which considered response shall include an assessment of whether to establish as expeditiously as possible the size and profile of that part of the population whose income falls below a recognised minimum level of income.

....

- 4. To direct that by no later than July, 2014, and after consultation with the relevant States Departments and the Medical Officer of Health, the Policy Council, in accordance with that part of its mandate which makes it responsible for "...the co-ordination of action to enable the implementation of the States Strategic Plan..." and in order to contribute towards fulfilling the Social Policy Plan general objective of "equality of opportunity, social inclusion and social justice" (Resolution 3 on Billet d'État VI of 2013), shall report to the States of Deliberation setting out its considered response to Recommendation 7 of the Medical Officer of Health's 113th Annual Report, which considered response shall include an assessment of whether to establish as expeditiously as possible a measure of income inequality".*

- 3.5.3 In July this year, via a Statement to the Assembly, the States was updated on the progress being made to fulfil these two Resolutions. As part of that update, it was explained that the key element of Resolution 2 was the reference to a “recognised minimum level of income”, as to establish the numbers and types of people who fall beneath a minimum level, there first needs to be an agreed means of measuring what that minimum level is. However, it was noted that previous efforts to establish such a measurement had been unsuccessful.
- 3.5.4 It was further reported that, independent of the States, the Guernsey Community Foundation had commissioned research by the local consultancy, Island Analysis, into the ways that a number of other islands measured poverty. At the time of writing, these findings were the subject of detailed discussion between the Policy Council and the Community Foundation, with the intention of identifying a methodology for measuring poverty that could be recommended for adoption by the States as soon as practicable.
- 3.5.5 In respect of Resolution 4 – measuring income inequality – it was explained that this was a complex subject and not one in which the Policy Council had any particular expertise; and because those staff that did have some understanding of such matters had been fully employed in supporting the PTR review and other strategic projects, it had not been possible to devote any significant time to this area of work.
- 3.5.6 However, an assurance was given that the Policy Council would, endeavour to investigate this matter as part of its staff’s contribution to the PTR review and the work of SWBIC, albeit this could not be prioritised for action independently without adversely impacting on other important policy work and/or requiring additional expert resourcing.

4 SUMMARY AND CONCLUSIONS

4.1 Policy Co-ordination

- 4.1.1 As will have become evident through reading the above, there are strong interrelationships between the various policy projects described in this Report. Each deals to a greater or lesser extent with some aspect of securing the adequacy of individual and household incomes; incentivising financial independence; and ensuring that social welfare and long-term care benefits are affordable and sustainable over the long-term. They also each have relevance to both Guernsey and Alderney.
- 4.1.2 Ideally, these projects would be taken forward as a programme, with the inter-dependencies and critical path for decision-making being explicit and understood. However, in the absence of such mechanisms, it is impossible at this stage to ‘retro-fit’ a programme structure around projects that have so many different leading political bodies and individual reporting deadlines and timetables (see Table 1 below).

Table 1 – Summary of projects and indicative timescales for reporting

PROJECT TITLE	ANTICIPATED REPORTING DATE
Review of Personal Tax, Pensions and Benefits	End of 2014
Review of Social Welfare Benefits	By March 2015 (first report)
Supported Living and Ageing Well Strategy	Q4 - 2015
Living Wage Statistic	March 2015
Measurements of Poverty and Income Inequality	Not yet known

4.1.3 Consequently, although the Policy Council is making concerted efforts to coordinate them effectively, fully synchronising the timetables of these various initiatives is impractical. As a result, the States is likely to be asked to make decisions on certain aspects of each project without necessarily having full data and information available on all the related matters pending the completion of research in those other areas.

4.1.4 Nonetheless, the States will need to be reminded of the broader context as each States Report is presented for debate.

4.2 Resource implications

4.2.1 While all the projects referred to in this Report are being progressed, each is constrained to a greater or lesser degree by inadequate resources – not just staff, but also monies to commission research, carry out financial modelling or to undertake public engagement activities.

4.2.2 While this position is by no means unique to the Policy Council, it is being felt particularly acutely by the Policy Council at this time, as, in the main, it is the same handful of officers that are responsible for supporting all of these projects. While there are undoubtedly some advantages to this in terms of knowledge transfer and policy coordination, the demands of reporting to multiple political bodies with competing timelines cannot be understated.

4.2.3 As variations on this situation are replicated many times over within Departments and the Policy Council's Policy and Research Unit, the Policy Council is, at the time of writing, reviewing the resources devoted to the entire policy-making agenda. Part of the outcome of this review may be a request for funding from the Strategic Development Fund for temporary additional resources to progress, in more timely fashion, all the many significant strategic initiatives currently underway.

4.2.4 In the meantime, the Policy Council will continue to deploy its officers as effectively and efficiently as possible, and has no doubt that the other States Departments/Committees involved will do likewise.

4.3 The need for a Government Service Plan

- 4.3.1 The March 2013 States Strategic Plan (SSP) Report (Billet d'État VI, March 2013) explained the importance of producing a Government Service Plan (GSP) to translate the SSP into a rolling 4-year programme linked to the States Budget. This was noted and a further Report was presented in July 2013 (Billet d'État XV, July 2013), which explained how the GSP would provide a basis for the States to make better informed choices about priorities for action. Although the need for a comprehensive prioritisation process was accepted in principle, the States was not prepared to make resources available to fund the development of the GSP until they were content with the methodology to be used.
- 4.3.2 However, the situation described in this Report illustrates clearly why there is an urgent need for a GSP. The fact that each project has been brought forward piecemeal rather than on a planned and prioritised basis, means that each project has become a 'priority' and competes with the remainder of the policy-making agenda - which is far broader and extensive than that described in this Report - for the limited resources that are available.
- 4.3.3 The Policy Council is, therefore, continuing to give consideration as to how a GSP may be established as soon as possible, but is hindered in doing so by the lack of resourcing.

5 CONSULTATIONS

- 5.1 In preparing this Report, the Policy Council has consulted with the Treasury and Resources and Social Security Departments, and with the Social Welfare Benefits Investigation Committee.

6 PRINCIPLES OF GOOD GOVERNANCE

- 6.1 The Policy Council is satisfied that this Report complies with the Principles of Good Governance.

7 RECOMMENDATIONS

The Policy Council recommends the States:

- 7.1 to note that, although the Policy Council is making concerted efforts to coordinate them effectively, it would be impractical to synchronise fully the timetables for reporting of the various policy projects referred to in section 3 of this Report;
- 7.2 to acknowledge that, arising from any one of the policy projects referred to in section 3 of this Report, decisions are likely to need to be made by the States before they have had the opportunity to consider and fully debate the entire suite of related reports;
- 7.3 to note that a lack of resourcing is hindering progress on the development of a Government Service Plan.

J P Le Tocq
Chief Minister

28th July 2014

A H Langlois
Deputy Chief Minister

Y Burford
M H Dorey
P L Gillson

M G O'Hara
R W Sillars
K A Stewart

P A Luxon
D B Jones
G A St Pier

(N.B. The Treasury and Resources Department recognises the volume and complexity of the work required to simultaneously develop these key policy initiatives which have numerous overlaps and inter-dependencies. Furthermore, there will potentially be long-term, far-reaching and significant resource requirements arising from the implementation and ongoing delivery of the resulting strategies, policies and services. It is, therefore, essential that an appropriate short-term investment is made in suitable resources at this stage in order that the outputs of these projects meet their objectives and enable services to be delivered, in the long-term, in the most effective, efficient and economic way.

The Treasury and Resources Department will be prepared to consider a request from the Policy Council for funding from the Strategic Development Fund which was established to “facilitate the delivery of fiscal, economic, social and environmental policy objectives including, of course, cost effective, efficient public services in a sustainable and diversified economy.”

Finally, the Department supports the Policy Council in its efforts to consider how a Government Service Plan may be established.)

The States are asked to decide:-

V.- Whether, after consideration of the Report dated 28th July, 2014, of the Policy Council, they are of the opinion:-

1. To note that, although the Policy Council is making concerted efforts to coordinate them effectively, it would be impractical to synchronise fully the timetables for reporting of the various policy projects referred to in section 3 of that Report.

2. To acknowledge that, arising from any one of the policy projects referred to in section 3 of that Report, decisions are likely to need to be made by the States before they have had the opportunity to consider and fully debate the entire suite of related reports.
3. To note that a lack of resourcing is hindering progress on the development of a Government Service Plan.

POLICY COUNCIL

REVIEWING THE FUNDING MECHANISM FOR THE GUERNSEY FINANCIAL SERVICES COMMISSION

1. Executive Summary

- 1.1 This report presents the findings of a review of the funding mechanism for the Guernsey Financial Services Commission (the Commission). The review was agreed during the States of Guernsey debate last July on the Commission's 2012 Annual Report and Financial Statements. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 provides that the Commission's funds and resources may come from a number of sources, including fees and charges paid to the Commission by supervised businesses, grants from the States, and borrowing. In practice, the Commission is funded by fees and charges paid by the businesses it supervises. The fees are set by regulations. These are made by the Commission after consultation with the relevant government committees in the Bailiwick and then laid before the States, which has the power to annul them by resolution. Subsequent to the States debate, in July 2013, an independent expert adviser, Mr Ian Tower¹, was appointed by the Policy Council to carry out the review. A copy of his report is attached as an Appendix.
- 1.2 Mr Tower's principal recommendation is that no change should be made to the Commission's existing funding mechanism. While the Policy Council agrees that no fundamental change should be made, it is recommending that the States should make an amendment to the process through which fee regulations are enacted, so that, in future, regulations will be made by the Policy Council (in the case of fees prescribed under regulatory legislation) and the Commerce & Employment Department (in the case of fees prescribed under commercial Guernsey legislation) rather than the Commission. In making these recommendations, the Policy Council has carefully considered the balance between its responsibilities, accountability of the regulatory authority for the largest part of Guernsey's economy, and meeting international regulatory standards. The recommendations also reflect the normal practice of legislative powers being reserved for the States or part of government as a delegate of the legislature. This normal practice assumes greater importance in the context of the sector which comprises the greatest part of Guernsey's economy. It would also reflect the position were a regulatory body for the finance sector to be established today. It is quite unusual for entities independent of government such as the Commission to have legislative powers.

¹ Ian Tower is an independent expert in financial regulation. Until late 2012, he was a senior manager at the United Kingdom's Financial Services Authority, where various roles included policy development and supervision of insurance companies and foreign-owned banks. From 2007 to 2010 he was seconded by the FSA to the International Monetary Fund, where he worked on financial sector issues. He has worked previously at the Bank of England and the Cabinet Office. Mr Tower now works on financial regulation issues as consultant to international organisations and other clients.

2. Background

- 2.1 In July 2013 the Policy Council submitted a report to the States, which covered the Commission's 2012 annual report and financial statements. The discussion by the States led to the Policy Council being directed, "*in conjunction with the Commerce & Employment Department (and having particular regard to the latter's on-going work following its consultation entitled "A Regulatory Framework for the 21st Century")*", to review the funding mechanism for the Guernsey Financial Services Commission ("*the Commission*") and in particular whether the Commission could in future be funded by way of direct grant from the Treasury & Resources Department and to report back to the States by no later than 30th September 2014."
- 2.2 At its meeting on 23 September 2013, the Policy Council decided that, in order to ensure there was sufficient objectivity and independence, an independent adviser should be appointed to carry out the review, with the appointment process being managed by Policy Council staff and coordinated with Commerce & Employment staff.
- 2.3 The Policy Council agreed that the terms of reference would be "To review potential alternative funding arrangements for the Guernsey Financial Services Commission as presently operated globally, including direct funding by the government, and provide a series of potential options for consideration, together with worked proposals on their implementation, and provide a clear recommendation on future arrangements. That recommendation should be measured against the need to ensure that international standards and expectations are met and the operational independence of the Commission is maintained".
- 2.4 Four potential advisers were approached to undertake the work. The three proposals received were scored using a system based on the corporate tendering process. Subsequently, Mr Ian Tower was appointed. He visited the Island on 16 December 2013 and met with representatives from the Guernsey International Business Association (GIBA), Guernsey Finance, the Commission, the Treasury & Resources Minister and the Commerce & Employment Minister.

3. Current Practice for Setting Fees

- 3.1 The Commission is funded by levying fees and charges payable by applicants (e.g. for authorisations, licences and registrations) and regulated businesses. It has powers under various regulatory laws (see below) to make regulations specifying the fees which are payable by applicants and annual and other fees and charges payable by supervised entities.
- 3.2 The Commission is required by Law to consult the Policy Council, the Policy and Finance Committee of the States of Alderney and the General Purposes and Advisory Committee of the Chief Pleas of Sark. It also consults industry. In addition, it consults the Commerce & Employment Department before making fee regulations under certain commercial legislation, such as the Companies (Guernsey) Law, 2008. The fee regulations are then enacted by the Commission

and laid before the States (a process which involves the printing of an explanatory note attached to the regulations) in a Billet d'Etat. This provides the States with the opportunity to scrutinise the fees and, in most cases, if they think fit, to annul the regulations.

4. International Context

4.1 The model for setting fees is similar to that used in other jurisdictions, including the United Kingdom and Jersey. As noted in Mr Tower's report, it is not the only model by which financial services regulatory authorities are funded.

4.2 The international standards set by the Basel Committee on Banking Supervision, the International Association of Insurance Supervisors, the International Organization of Securities Commissions and the Financial Action Task Force with respect to regulatory authorities do not prescribe how funding should be provided but they do specify that such authorities should be adequately resourced and operationally independent. Members of the States will be aware that MONEYVAL (the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism) is due to undertake an inspection of the Bailiwick's compliance with AML/CFT standards of the FATF later this year. That review, and others which will be undertaken by MONEYVAL, will consider the Commission's resources and operational independence. Furthermore, in due course the IMF will carry out further assessments of the Bailiwick against the standards of the Basel Committee, the IAIS and IOSCO, which will also scrutinise the Commission's resources and operational independence.

4.3 Mr Tower advised that the IMF has:

“regard to the funding mechanism of regulators when carrying out assessments. There are cases where it has downgraded countries for funding mechanism that may compromise independence. However, their main focus is on independence and adequacy of resources and the funding mechanism is one of many inputs into their judgements. Assessors also take into account actual experience, particularly whether regulators have been able in practice to finance themselves adequately, from whatever source, and whether applications to government for fee increases, where necessary have been met.

That said, the IMF would look closely at significant changes in funding mechanisms. If more government involvement were to have been the result (and there was limited or no track record to show how this worked in practice), then more weight would likely be placed on the risks to regulatory independence. Furthermore, the high priority given since the crisis to strengthening financial sector regulation and regulators, as well as initiatives such as the F[inancial] S[tability] B[oard]'s are likely to increase the scrutiny of funding mechanisms in assessments undertaken in future.”

5. Legislative Regime

- 5.1 The relevant regulations prescribing the fees chargeable by the Commission are made under a number of statutory powers conferred by the different regulatory and commercial laws. There are eight principal enactments under which the Commission makes fee regulations. These items of legislation are:
1. section 13 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987;
 2. sections 21 and 22 of the Protection of Investors (Bailiwick of Guernsey) Law, 1987;
 3. sections 7 and 60 of the Banking Supervision (Bailiwick of Guernsey) Law, 1994;
 4. sections 7, 38 and 61 of the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000,
 5. sections 85 and 94 of the Insurance Business (Bailiwick of Guernsey) Law, 2002;
 6. sections 62 and 71 of the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002;
 7. sections 4(2)(c) and 7(2) of the Registration of Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008;
 8. sections 66(2)(i), 94(2)(e), 438(3), 469(3), 534 and 538 of the Companies (Guernsey) Law, 2008.
- 5.2 For the purposes of this report the first seven enactments are considered to be the regulatory laws.
- 5.3 Sections 36 and 45 of the Limited Liability Partnerships (Guernsey) Law, 2013 also allow the Commission to make fee regulations; regulations under this enactment are due to be made in the near future.

6. Conclusions

- 6.1 The Policy Council has given careful consideration to finding the right balance in relation to its responsibilities, accountability of the regulatory authority for the largest part of Guernsey's economy, and meeting international regulatory standards.
- 6.2 Mr Tower's principal recommendation is that no change should be made to the Commission's existing funding mechanism. The Policy Council agrees that no fundamental change should be made to the existing mechanism. In seeking to

achieve the right balance, the Policy Council has additionally concluded that it should recommend to the States that an amendment should be made to the current process by which fee regulations are made so that, in future, the regulations will be enacted by the Policy Council in relation to the regulatory laws rather than the Commission. These regulations will be made by the Policy Council with the agreement of the Commission.

- 6.3 Following liaison with the Commerce & Employment Department, it is also recommended that, for consistency with the proposed process for enacting fee regulations under the regulatory laws by the Policy Council, responsibility for enacting fee regulations made by the Commission under Company Law and the Limited Liability Partnerships Law, in relation to which the Commerce and Employment Department has specific statutory functions, should be transferred to that Department. The transfer of these powers to the Department will be consistent with its ability to make fee regulations under the Limited Partnerships (Guernsey) Law, 1995.
- 6.4 More generally, the above recommendations reflect the normal practice of legislative powers being reserved for the States or part of government as a delegate of the legislature. This normal practice assumes greater importance in the context of the sector which comprises the greatest part of Guernsey's economy. It would also reflect the position were a regulatory body for the finance sector to be established today. It is quite unusual for entities independent of government such as the Commission to have legislative powers.

7. Other Bailiwick Bodies

- 7.1 The States of Guernsey Commerce & Employment Department supports the recommendations in this report.
- 7.2 The relevant political committees of the States of Alderney and the Sark Chief Pleas have no objection to the proposal for the Policy Council to make fees regulations in relation to the regulatory laws. Unlike the commercial legislation referred to above, the regulatory laws apply across the Bailiwick.
- 7.3 The Policy Council has also engaged with the Commission and considered its views in finalising the recommendations in this Report.
- 7.4 The Law Officers have been consulted on the recommendations.

8. Resources

- 8.1 There are no additional financial or staff resource implications for the States associated with the proposals and recommendations set out in this report, other than the resources required to draft the legislation necessary to implement the Policy Council's proposals.

9. Principles of Good Governance

- 9.1 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'Etat IV of 2011). The Policy Council believes that, to the extent to which those principles apply to its contents, this Report complies with them.

10. Recommendations

- 10.1 In the light of the contents of this report the Policy Council recommends the States to:
1. confirm that the Commission's existing funding mechanism should broadly remain unchanged.
 2. agree that fees regulations currently made by the Commission should be made by the Policy Council (in the case of fees charged under the regulatory laws specified in items 1 to 7 of section 5 entitled "Legislative Regime") and the Commerce & Employment Department (in the case of fees charged under the Companies (Guernsey) Law, 2008 and the Limited Liability Partnerships (Guernsey) Law, 2013).
 3. approve the drafting of the necessary legislation to implement the Policy Council's proposals.

J P Le Tocq
Chief Minister

28th July 2014

A H Langlois
Deputy Chief Minister

R Burford
M H Dorey
P L Gillson

M G O'Hara
R W Sillars
K A Stewart

P A Luxon
D B Jones
G A St Pier

Guernsey: Review of the funding of the Guernsey Financial Services Commission

Report by Ian Tower, Consultant¹

13 February 2014

1. The States of Guernsey (Guernsey's government) has commissioned this review of the funding arrangements of the Guernsey Financial Services Commission (GFSC), the regulatory authority for financial services.
2. The GFSC is funded mostly by fees levied from regulated entities. Discussions in mid-2013 on the GFSC's 2012 Annual Report in the States of Deliberation (Guernsey's parliament and overarching executive authority) concluded in an instruction to the Policy Council (the coordinating body comprising departmental ministers) to review alternative funding mechanisms².
3. The Terms of Reference for this review developed by the States of Guernsey are:

"To review potential alternative funding arrangements for the Guernsey Financial Services Commission as presently commonly operated globally, including direct funding by the government, and provide a series of potential options for consideration, together with worked proposals on their implementation, and provide a clear recommendation on future arrangements. That recommendation should be measured against the need to ensure that international standards and expectations are met and the operational independence of the Commission is maintained."
4. This review has been informed by discussions in Guernsey on 16th December 2013 with the Ministers for Treasury and Resources and Commerce and Employment, senior staff of the States of Guernsey, the GFSC and Guernsey Finance (the body responsible for promotion of financial services in Guernsey) and with representatives of financial services sector participants in a meeting coordinated by the Guernsey International Business Association (GIBA). The author of this report is grateful for all the valuable input and especially to Mike Brown, formerly Chief Executive, and staff of the States of Guernsey for their support.
5. After a summary and statement of recommendations, Section I of this report provides an overview of current arrangements for GFSC funding. Section II reviews practices on funding of financial sector regulators internationally. Section III then summarises the approach and expectations of international bodies. Section IV discusses potential alternative funding mechanisms for the GFSC. Section V makes recommendations.

¹ See the end of this document for background on the author.

² The States agreed: "To direct the Policy Council in conjunction with the Commerce & Employment Department (and having particular regard to the latter's on-going work following its consultation entitled "A Regulatory Framework for the 21st Century") to review the funding mechanism for the Guernsey Financial Services Commission ("the Commission") and in particular whether the Commission could in future be funded by way of direct grant from the Treasury & Resources Department and to report back to the States accordingly by no later than 30th September 2014." (States, 30 July 2013, <http://www.gov.gg/Billets2013>).

Summary and recommendations

6. There are limited sources from which regulators can derive their funding, the key ones being central bank income, where available; fees and levies on regulated entities; and the government budget. A 2009 IMF survey of around 100 countries suggested that only around 25% of regulators have government funding as their primary income source. However, even if regulators are funded from non-government sources, government often has a role in setting the level of industry fees or in approving the regulator's expenditure budget.
7. Current funding arrangements for the GFSC are consistent with and supportive of its independence from government and industry, which ranks high by international comparison.
8. International standard-setting bodies such as the Basel Committee on Banking Supervision do not provide detailed standards on funding of financial sector regulators. Their focus is on how funding arrangements contribute to, or detract from, the regulator's operational independence and the adequacy of its resources relative to its objectives. IMF assessments take a similar approach. Government funding is not on its own a reason for a significant negative assessment. However, international bodies are focusing more on funding in the context of efforts since the financial crisis to strengthen not just regulatory standards but the capacity of regulatory bodies.
9. Alternative funding arrangements could be introduced for Guernsey which would either:
 - keep fees as the main source of GFSC funding but give the government greater control over the setting of the level of the fees or of GFSC expenditure (or both); or
 - make the government budget the major source of funding, with the industry continuing to pay fees, which would become payable to government rather than to the GFSC.

Either approach would enable the government to influence the direct costs to the financial sector of the GFSC as a tool to help meet its objective of fostering growth and innovation in financial services.

10. However, safeguards would be needed to protect the operational independence and effectiveness of the Commission. Even with such safeguards, international bodies could make a negative assessment of changes in GSFC funding in the circumstances in which they would occur.
11. The recommendation of the paper is that in the interests of maintaining effective regulation, such changes in GFSC funding are not made. However, current arrangements can also be improved, to focus more attention on key drivers of regulatory spending (for example through a plan and budget publication) and to increase the transparency of GFSC

policies and practices in relation, for example, to income from financial penalties and senior staff remuneration.

Section I: Current GFSC funding arrangements

12. This section examines the current funding mechanism. References are to The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, referred to in this document as the “FSC Law”.
13. There are three main features of the GFSC’s financial arrangements to highlight:
 - **Most income is derived from fees charged to the financial services sector and there is no government funding³.** The GFSC has powers under various regulatory laws to charge fees for regulatory transactions (mainly new license applications) and to impose levies on existing licensed entities. The level of these fees is in almost all cases set by the GFSC itself under provisions in legislation enabling it to make Regulations⁴; the GFSC also derives income from discretionary and administrative (automatic) monetary penalties imposed on regulated entities, which are payable to the Commission but must be taken into account when setting future fee levels⁵. (The Commission is starting to impose significant discretionary fines - one fine was imposed in 2012). While there are provisions in law for the government to contribute to GFSC resources⁶, particularly (but not confined to) where a Commission shortfall is expected, these have not been used and are not expected to be used in practice.
 - **The GFSC has full control of its own expenditure.** It is empowered to set its own budget and determine its spending priorities. Most significantly, it sets its own salary scales and is independent of the annual government budget approval process. In return, the government currently expects the GFSC to be wholly self-financing.
 - **Accountability to government and industry is provided for by both consultation and review requirements.** The Commission consults with government and industry on fees in the context of regulatory objectives and priorities according to a standard timetable for the second half of each year; early discussions are held with government, as required under the FSC Law⁷, and fee proposals are then set out in a consultation paper. The States of Deliberation has the opportunity each year to review the fees regulations, which are laid before the States after enactment by the Commission (in practice in February of the year to which the fees relate) and laws also provide for the States to be able to annul regulations⁸. In addition, the Commission’s annual report,

³ FSC Law, section 12 sets out general funding provisions.

⁴ The exception is for fees charged to professional services providers (lawyers, accountants and estate agents) to meet the costs of GSFC regulation to which they are subject.

⁵ FSC Law, section 11D, which also provides that individual penalties may not exceed £200,000.

⁶ FSC Law, section 14

⁷ FSC Law section 13 (b)

⁸ For example, section 25(3) of the FSC Law states that regulations made under that law must be laid before and may be annulled by the States. However, annulment would be without prejudice to anything done under the relevant regulation.

including its income and expenditure must also be laid before the States⁹, giving the opportunity (as was taken in 2013) for a debate on the Commission's work generally as well as its finances.

14. A strong commitment to providing the GFSC with both operational independence and adequate resources to meet its objectives is evident in the recent discussions in the States, the GFSC's legal and policy framework and the Commission's use of its powers since the financial crisis. The FSC Law, particularly since significant revisions in 2008, seeks to balance independence with accountability and transparency of how the Commission uses its resources. As the IMF has noted in its assessments, the GFSC enjoys a high degree of independence.¹⁰ The financing arrangements are an important contributor to this independence.
15. Since 2008, the Commission has in practice been able to raise additional fees to develop its supervision in response to the financial crisis, significantly in a number of years. Total fee income has increased from £9.4 million in 2008 to £12.25 million in 2013 (as estimated in the 2014 fees consultation exercise), an increase of around one third. The increase in Jersey to 2012 (excluding fees from Companies Registry work, a function which the GFSC does not have) has been 22%. Increases in staffing and in legal and enforcement costs have been material for regulators. The difference relates mainly to one-off costs incurred by the GFSC on an independent review of its organisation and conduct of its business, together with associated implementation costs.
16. While the amount of GFSC fees is outside the scope of the review, it is noteworthy that regulators seen as both independent and as having performed well through the financial crisis such as the Canadian prudential regulator have been significantly increasing their resources¹¹.
17. The debate in the States in mid-2013 has, however, highlighted concerns among policy-makers and in the financial sector over recent growth in GFSC fees. The Commission has committed to raise its total fee income by no more than 2% per annum over three years starting in 2013.
18. Concerns have also been raised over the transparency of the GFSC's finances. As mentioned, GFSC explains its approach in its annual fees consultation exercise (focusing mostly on how fees are calculated, the sectoral distribution etc.) and in its annual report. Some other regulators (including the UK, Australia – APRA - and the Jersey FSC) publish plan and budget documents, using these to explain in some detail the key drivers of their work and expected costs. Further, some other regulators publish more detail on actual costs including senior executive remuneration. In the UK, Australia, Jersey and Isle of Man,

⁹ Sections 6 of the FSC Law 1987 (annual report) and 18 (annual accounts).

¹⁰ IMF Financial Sector Stability Assessment, 2010, paragraph 60: "The GFSC enjoys considerable independence, and is subject to suitable accountability provisions. The GFSC is broadly adequately resourced."

¹¹ Fees in Canada (OSFI, the federal bank and insurance prudential regulator) have increased, depending on sector, by between 40% and 60% from March 2008 to March 2013. Spending and fees of the Australian prudential regulator APRA rose by less than 20% in the same period but has more than doubled since 2002.

for example, the chief executive's remuneration is either disclosed directly or is observable from published salary bands. GFSC's disclosure is more limited. Section V of this paper includes recommendations in this area.

Section II: Funding arrangements internationally

19. There are few sources from which regulators can derive their funding. The key ones are central bank income, fees and levies on regulated entities (to which may be added financial penalties) and government. Box 1 below sets out more detail and examples of each model.
20. In theory, there are other sources of income – investment income, sales of services etc; and regulators could be funded by levies on users of financial services (transactions taxes etc payable to the regulator). In practice, financial regulation is almost universally funded by central bank income, regulated firms, governments or a mix. As the GFSC is not a monetary authority, this paper focuses on government funding as the only practical alternative to current arrangements.
21. Although this review's terms of reference focus on the GFSC's source of funds, it is important also to consider the overall funding mechanism, including the ways in which governments influence the regulator's funding even where they are not its source. There are three key drivers:
 - The need for mechanisms to hold regulatory authorities accountable, including for their financial management. In many countries this is achieved, as in Guernsey, through regular liaison and published reports. Elsewhere, governments exercise control over regulatory authorities' budgets and/or set fees directly. The risk of budgetary control by government is that it will be used to influence regulatory decisions; or simply that the budget is subject to broader fiscal policy pressures that may in particular lead to funding reductions at key times when, for example, financial stability is at risk.
 - The contribution which levies on the financial sector can make to government revenues. Comparison across countries is complicated by the inclusion and scale of companies registration work in some jurisdictions (for example, BVI¹² and the Isle of Man) and in some cases, of insurance premium tax. In a number of countries, fees and levies raised from the financial sector significantly exceed funding of the regulator.

¹² The fees collected by the BVI FSC and passed on to government account for some 60% of total government revenue.

- The need for fees to be set as enforceable obligations on regulated entities, which is possible in some jurisdictions, depending on the legal system, only through the government's legislative process. This creates at the least a dependence on that process and an opportunity for active government involvement.

Box 1: Funding sources for financial regulation

Funding sources available to regulatory agencies may be classified by three main sources:

Central banks: where the central bank is the supervisor, as is often the case for banks, general central bank income may be available to finance supervisory work. (Example: US Federal Reserve) However, many central banks and monetary authorities, particularly where they also supervise non-banks, levy fees on regulated firms (Examples: Bank of England, Bermuda Monetary Authority, Monetary Authority of Singapore). Some are funded by government (Example: Cayman Islands Monetary Authority)

Regulated firms and applicants for new licenses: Fees and levies can be designed in various ways. Most common are levies proportionate to the scale of business of the individual firm and charges for regulatory transactions (new licenses, waivers, transfers of business, applications for approvals of capital models etc.). Some regulators levy risk-based fees, i.e. higher for institutions assessed as greater risk. Charges for supervisory work (examinations or onsite inspections, depending on the terminology) are common. Some jurisdictions require annual relicensing of all entities, charging the same flat fee as a license applicant would pay, or require licensees to make monetary deposits with the regulator which are used to generate interest income. Financial penalties, in some cases imposed on unregulated as well as regulated entities, may also generate income for regulators, where not passed to government or recycled to the regulated population. (Examples: Canada - OSFI, Australia – APRA, Jersey FSC, GFSC)

Governments: some regulators are formally part of government rather than separate agencies and subject to the government budget process. In other cases, funding is provided by government grant, again out of general government revenue. (Examples: US SEC, Australia – ASIC, Caymans Islands Monetary Authority, Isle of Man FSC and IPA) In the British Virgin Islands, the BVIFSC retains a share of fees collected which by law may vary from 7.5% to 15% of the total.

Notes:

- (i) Mixed models are also found, e.g., the Netherlands - both government and fee income.
- (ii) Authorities which collect fees but pass them to government are best regarded as government financed.
- (iii) Most regulators derive some (normally negligible) income from investments, publications, events etc.

22. Examples from Australia are illustrative:

- In the case of APRA, the prudential regulator of banks and insurance companies which is funded by industry fees, the central government approves the annual budget, which then in effect determines the rates at which fees are levied (i.e. they are set by APRA at the level required to fund, with other sources of income, the expenditure budget).
- In the case of ASIC, the markets, securities and business conduct regulator, the levies are collected by the regulator and passed on to government in full. Government approves the ASIC budget, expenditure being typically equivalent to a

share of revenues raised.

23. Even where the regulator is funded by fees and is independent of the government budgeting process, practice varies on how fees are set. Two models may be identified:
- The regulator sets fees itself using its own powers with no involvement of government (executive or parliament). In the UK, for example, the regulators have rule-making powers in respect of fees (their rule-making authority is unusually wide by international standards). In some cases, as in Guernsey, the regulator issues fees regulations and these have to be laid before parliament, giving an opportunity for objection. But approval is not required and the regulator is not dependent on government processes.
 - More frequently, the regulator is dependent on the government to legislate to make fees into binding obligations. Legislation is enacted each year. This is usually through secondary legislation (regulations) and typically, both government support and parliamentary approval are required. Occasionally, as in Gibraltar, the regulator is able to vary fee levels set in legislation but only with the permission of the finance minister.
24. Regulators' approach to income from financial penalties (fines) is not always easily understood from published information. Much depends on the legal system and how practice has developed over time. In many countries, including Guernsey until 2008, financial penalties have been reserved for criminal authorities and the courts. In principle, penalties may be applied for the benefit of the government, the regulator, the regulated population, victims (if identifiable) or a mix. In practice, it appears to be rare, because of unwanted incentives, for penalties to be retained by the regulator and they can be discounted as a funding source.
25. The case of the UK is illustrative. Both the Financial Conduct Authority (FCA) and Prudential Regulation Authority (PRA) are explicitly required to delink decisions on the scale of penalties from regulatory costs – i.e. they must not be regarded as a funding source. They both must remit income from penalties to HM Treasury, but after deduction of enforcement costs, the "retained penalties" being subject to requirement for a "financial penalty scheme" establishing how they will be used "for the benefit of regulated persons".¹³ Both regulators in practice remit retained penalties to the regulated population as discounts to annual fees.¹⁴
26. In 2009, the IMF published the results of a survey of governance practices in which 140 agencies participated from over 100 countries.¹⁵ This found that only around 25% of

¹³ Paragraph 21 of Schedule 1ZA of Financial Services and Markets Act 2000 (as amended by the 2012 Financial Services Act). <http://www.legislation.gov.uk/ukpga/2012/21/schedule/3/enacted>

¹⁴ FCA publication, How we raise our fees, July 2013, <http://www.fca.org.uk/static/documents/how-we-raise-our-fees.pdf>

¹⁵ Governance Practices at Financial Regulatory and Supervisory Agencies, Steven Seelig and Alicia Novoa, WP/09/135, July 2009, <http://www.imf.org/external/pubs/ft/wp/2009/wp09135.pdf>

agencies are funded by government, although government funding is relatively more important for securities regulators (i.e. those which regulate securities only). A separate IMF study on securities regulation, also published in 2009, highlighted dependence on government funding as a driver of under-resourcing in many countries.¹⁶ More detail of the IMF's wider survey's findings are in Box 2 below. Although it should be noted that the inputs predate the financial crisis, the survey results indicate a relatively high degree of reliance on fees payable by regulated entities.

Box 2: Conclusions on funding from 2009 IMF survey of governance of regulators

- The most important source of funding is central bank funds. Ninety percent of agencies housed in central banks are primarily funded by their central banks.
- The second major source of funding is fees imposed on regulated entities.
- About 76 percent of insurance-only and securities-only supervisors receive funding from fees. However, only 35 percent of bank-only supervisors are reliant on fee income.
- Almost 60 percent of all supervisors indicated that they had the independence to determine budget and funding allocations.
- Slightly more than a quarter of the agencies receive allocations from their central government. For 45 percent of securities regulators, government appropriations are their second most important source of funding.
- One-fourth of insurance regulators receive funding from the government budget, but only 8 percent of bank supervisors.
- For agencies that have fees as a source of revenue, half report that fees charged are set in legislation, while most of the rest (36 percent) set fees by [their own] regulations, though some of these have to consult with a ministry.

27. The IMF survey included few supervisors of international financial services centres.¹⁷ A review of available information on other Group of International Financial Services Centre Supervisors (GIFCS) members points to a picture similar to the IMF survey. Many of these regulators are also central banks or monetary authorities¹⁸. The others are all funded by fees with varying degrees of government involvement in setting fees and expenditure control.

28. Of the UK Crown Dependencies, the Isle of Man is an outlier. The Financial Services Commission is formally a statutory board, effectively an integral part of government. While it raises revenues through fees, these are for the account of government and government sets the rates at which fees are raised and determines the Commission's expenditure budget.

29. Jersey, by contrast, has a funding model which since 2008 has been similar to Guernsey's. The Financial Services Commission sets fees by notices issued under provisions in relevant legislation (previously the government issued fees regulations); and whereas the

¹⁶ The Challenge of Enforcement in Securities Markets: Mission Impossible? Ana Carvajal and Jennifer Elliott, WP/09/168, August 2009, <http://www.imf.org/external/pubs/ft/wp/2009/wp09168.pdf>

¹⁷ Only Bahamas, Panama, Barbados, and Mauritius.

¹⁸ Aruba, Bahamas, Barbados, Bermuda, Caymans, Curacao, Mauritius, Samoa.

Commission used to raise what is effectively tax revenue from companies in respect of its registrar responsibilities, it now levies registration fees on a basis similar to that used for regulated entities.

Section III: International standards and assessments

30. This section sets out relevant international standards and reviews some of the assessments and evaluations made of regulators internationally. The focus is on the IMF and the FSAP program as the most relevant process for more advanced jurisdictions.
31. The key standards of the Basel Committee, International Association of Insurance Supervisors (IAIS) and International Organization of Securities Commissions (IOSCO) are set out in Box 3¹⁹. Requirements in relation specifically to funding are relatively high-level and lack detail. The issues are addressed by all the standard-setters from the perspective of requirements that regulators are independent of government and industry and have

Box 3: select international standards addressing on regulatory funding

Basel Committee on Banking Supervision (Basel Core Principles, 2012):

- BCP 1 Independence, accountability, resourcing and legal protection for supervisors: The supervisor possesses operational independence, transparent processes, sound governance, budgetary processes that do not undermine autonomy and adequate resources, and is accountable for the discharge of its duties and use of its resources.
- BCP 1, Essential Criterion 4: The supervisor has adequate resources for the conduct of effective supervision and oversight. It is financed in a manner that does not undermine its autonomy or operational independence.

International Association of Insurance Supervisors (Insurance Core Principles, 2011):

- ICP 2 Supervisor: The supervisor, in the exercise of its functions and powers, is operationally independent, accountable and transparent; protects confidential information; has appropriate legal protection; has adequate resources; meets high professional standards.
- ICP 2.4: The supervisor is financed in a manner that does not undermine its independence. The supervisor has discretion to allocate its resources in accordance with its mandate and objectives and the risks it perceives.

International Organization of Securities Commissions (IOSCO) Objectives and Principles of Securities Regulation (2011):

- Principle 2, Key Issue 4: The regulator should have a stable source of funding sufficient to exercise its powers and responsibilities.
- Principle 3: The Regulator should have adequate powers, proper resources and the capacity to perform its functions and exercise its powers.

adequate resources.

¹⁹ FSAP assessments are made using standards and assessment methodologies developed by the international standards-setting bodies, but the IMF assessors make their own judgments.

32. The IMF and other bodies have, however, been more vocal on funding issues in recent policy statements, drawing on FSAP and other work:

- An IMF paper 2010 "The Making of Good Supervision: Learning to Say "No"²⁰ analysed country assessments under the FSAP programme and made observations on what constitutes an effective supervisory style and key drivers. On resourcing, it noted:

"Supervisors need to have sufficient funds and stable funding sources to be able to carry out their mandates, as much in good times (when supervisors can be at their most effective) as in bad. Supervision is resource intensive....Adequate resources are also a key determinant of will [i.e., will to take effective supervisory action]—they demand a degree of budgetary autonomy, which in turn drives operational independence."

- The Financial Stability Board (FSB) has also highlighted, in the content of supervisory effectiveness and intensity in relation to Global Systemically Important Financial Institutions (G-SIFIs), the importance of adequate funding and the scope for mechanisms which involve government budgetary approval to frustrate this.²¹ The work refers to caps on funding or on the fees which regulators may raise as being a particular issue.

33. The OECD has also published thinking on best practice in the governance of regulators. Although not specific to financial regulation, their principles (draft as at May 2013) echo the need for funding to be consistent with the need for independence and objectivity of the regulator, for adequate resourcing and for the funding mechanism to be transparent and simple.²²

34. In relation to insurance supervision, the IAIS is undertaking peer reviews of compliance with Insurance Core Principles, covering ICP2 (see Box 3) most recently. The IMF and World Bank participate. Their report commented that ratings of less than Observed²³ are due primarily to the source and conditions of funding or budgetary independence in the allocation of resources.²⁴

35. In individual assessments surveyed for this review, the IMF approach is similarly focused on non-financial aspects of independence and on the adequacy of resources. Where countries have been marked down by assessors on relevant principles, it is usually for a range of issues related to independence. There are recent cases of concern being

²⁰ Staff Position Note, SPN/10/08, May 2010, <http://www.imf.org/external/pubs/ft/spn/2010/spn1008.pdf>

²¹ Financial Stability Board, Supervisory Intensity and Effectiveness Reports, 2010-12. Latest available at: http://www.financialstabilityboard.org/publications/r_121031ab.htm.

²² OECD Principles for the Governance of Regulators, Public Consultation Draft, June 2013, <http://www.oecd.org/gov/regulatory-policy/governance-regulators.htm>

²³ Or in IOSCO terms, Fully and Broadly Implemented. All three standard-setters' assessment methodologies work on a four grade assessment scale and a grade for non-applicable.

²⁴ Report from Expert Review Teams Conducting the Self-Assessment and Peer Review of ICPs 1, 2, and 23, IAIS Oct 2013

expressed on funding mechanisms:

- in the 2013 assessment of ASIC in Australia, the IMF highlighted the dependence on government funding decisions, especially the uncertainty created by the system of core and (less stable) non-core funding. ASIC maintained in its comments on the assessment that funding requests had consistently been met by government in full.
- In the 2009 assessment of the Isle of Man (FSC and IPA), the assessors drew attention to the regulators' dependence on government to agree expenditure and/or vote funds as part of a wider analysis of independence; no specific recommendation was made.
- In the USA 2009 assessment of insurance supervision, the vulnerability of insurance supervisors to cuts in their expenditure budgets (and evidence that this had happened) were highlighted, as part of a wider set of issues on independence. The assessment of US securities regulation mentioned that the method of funding (from government) did not provide sufficient assurance of continuing funding levels for capital projects.

36. However, it is not clear from the assessments that reliance on government funding and/or decisions on fees or expenditure on their own lead to large downgrades - more than from Compliant/Observed to Largely Compliant/Observed. Other factors such as provisions for the involvement of a government minister in regulatory decisions or evidence of government constraints on required funding in practice have also to be present. In a number of assessments surveyed for this review, the assessors make clear that they have satisfied themselves that potential risks to independence from the funding mechanisms have not materialised in practice.

37. The conclusions of this review are that the IMF has regard to the funding mechanism of regulators when carrying out assessments. There are cases where it has downgraded countries for funding mechanisms that may compromise independence. However, their main focus is on independence and adequacy of resources and the funding mechanism is one of many inputs into their judgments. Assessors also take into account actual experience, particularly whether regulators have been able in practice to finance themselves adequately, from whatever source, and whether applications to government for fee increases, where necessary, have been met.

38. That said, the IMF would look closely at significant changes in funding mechanisms. If more government involvement were to have been the result (and there was limited or no track record to show how this has worked in practice), then more weight would likely be placed on the risks to regulatory independence. Furthermore, the high priority given since the crisis to strengthening financial sector regulation and regulators, as well as initiatives such as the FSB's, are likely to increase the scrutiny of funding mechanisms in assessments undertaken in future.

Section IV: An alternative approach for the GFSC

39. As discussed, any consideration of alternative funding mechanisms for the GFSC must focus on government financing and this is what has been proposed in the decision of the States (see footnote 2). The objectives of such a change are evident from the debate in the States. The separate but related States review of GFSC governance (“A Regulatory Framework for the 21st Century”), including the May 2013 Discussion Paper,²⁵ also highlights government objectives.
40. Given the government commitment to operational independence and adequate resourcing of the Commission, the objectives of funding reform relate to a wider determination to foster growth in the financial sector through cost effective regulation and the promotion of innovation. It is not the objective of government to obtain access to increased revenues.

Model 1: Government control

41. If the objective is to increase government leverage on these important public policy issues, then this could be done simply through taking powers over either the income or expenditure side of the Commission (or both):
- **Control of GFSC fee levels:** Decisions on fees could be taken over by the States, presumably by amendment to the various statutes which are administered by the GFSC: the Commission would continue to propose fee levels to government based on its work programme, but the States would make the implementing regulations. This would enable the government to determine both the aggregate level of fees and the fees applying to each sector or transaction type (for example, making new license applications less costly at the expense of periodic fee-payers or even giving a particular sector a fee holiday, if this were thought helpful to support increased activity).
 - **Control of GFSC expenditure:** The States would explicitly approve the Commission's budget before the start of each year, maybe at the same time as it sets the general government spending budget. Again, the Commission would continue to develop its own expenditure plans based on its objectives and work programme and the States could be required to have regard to these. In practice, the Commission would normally expect to secure its key spending plans. However, the States would be able to negotiate deferrals in some spending, for example, and so reductions in industry fees, to reflect the government's assessment of the growth prospects of the financial sector or parts of it.

²⁵ <http://www.gov.gg/gfscconsultation>

42. Under both of these approaches, although the government would have varying degrees of control, the Commission would continue to be a separate agency, able to raise its own income in the form of fees on regulated entities, set its own salaries etc. The basic funding mechanism (reliance on industry fees payable directly to the Commission) would remain as now. If the government's objective were limited to relieving regulatory cost pressures on the industry, it could choose to make up Commission income by grant from general government revenues. As mentioned in Section I, the legislation already empowers the government to provide financial support to the Commission. Box 4 considers the

Box 4: Government control (Model 1)

Under this approach, industry levies remain the key funding source, but the government controls the Commission's income and/or expenditure through powers of approval.

Advantages	Disadvantages
Meets the government objective to take control of direct regulatory costs	Risk of under-funding of Commission work, especially if government is unwilling or unable to make grants
Requires GFSC to justify fees and/or expenditure with discipline of challenge	GFSC loss of financial control risks weakening its regulatory authority
No change in GFSC or government cash flows, saving costly systems changes etc.	Risk of public disputes between GFSC and government, damaging Guernsey reputation
Limited legislative changes required	Risk of downgrade and criticism in future international assessments

advantages and disadvantages of Model 1.

Model 2: Government funding mechanism

43. What some in the States and the industry have said they want the government to consider would go further than Model 1 to incorporate the Commission more fully into the government budget and financial management. This could involve extensive reform of the Commission, making it into a part of government on the Isle of Man FSC model. It is assumed that the States would not want to go this far, with the significant change in status of the Commission and major legislative change it would involve, as well as presentational challenges.
44. A similar outcome could be achieved, however, by changing to a government funding model. This approach would involve:
- The Commission bidding not simply for approval for its budget but for an allocation from general government revenues; it would participate in the States annual budgeting process, effectively in the same way as other government departments; monies would then be disbursed to the Commission to fund its agreed spending. Separate accounts would continue to be produced by the Commission as a separate legal entity and would need to be approved by the States as now; but accounting for spending outcomes would also be undertaken as

for general government spending.

- The fees currently raised by the Commission would continue to be levied on the regulated entities, license applications etc, but would accrue to government under regulations made by government; income from financial penalties would similarly accrue directly to government. The Commission could continue to collect the fees, using the mechanism currently in place, but as agent for the government; or it could collect and retain the fees on its own account, as a method for the government to fund what in accounting terms would be budgetary support for the Commission.

45. If the objective is not to raise revenue, there should of course be no surplus fee income (as there is in some other countries using a similar model) to remit to government. However, as is the case under Model 1, funding of the Commission by government could exceed amounts taken in fees in any year, i.e., the government could fund the Commission in part from general government revenues. Box 5 considers the advantages and disadvantages of

Box 5: Government funding (Model 2)

Under this approach, a government grant replaces industry levies as the key funding source. Levies on the industry would continue, but would be payable to the government.

Advantages	Disadvantages
As for Model 1, meets government's objective to take control of regulatory costs and requires GFSC to justify funding requirements when bidding for budget	As for Model 1, risks of under-funding, damage to GFSC's regulatory authority and to Guernsey's reputation, downgrade and criticism in future international assessments
Integration with government budgetary process sets GFSC's needs in broader context	Open to abuse by government for general revenue-raising
Separation of GFSC funding and industry levy facilitates funding of GFSC in excess of levy income, if government so chooses	Could change GFSC and government cash flows, requiring systems changes, and potentially extensive legislative change

Model 2.

46. Either model would equip the States to achieve the objectives of reform. Option 1, the government control model, appears operationally simpler to implement as it would be less likely to require change in government or Commission cash flows or accounting, while required legislative change would appear to be limited. Within Option 1, the control of fees approach offers the greater scope for government to affect fees most extensively, the expenditure control approach being more focused on aggregate fee levels. However, the fundamental change in the relationship between government and Commission under any of these approaches should enable government to influence Commission finances to a high degree and at any level of detail.

47. Both approaches would require a new framework for government consultation and engagement with the industry. Given risks of excessive industry influence over GFSC funding through its access to government, the government may need an enhanced capacity to evaluate both the impact of regulatory costs on the financial sector and the needs for spending on effective regulation, including the need for new regulatory initiatives.
48. Both models clearly entail significant risks of impairing the Commission's independence and security of financing, even if this is not the intention of the current States government. If any such changes were to be agreed, the States would therefore want also to consider a means of protecting Commission income from both excessive volatility and from the appearance, if not the reality, of control of funding being used to influence regulatory or supervisory decisions. The obvious risk would be that the States place such a high priority on supporting growth and innovation in the financial sector through the mechanism of Commission fees that effective regulation would be compromised through resulting budgetary constraint.
49. Possible approaches would be:
- Process safeguards, especially a high degree of transparency around the process for setting the Commission's budget and/or fees. There would need to be a clear accounting by government of the basis for its decisions on Commission financing. The Commission would need to be given an explicit right to put on record its views on its annual financing, if necessary that it had been unable to obtain the funding which it deemed necessary to carry out effective regulation. Clearly, there would be risks to Guernsey's reputation from a public disagreement between government and the Commission.
 - Alternatively, there could be some guarantees of minimum or core funding built into the arrangements, related maybe to the number and scale of regulated institutions, potentially with indexation. There could be provisions for additional or non-core funding to be made available in case of particular pressures such as international regulatory reform initiatives; and for the Commission to seek additional funding intra-year, if necessary.
50. Even with such safeguards, there is a significant risk that international bodies would make a negative assessment of the change in GSFC funding, in the circumstances in which it would occur. This risk would reduce only to the extent that over time the States and Commission were able to show evidence that this had not been the outcome in practice.

Section V: Recommendations

51. The recommendation of the paper is that in the interests of maintaining effective regulation in Guernsey and protecting the reputation of Guernsey as a financial centre, the changes in GFSC funding outlined in Section IV are not made.

52. As the GFSC currently enjoys a high level of independence, to which its financial arrangements are a contributor, an increase in government control over funding, even with the limited objectives that have been associated with this review, risks being perceived as significantly weakening the Commission. Reassessment by international bodies of their previously positive views of the GFSC could reinforce such perceptions.
53. However, current arrangements can also be improved, to focus more attention on key drivers of regulatory spending and to reduce the chances of further criticism of the Commission as occurred in 2013. There is also scope to increase the transparency of GFSC policies and practices in relation, for example, to income from financial penalties and senior staff remuneration.
54. The objective should be to help the GFSC engage even more extensively with government and industry on public policy issues in relation to regulatory costs and financial sector development, recognising that the sector makes a direct contribution of 40% of Guernsey's GDP; and to strengthen existing accountability mechanisms for the GFSC, recognising that accountability is an essential counterpart to independence.
55. In particular, the States and Commission could consider the following:
- **The Commission could provide more information on its plans each financial year.** As mentioned in Section I, some other regulators publish plan and budget documents explaining the drivers of their work. GFSC could issue such a publication, covering, for example, how the Commission is reacting to international regulatory initiatives and to changes in the regulated population. Alternatively, it could develop its existing process for consultation with government and with the industry on its fee proposals by setting out more detail on the drivers of its spending plans. Either way, the objective would be to enrich the debate with government and wider stakeholders on why fee increases are required or why a cap on fee increases, as is now in place, is justified.
 - **It could set out in more detail its approach to handling income from fines.** As the Commission, as mentioned in Section I, is now imposing more significant discretionary fines, it would be timely to explain, in a speech or public statement for example, how the Commission will continue to meet the statutory requirement to take fine income into account in setting future fees.
56. **It could also increase its reporting on actual spending, including on senior staff remuneration.** The Commission could use its annual report to provide greater analysis and explanation of its key areas of expenditure in the previous year, including on supervision, new authorisations, enforcement etc. Publication of senior staff remuneration is clearly a sensitive issue which needs careful consideration. However, as mentioned in Section I, the Commission's disclosure is less extensive than that of some other regulators. The objective of making such a high profile disclosure would be to reassure that the Commission is

committed to a high level of transparency in all key areas of its costs.

Ian Tower

13 February 2014

Ian Tower is an independent expert in financial regulation. Until late 2012, he was a senior manager at the United Kingdom's Financial Services Authority (FSA), where various roles included policy development and supervision of insurance companies and foreign-owned banks. From 2007 to 2010, Ian Tower was seconded by the FSA to the International Monetary Fund, where he worked on financial sector issues. He has worked previously at the Bank of England and the Cabinet Office, a department of the UK central government. Ian Tower now works on financial regulation issues as consultant to international organisations and other clients.

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

The States are asked to decide:-

VI.- Whether, after consideration of the Report dated 28th July, 2014, of the Policy Council, they are of the opinion:-

1. That the Guernsey Financial Services Commission's existing funding mechanism remain broadly unchanged.
2. That fees regulations currently made by the Guernsey Financial Services Commission be made by the Policy Council (in the case of fees charged under the regulatory laws specified in items 1 to 7 of section 5 entitled "Legislative Regime" in that Report) and the Commerce & Employment Department (in the case of fees charged under the Companies (Guernsey) Law, 2008 and the Limited Liability Partnerships (Guernsey) Law, 2013).
3. To direct the preparation of such legislation as may be necessary to give effect to their above decisions.

POLICY COUNCIL

PROPOSED AMENDMENTS TO THE CHARITIES AND NON PROFIT ORGANISATIONS (REGISTRATION) (GUERNSEY) LAW, 2008

1. EXECUTIVE SUMMARY

- 1.1. This States Report outlines proposals to make amendments to the registration framework for charities and non-profit organisations (collectively “NPOs”) in Guernsey and Alderney under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 (“the Law”). The amendments are necessary in order to ensure that the legal framework for NPOs remains in line with international standards as they evolve.
- 1.2. This Report has been issued by the Policy Council on the basis that although the Treasury and Resources Department has certain functions under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008, the Policy Council was responsible for the introduction of the Law and additional legislation relating to NPOs in 2007.
- 1.3. The proposals build upon the existing registration framework in four ways.
- 1.4. These are to:
 - (a) extend the registration framework to NPOs which are administered, controlled or operated by a person licensed by the Guernsey Financial Services Commission;
 - (b) amend the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 to give greater clarity and consistency with regard to criminal penalties;
 - (c) make certain technical amendments in respect of the disclosure of information; and
 - (d) widen the regulation making powers in the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008.
- 1.5. The intention is that the legislative changes will be made in conjunction with the Moneyval assessment due to take place October 2014.
- 1.6. The Treasury and Resources Department is currently giving consideration to raising the thresholds for registration and the filing of financial statements, which have not been changed since the legislation was introduced in 2008, under its power to make regulations. The intention is for any such changes to be introduced at the same time as the legislative changes outlined above.

2. BACKGROUND

- 2.1. The current registration framework, which was introduced in Guernsey in 2008 and extended to Alderney in 2010, applies to NPOs with income or assets over certain thresholds but is subject to some exemptions. There have been a number of developments since then which have given rise to the need for amendments to the framework.
- 2.2. In 2011, the International Monetary Fund (IMF) published a report on the Bailiwick's compliance with the Financial Action Task Force ("FATF") Recommendations on anti-money laundering and countering terrorist financing ("AML/CFT") that were then in place. The report made some recommendations in respect of the framework for dealing with NPOs.
- 2.3. When the IMF report was published it was known that the FATF was working on a revised set of Recommendations and a revised Methodology. Therefore it was agreed by the Registrar of NPOs and the other AML/CFT authorities in the Bailiwick that no decision would be taken on any substantive changes to the NPO registration framework until the revised FATF Recommendations and Methodology were available. In February 2012, the revised FATF Recommendations were issued and were followed up in February 2013 by the revised Methodology (collectively "the revised FATF standards"). The revised FATF standards make a number of changes that affect NPOs including the introduction of internal governance measures.
- 2.4. Other developments since the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 was enacted are the introduction of an NPO registration regime in Sark in 2010 and, more recently, the decision to transfer the office of Registrar for NPOs from the Director of Income Tax to the person who currently holds the offices of Registrar of Companies and Registrar of Foundations, with effect from the 30th June 2014, albeit the role is separate and distinct.
- 2.5. Consideration has now been given to the steps that are necessary in order both to meet the IMF recommendations in relation to the previous FATF standards and to comply with the revised FATF standards going forward. During this process some further issues were identified in respect of consistency of penalties, as well as some technical issues arising from the introduction of the Sark regime and the transfer of the office of Registrar of NPOs. These matters form the basis of the proposals outlined below.

3. THE EXISTING FRAMEWORK

- 3.1. The legal framework requires NPOs based in Guernsey, Alderney, Herm or Jethou with gross assets and funds of, or over, £10,000 or gross annual income of, or over, £5,000 to be registered on the register of NPOs. The register is maintained by the Registrar, who publishes the name and address of each NPO

which solicits or accepts donations, funds and contributions from the public, or which elect to be inscribed on the public Register. Registrations must be renewed at the commencement of each calendar year.

- 3.2. Registered NPOs are currently subject to a number of requirements under the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008. They must:

- (a) Make, keep and retain records of all financial transactions (with whosoever made) in order to evidence the application or use of the organisation's assets, funds and income. The records must be retained in a readily retrievable form for a period of no less than six years after the date of being made;
- (b) File annual financial statements with the Registrar, in such form as the Registrar may specify (subject to an exemption for NPOS with assets of less than £100,000 or income of less than £20,000, or whose assets or income are applied exclusively in the Bailiwick); and
- (c) Inform the Registrar as soon as is reasonably practicable of any change to any of the matters required to be stated in the application for registration.

- 3.3. Apart from the record-keeping obligations referred to at (a) above, the current framework does not apply to manumitted organisations, that is, any NPO which is administered, controlled or operated by a person:

- (a) who holds or is deemed to hold a licence granted by the Guernsey Financial Services Commission under the regulatory Laws; and
- (b) who administers, controls or operates the organisation in the course of his regulated activities.

4. THE PROPOSED CHANGES

Manumitted Organisations

- 4.1. It is a requirement of both the previous FATF standards and the revised FATF standards that the various measures governing NPOs be applied to -

“those NPOs which account for (i) a significant portion of the financial resources under control of the sector; and (ii) a substantial share of the sector's international activities”.

- 4.2. The position of manumitted organisations in relation to this requirement in the existing FATF standards was considered by the IMF, and their findings, as set out in Paragraph 1194 of their report, were as follows:

“The registration framework for NPO[s] is not comprehensive. The decision to exempt manumitted organization[s] is not justified from a risk perspective. A total of 207 manumitted organizations hold £2.018 billion in asset[s] with over 76% of those assets held internationally. The large asset values and the international nature of the holdings do not justify a low risk evaluation from a terrorist financing perspective. Manumitted organizations present the highest vulnerability to Terrorist Financing in the NPO and charities sector in Guernsey and therefore should be subject to registration.”

- 4.3. Currently, manumitted NPOs are administered, controlled or operated by 50 full fiduciary licensees. There are 128 manumitted NPOs compared to 587 registered NPOs. The vast majority of manumitted NPOs have assets outside the Bailiwick or are active outside the Bailiwick. The total value of assets of manumitted NPOs is almost £1.95 billion with an average value of over £15 million. The activities and scope of activities of the manumitted NPO sector is significantly larger than the registered NPO sector.
- 4.4. If the present situation as regards manumitted organisations remains as it is, Guernsey will clearly remain vulnerable to criticism in future evaluations. It is therefore proposed that the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 be amended to bring manumitted organisations within the same range of requirements as other NPOs under the Law. This will be accompanied by an amendment clarifying the scope of the definition of NPO, to take account of some comments made in the feedback from the consultation process referred to below. The proposed amendments will not change the current position, as confirmed to fiduciaries by the Guernsey Financial Services Commission in 2010, that the NPO regime does not extend to non-charitable discretionary trusts that have charities appointed alongside natural persons as long-stop beneficiaries.

Internal Governance Issues

- 4.5. The revised FATF standards reiterate the requirements in the previous FATF standards for NPOs to maintain information on the purpose and objectives of their stated activities and to maintain records for domestic and international transactions. In addition, the revised FATF standards include certain other governance requirements that previously featured only in FATF guidance and so were not directly considered during the IMF evaluation in 2010.
- 4.6. These are requirements to:
 - (a) issue annual financial statements that provide detailed breakdowns of income and expenditure;

(b) have controls in place to ensure that all funds are fully accounted for, and are spent in a manner that is consistent with the purpose and objectives of the NPO's stated activities; and

(c) follow a "know your beneficiaries and associated NPOs" rule.

4.7. While certain aspects of these requirements, such as the need to file annual returns, are covered to some extent by Guernsey's existing NPO framework, other aspects such as a "know your beneficiaries and associated NPOs" rule are not. It might be possible to deal with some of these aspects using the regulation-making powers at section 4 of the Law, but as these powers are restricted to record-keeping and related issues, the Law will need to be amended to include regulation-making powers that are wide enough to cover all necessary matters. This will include provisions in respect of the monitoring and enforcement by the Registrar of any new requirements that are introduced, together with appropriate underpinning sanctions.

4.8. However, because Guernsey will not be judged against the revised FATF standards for some time, new regulations do not need to be introduced urgently and their precise form can be considered over time. This approach would have the benefit of enabling Guernsey to see how the implementation of the revised FATF standards is judged in some other jurisdictions that will be assessed against those standards in the next year or so. It would also allow time for a full consultation with industry on any proposed changes in order to ensure they would be proportionate the Guernsey context.

4.9. In order to address the matters regarding internal governance issues and monitoring and enforcing compliance, it is recommended that the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 be amended now to permit the making in due course of regulations to cover all necessary matters.

Sanctions for Non-Compliance

4.10. The Law provides for a range of criminal and administrative sanctions for non-compliance. There are some areas where it would be of benefit to clarify the scope of these sanctions and make them more consistent. For example, the Registrar's information-gathering powers in section 1C and Schedule 1 of the Law are underpinned by criminal penalties in respect of the provision of misleading information, but there are no express penalties for an outright failure to provide information that the Registrar has requested. Failure to comply with this requirement is indirectly susceptible to criminal sanction, because in those circumstances the Registrar would be able to strike an NPO off the Register, and this would mean that the NPO would then be committing a criminal offence if it continued to operate. However, it would clearly be preferable in the interests of greater transparency and effectiveness if potential

liability to criminal sanction for all breaches were explicit on the face of the Law.

- 4.11. It is recommended that the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 be amended to make criminal sanctions for failing to comply with the different requirements imposed on NPOs explicit and consistent.

Disclosure Powers

- 4.12. Registration by NPOs brings certain tax benefits and for this reason the Director of Income Tax was appointed as Registrar when that office was first established. The Treasury and Resources Department have agreed the transfer of the appointment of the office of Registrar to the Guernsey Registry, with the office of Registrar being held by the person who currently holds the offices of Registrar of Companies and Registrar of Foundations; this transfer took place on 30th June 2014. Clearly it will be important for the effective discharge of their functions that the Director of Income Tax and the new Registrar can share information relating to NPOs (for example, it may be necessary for information to be exchanged between the Registrar and Director of Income Tax to facilitate the repayment of income tax on charitable donations made to Guernsey Registered Charities). There are some general provisions governing the sharing of information that could be invoked in some circumstances, but in the absence of specific information-sharing gateways there will be a risk that in some cases where information needs to be shared, this cannot happen because the particular circumstances do not come within the existing provisions. Therefore specific information-sharing gateways should be introduced into the Law, and also into the Income Tax (Guernsey) Law, 1975 to complement the existing gateways in those enactments. This will have the added benefit that the Registrar will be able to pass details of NPOs on to the Director of Income Tax to avoid the need for NPOs who wish to claim tax relief from making an additional application, which was identified as desirable during the consultation process.
- 4.13. A further amendment to the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 is necessary to deal with disclosure to corresponding authorities within the Bailiwick. Under paragraph 13 of Schedule 1 of the Law, the Registrar is empowered to disclose information for the purposes of enabling or assisting an authority exercising functions equivalent to his in a place outside the Bailiwick. However, since this provision was enacted Sark has appointed its own Registrar of NPOs and therefore the reference to authorities outside the Bailiwick needs to be amended to ensure that the disclosure powers may be used to assist the Sark's Registrar of NPOs as necessary.

4.14. It is recommended that:

- (a) the Income Tax (Guernsey) Law, 1975 be amended to permit information to be disclosed to the Registrar; and
- (b) the Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 be amended to permit disclosures to be made to the Director of Income Tax and to corresponding authorities inside the Bailiwick as well as outside.

5. PRINCIPLES OF GOOD GOVERNANCE

- 5.1 The proposals made in this States Report are in accordance with the Principles of Good Governance as outlined in Billet d'État IV 2011, particularly Principle 4 "taking informed, transparent decisions and managing risk." The proposals made in this Report will help Guernsey to meet the FATF standards and will therefore help to manage the risks to Guernsey's international reputation.

6. RESOURCES

- 6.1. The Registrar for NPOs proposes to continue to manage the framework for registration within the current operational resources of the Guernsey Registry.
- 6.2. HM Procureur has advised that the introduction of the amendments is unlikely to place any significant burden on the resources of St James Chambers or the Royal Court.

7. ALDERNEY

- 7.1 The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 has force in Guernsey and Alderney. The Alderney Policy and Finance Committee supports the proposals in this States Report.

8. CONSULTATION

- 8.1 The previous Registrar consulted on the proposals in section 4 of this paper on 4th April 2014. The response from the Guernsey Association of Trustees, which represents the main sector affected by the proposals, acknowledged the probability that the inclusion of manumitted NPOs within the registration regime is necessary to meet international standards. The Commercial Bar Association has made comments relevant to the existing definition of NPOs and this will be addressed in the clarifying amendment proposed at paragraph 4.4 above. In addition, the Association of Guernsey Charities suggested that the procedure for applying for tax relief should be encompassed in the registration process and it is intended that this will be addressed as indicated in paragraph 4.12 above.
- 8.2 HM Procureur has been consulted and his comments have been taken into account in the preparation of this Report.

9. RECOMMENDATIONS

9.1. The Policy Council recommends that the States agree that:

(a) The Charities and Non Profit Organisations (Registration) (Guernsey) Law, 2008 be amended to:

- i. remove the exemption for manumitted organisations, so that they become subject to all existing and any future requirements in connection with registration;
- ii. amend the definition of NPOs to clarify its scope;
- iii. widen the regulation-making powers to permit the making in due course of regulations to cover all necessary matters regarding internal governance issues;
- iv. make criminal sanctions for failing to comply with the different requirements imposed on NPOs explicit and consistent;
- v. permit disclosures relating to NPOs to be made by the Registrar of NPOs to the Director of Income Tax and to corresponding authorities inside the Bailiwick as well as outside.

(b) the Income Tax (Guernsey) Law, 1975 be amended to permit information on NPOs to be disclosed to the Registrar of NPO.

J P Le Tocq
Chief Minister

28th July 2014

A H Langlois
Deputy Chief Minister

R Burford
M H Dorey
P L Gillson

M G O'Hara
R W Sillars
K A Stewart

P A Luxon
D B Jones
G A St Pier

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

The States are asked to decide:-

VII.- Whether, after consideration of the Report dated 28th July, 2014, of the Policy Council, they are of the opinion:-

1. To agree that The Charities and Non Profit Organisations (Registration) (Guernsey) Law 2008 be amended to:
 - a. remove the exemption for manumitted organisations, so that they become subject to all existing and any future requirements in connection with registration;
 - b. amend the definition of NPOs to clarify its scope;
 - c. widen the regulation –making powers to permit the making in due course of regulations to cover all necessary matters regarding internal governance issues;
 - d. make criminal sanctions for failing to comply with the different requirements imposed on NPOs explicit and consistent;
 - e. permit disclosures relating to NPOs to be made by the Registrar of NPOs to the Director of Income Tax and to corresponding authorities inside the Bailiwick as well as outside.
2. To agree that the Income Tax (Guernsey) Law, 1975 be amended to permit information on NPOs (charities and non-profit organisations) to be disclosed to the Registrar of NPOs.

TREASURY AND RESOURCES DEPARTMENT**MISCELLANEOUS AMENDMENTS TO THE INCOME TAX LAW**

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

3rd July 2014

Dear Sir

1. Executive Summary

1.1. This Report proposes a number of amendments to the Income Tax (Guernsey) Law, 1975, as amended (“the Income Tax Law”) as set out below:

- 1.1.1. That section 172(1) of the Income Tax Law be revised to put it beyond doubt that Double Taxation Arrangements made between the States of Guernsey and the government of another country, may include any arrangements such as, but not limited to, the apportionment of taxing rights, variations in the rates of tax and methods of computing a person’s liability to tax in relation to, and the exemption from tax of, particular sources of income, and other ancillary provisions, provided that the main purpose, or one of the main purposes, of the arrangements or provisions is that they are made with a view to affording relief from double taxation, and not some other purpose.
- 1.1.2. That the Income Tax Law be amended to permit a claim to allowances applicable to married persons only when both spouses are resident in Guernsey.
- 1.1.3. That the Income Tax Law be amended so that the overall entitlement of a non-resident person to personal and other allowances cannot exceed that which an individual who is solely or principally resident in Guernsey would be entitled and, for persons who are resident but not solely or principally resident, to ensure that entitlement to allowances is linked to the amount of time that the individual is resident in Guernsey (or, in relation to a pension arising or accruing in Guernsey, by reference to the period, during a year of charge, that the individual is in receipt of that pension).

- 1.1.4. That some, minor, amendments be made to the powers granted to the Director of Income Tax (“the Director”) to obtain information to discharge his official functions under the Income Tax Law (including in relation to the provision of assistance under approved international agreements that Guernsey has with the governments of other jurisdictions or that are otherwise binding on Guernsey).
- 1.1.5. That section 209(1) of the Income Tax Law be amended, to put it beyond doubt that compensatory awards made by the Employment and Discrimination Tribunal under the Employment Protection (Guernsey) Law, 1998 and other relevant legislation, when arising from the termination of an individual's employment, as payments made directly or indirectly as a consequence of such termination, fall within the definition of “emoluments” and are therefore chargeable to tax.
- 1.1.6. That the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007 be amended to increase the amount of unpaid tax that the Director may collect through the issue of a Direction Notice to an employee's employer, without prior consent, from £1,000 to £3,000, to enable timely collection of tax debts and islanders to manage their financial affairs.

2. Report

2.1. Arrangements made with other countries to avoid double taxation

- 2.1.1. Double taxation normally occurs when the country in which a source of income arises (the “source country”) imposes tax on a person in respect of that income who is also subject to tax, on the same income, in another country (usually the country in which he lives – the “residence country”). Countries may seek to alleviate the double taxation that may arise as a consequence through provisions in their respective domestic tax laws, Double Taxation Agreements (“DTAs”), or a mixture of both of these.

Under section 172(1) of the Income Tax Law:

“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”.

2.1.2. Section 173 of the Income Tax Law then provides that:

“The provisions of this section shall have effect where, under arrangements having effect under the preceding section of this Law, tax payable in respect of any income in the territory with the government of which the arrangements are made is to be allowed as a credit against tax payable in respect of that income in Guernsey; and in this section the expression “foreign tax” means any tax payable in that territory which under the arrangements is to be so allowed and the expression “income tax” means tax chargeable under this Law”.

2.1.3. Section 173 provides for, what is commonly known as, the “credit method” principle of double taxation relief. Essentially, under this principle, if tax is paid in the source country on income, and tax is payable in the residence country on the same income, the residence country will allow a credit in respect of the foreign tax paid against its own domestic tax liability, in order to alleviate double taxation that would otherwise arise.

For example, in the broadest terms:

Mr X lives in Country A (the residence country) and receives income of £1,000 from Country B (the source country), which has imposed tax of £100 on that income. Under the credit method, Country A will allow a credit, in respect of the £100 tax paid in Country B, against Mr X’s tax liability in Country A (although the actual amount of the credit to be given will depend on the precise provisions in any DTA between Country A and Country B and/or the domestic tax rules in Country A).

2.1.4. The credit method is only one of a number of different ways that countries may wish to use to alleviate double taxation, but another common alternative to the credit method is the “exemption method”. Under this alternative, if tax is payable on income arising in Country B, which is received by a person who is a resident of Country A, Country A may agree not to charge tax on the same income.

2.1.5. Other methods used to alleviate double taxation may include two countries agreeing, in a DTA:

- To use a different basis for taxing persons than exists in their respective taxation laws (such as agreeing the way in which a person is considered to be resident for tax purposes, or having “tie-breaker” clauses when a person is treated as a resident of both countries), or using concepts of calculating the amount of profits which will be charged to tax which may differ to those used in its domestic tax rules (for example allowing a higher, or lower, deduction for certain types of expenses).

- To apportion the income of a particular source between them so that, overall, both countries do not tax the income twice.
- To allow both countries to tax a source of income when it arises in one country and is payable to a resident of the other, but to limit the rate of withholding tax chargeable, in the source country, to a level lower than would normally be charged. This is a common method of partially offsetting double taxation in respect of dividends (for example, a country with a normal withholding rate on dividends of say, 25%, may agree to tax dividends paid to shareholders living in the other country at, say, 5% if they arise from shares in an active trading company, whereas portfolio dividends may be taxed at the normal (25%) domestic rate). This may encourage inward investment into manufacturing etc businesses in the source country, from the residence country.

In some instances, a source country may agree to completely exempt a type of income (such as interest or royalties) from its normal tax charge, when paid to a resident of another country with which it has a DTA, if the provision is reciprocal in respect of payments received by its residents from the other country.

- 2.1.6. Whichever method is used, the overriding principle, for the purposes of section 172(1), is that there must be an intention to relieve double taxation, rather than just the reduction of a person's overall tax liability. So, if the purpose of a provision in a DTA was to reduce a person's tax liability in Guernsey, when there would be no tax charge on the relevant income in the other territory, that would not be a provision "... 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 so would be outside of the ambit of section 172(1). It is recognized, however, that even where the provision is made with a view to affording relief for double taxation, there may be situations where that is not achieved, and some instances where double non-taxation exists may result. The Department does not consider that the mere existence of that possibility should prevent the arrangements from satisfying the requirements of section 172(1).
- 2.1.7. HM Procureur has advised the Department that there may be circumstances where doubt may exist as to whether a method of affording relief from double taxation, other than that specifically covered in section 173 (the credit method), is legally effective. This could mean that Guernsey would not be in a position to continue to negotiate DTAs using, for example, the OECD or UN Model Agreements, which utilize a number of the alternative methods, other than the credit method, as outlined above, nor may it be possible to adopt other methods, even though it may be in the Island's economic interests to adopt such methods, in particular circumstances.

- 2.1.8. Presently, Guernsey is not engaged in, nor anticipating, negotiation of a significant number of DTAs. The major activity currently, in the area of international tax agreements, is in relation to automatic exchange of tax information, rather than relieving potential double taxation. During 2013, Guernsey signed Inter-Governmental Agreements (IGAs) with the United States and the United Kingdom based on the Foreign Account Tax Compliance Act (FATCA), a piece of US legislation that has since gained broad appeal, such as with the OECD and G20, as a basis for a new international standard for automatic exchange. The two IGAs have been approved by the States by Ordinance and will now be the subject of implementing regulations of the Department to be made under the Income Tax Law (recommendation 107(f) in Billet XXV, 2013).

In December 2013, the States agreed to ask the UK Government to request that the terms of the Multilateral Convention on Mutual Administrative Assistance in Tax Matters, as revised in 2010 by the Amending Protocol, (MAC, printed at Appendix IIA and IIB to Billet XXV, 2013) be extended to Guernsey. The effective date for extension will be 1 August 2014. The States also agreed that the MAC should be approved by the States by Ordinance (recommendation 107(g) in Billet XXV, 2013).

Article 24(1) of the MAC, printed at page 2336 of that Billet, authorises the competent authorities of the parties (in the case of Guernsey, the Director of Income Tax) mutually to agree on the mode of application of the MAC between the respective jurisdictions and to communicate directly for the purpose of the implementation of the MAC. In exercise of this authority, in the near future, Guernsey will be negotiating agreements on automatic exchange of tax information with a number (possibly a considerable number) of countries based on what has become known as the Common Reporting Standard (CRS) which, broadly, replicates the provisions of FATCA in a manner which can more easily be used by other countries.

The CRS may be adopted by way of an agreement between the competent authorities under Article 24(1) of the MAC, or by way of a further bilateral IGA with another country incorporating the provisions of the CRS (which may also involve negotiation of a DTA or a TIEA (or revised TIEA where one already exists dealing with exchange of information on request) by the Policy Council, as authorised by the resolution of the States on recommendation 107(e) in Billet XXV, 2013). The MAC, CRS agreements, and any future IGA, DTA or TIEA may all need implementing regulations of the Department under the powers recommended at paragraph 107(f) in Billet XXV, 2013 and now set out in the Income Tax Law.

Notwithstanding that Guernsey is not currently contemplating entering into a significant number of DTAs in the near future, the opportunity is taken,

whenever it presents itself, to seek agreement to negotiate DTAs with any territory, if it is considered to be in Guernsey's interests to do so. As a consequence, it is considered appropriate for the Income Tax Law to be revised now to resolve the shortcomings outlined above, in anticipation that more DTAs will be entered into at some point in the future.

- 2.1.9. As a consequence, the Department recommends that section 172(1) of the Income Tax Law be revised to put it beyond doubt that arrangements made between the States of Guernsey and the government of another country may include any arrangements such as, but not limited to, the apportionment of taxing rights, variations in the rates of tax and methods of computing a person's liability to tax in relation to, and the exemption from tax of, particular sources of income, and any necessary consequential, incidental, supplementary or transitional provisions, provided that the main purpose, or one of the main purposes, of the arrangements or provisions is that they are made with a view to affording relief from double taxation.

2.2. Entitlement to allowances for married persons

- 2.2.1. Section 36(1) of the Income Tax Law provides that:

“For any Year of Charge the States may by resolution prescribe the amount of personal and other allowances to which an individual who is solely or principally resident in Guernsey is entitled by way of relief from income tax at the appropriate rate, and the conditions applicable to such allowances”

Section 43(1) provides that:

“Any income of a married woman living with her husband shall for the purposes of assessment, charge, collection, computation of total income, and reliefs be treated as if it were the income of the husband:

Provided that if, as respects any income of the married woman, the residence of the person entitled to the income is material for determining the question of whether or not that income is income in respect of which tax is chargeable ... the question shall be determined by reference to the residence ... of the married woman, and not of the husband”,

and section 43(2)(ii) provides that section 43(1) shall not apply:

“... if one of the spouses is resident in Guernsey in the year of charge, and the other is not so resident, in which case each spouse shall be charged, and entitled to relief as if he or she were unmarried”

On the basis of the above, where only one of the spouses of a married couple reside in Guernsey, the resident spouse would be treated as if they were single.

There is a proviso to section 43(2)(ii), however, which states as follows:

“Provided that, where the resident [spouse] wholly maintains the non-resident [spouse], he or she shall be entitled to any personal allowance for married persons prescribed by the States under section thirty-six of this law”.

The effect of this proviso, therefore, is that the resident spouse would be entitled to claim, for example the Married Persons Allowance, for their non-resident spouse, so long as they “wholly maintain” their spouse.

It has long been the practice of the Director to treat one person to a marriage as “wholly maintaining” their spouse if they are contributing a sum more than the total of their spouse’s other income. “Wholly maintaining” does not mean, therefore, that the contributing spouse must be the only source of funds of the non-resident spouse.

2.2.2. The Department considers that the principal purpose of the personal and other allowances should be to provide relief from tax in relation to persons who are resident in the island. As a consequence, the Department proposes that section 43(2)(ii) of the Income Tax Law be revised by rescinding the proviso. As a consequence, where one party to a marriage is resident in Guernsey and the other party is not, the resident individual will be entitled only to the allowances applicable to single persons.

2.2.3. A similar situation exists in relation to a married couple where both parties are non-resident for tax purposes in Guernsey, but at least one of the spouses is in receipt of a pension arising or accruing, or treated as arising or accruing, in Guernsey.

2.2.4. Section 51(5) of the Income Tax Law provides that such a person shall:

“... be entitled to a proportion of the personal and other allowances prescribed under section 36(1) by way of relief from income tax at the appropriate rate and subject to the same conditions as if he were solely or principally resident in Guernsey, that proportion –

(a) not to exceed one fifty-second part of those personal and other allowances in respect of every seven days for which he satisfies the Director of Income Tax that he is in receipt of that pension in that year of charge, and

- (b) to be set off only against his income comprised in that pension (and not against any other income arising or accruing or treated as arising or accruing in Guernsey)".

The above provision was put in place to provide an ongoing element of relief in respect of the taxability of a pension arising in Guernsey where the recipient was not resident in Guernsey when, the more generally available, "proportional relief" was repealed.

- 2.2.5. The effect of section 51(5) is that for a person receiving a pension from Guernsey throughout the whole of the year, they will receive a full year's personal and other allowances. Because of the way that the legislation is worded, where only one of the parties to a marriage receives a pension, they would, nevertheless, be entitled to claim the allowances applicable to married persons, notwithstanding that neither of the parties to the marriage is resident in Guernsey.
- 2.2.6. Whilst the Department does not propose disturbing the entitlement to personal and other allowances for non-resident recipients of a Guernsey source pension, the Department does believe that that entitlement should be limited to the relevant proportion of the allowances applicable to single persons for each spouse who is in receipt of such a pension (so where only one spouse receives a pension, there is an entitlement to the relevant proportion of the allowances applicable to single persons, but where both spouses each receive a pension in their own right, they are each entitled to the relevant proportion of allowances applicable to single persons). The Department proposes that section 51(5) of the Income Tax Law be revised accordingly, and that corresponding changes should be made to sections 51(4) and 51A(2), which also deal with proportionate allowances to persons not solely or principally resident.
- 2.2.7. The Department proposes that the amendments referred to at paragraphs 2.2.2. and 2.2.6. above should take effect for the Year of Charge 2015 et seq.
- 2.2.8. One of the objectives of the Personal Tax, Pensions and Benefits Review is to ensure that the way money is raised does not, as far as possible, offer unfair advantages to some people over others; and where it might, measures are taken to mitigate aspects that might be considered unfair. As part of this review, the Department is considering whether Guernsey should adopt independent taxation, where each person must complete a tax return for themselves and the ability to transfer allowances between spouses is limited. Any proposals put forward, will ensure that people are treated equally, irrespective of whether they are married, in a civil partnership, cohabiting or single or whether or not they have children.

2.3. Basis of entitlement to personal and other allowances for non-residents and individuals who are not solely or principally resident

2.3.1. Section 51 of the Income Tax Law prescribes that a non-resident is entitled to personal and other allowances:

- where they are employed, to 1/52nd of the allowances to which an individual who is solely or principally resident would be entitled, in respect of each week or part of a week for which that person is employed in Guernsey, and
- where the non-resident receives a Guernsey pension, to 1/52nd of the personal and other allowances to which an individual who is solely or principally resident would be entitled, in respect of every seven days for which the pension is received (such allowances can only be offset against the pension income, and not against any other Guernsey source income).

2.3.2. Section 51A of the Income Tax Law sets out the provisions relating to the entitlement to personal and other allowances for individuals who are resident but not solely or principally resident in Guernsey. That section contains an overriding provision that for any year of charge such an individual cannot be entitled, in total, to more allowances than an individual who was solely or principally resident would be entitled. No such overriding provision exists, however, in section 51 (in relation to non-residents).

2.3.3. There are circumstances, albeit not often encountered, where a non-resident individual could be entitled to more allowances than a person who is solely or principally resident. For example:

Mr X worked in Guernsey until retirement and subsequently spends the majority of each year living in France. He receives an occupational pension from his previous, Guernsey, employer.

During July and August each year, Mr X spends time in Guernsey visiting relatives and friends. While in Guernsey he is employed, on a part-time basis, by a relative. He is considered to be non-resident for tax purposes.

During 2014, Mr X has Guernsey source income of:

- occupational pension £20,000 (which has been continuing throughout the whole of 2014), and
- Guernsey employment income £3,000 (eight weeks at £375 per week).

Mr X's tax liability is, therefore:

2014 total income	£23,000.00
Less allowances: Single Persons Allowance (in respect of the occupational pension)	£ 9,675.00
Single Persons Allowance (in respect of employment income) ($£9,675 \div 52 \times 8$)	<u>£ 1,488.00</u>
Taxable income	£11,837.00
Tax due	£ 2,367.40

By comparison, Mr Y, who is solely or principally resident in Guernsey, has the same amount of income, derived from the same sources, but as his entitlement to allowances is only one Single Persons Allowance of £9,675.00, his taxable income is £13,325.00 (£23,000.00 - £9,675.00) and his tax liability is £2,665.00.

- 2.3.4. Whilst the number of occasions on which the above situation is likely to arise is few, it is inequitable that persons who are non-resident may, in certain circumstances, be entitled to more personal and other allowances than an individual who spends most of his time in Guernsey.
- 2.3.5. As a consequence, the Department proposes that section 51 of the Income Tax Law be revised to include a provision that, notwithstanding any provision of section 51, a non-resident person cannot be entitled to personal and other allowances which exceed the personal and other allowances to which an individual who is solely or principally resident in Guernsey may be entitled.
- 2.3.6. Individuals who are resident but not solely or principally resident in Guernsey have the option, under Chapter IA of Part I of the Income Tax Law, to pay a "standard charge". Any such individual who does not elect to pay the "standard charge", however, is taxable on their worldwide income and is entitled to personal and other allowances in accordance with the provisions of section 51A of the Income Tax Law.
- 2.3.7. As indicated above, section 51A includes a provision that restricts the overall amount of allowances that an individual who is not solely or principally resident in Guernsey may claim to that which could be claimed by an individual who is solely or principally resident (section 51A(3)).
- 2.3.8. The general principle of section 51A is that individuals who are not solely or principally resident in Guernsey are entitled to $1/52^{\text{nd}}$ of the personal and other allowances to which an individual who is solely or principally resident would be entitled, for every seven days spent in Guernsey.

Section 51A(1) provides, however, that section 51 also applies to individuals who are resident but not solely or principally resident. As a consequence, under section 51(4), and, for the purposes of illustration, taking as an example such an individual who derives all of their Guernsey source income from being employed in Guernsey, they would be entitled to $\frac{1}{52}^{\text{nd}}$ of the personal and other allowances applicable to someone who is solely or principally resident in Guernsey for each week or part of a week for which they are employed in Guernsey. The provisions of sections 51(4) and 51A(2) together create a situation where, it may be argued, one individual is entitled to claim two sets of personal and other allowances.

- one claim being based on the number of weeks that they are employed in Guernsey, and
- another claim based on the time spent in Guernsey.

Overall, the effect of section 51A(3) would be to limit the amount claimable to the equivalent of the allowances which could be claimed by someone who is solely or principally resident, but there may still remain circumstances in which an individual would, overall, be entitled to claim allowances greater than those that would be due under the general principle that individuals who are not solely or principally resident should be entitled to allowances on the basis of the number of days spent in Guernsey.

2.3.9. In view of this potential anomaly, the Department proposes that section 51A of the Income Tax Law be revised to remove the cross-reference to section 51 (which is contained in section 51A(1)) and include in section 51A an equivalent provision to that contained in section 51(5) (which relates to an individual who is in receipt of a Guernsey pension being entitled to one week's allowances for each week that they receive such a pension). Those amendments, combined with the overall restriction contained in section 51A(3), will remove the potential anomaly created, currently, by the application of section 51(4) to section 51A of the Income Tax Law.

2.3.10. The Department proposes that the amendments to sections 51 and 51A of the Income Tax Law should have effect in relation to any entitlement to claim allowances for the Years of Charge 2015 onwards.

2.4. Information Powers

2.4.1. Under sections 75A and 75B of the Income Tax Law, the Director is given the power to ask a person to provide documents and other information that they hold (including, under section 75B, information about another person) if he believes it is necessary or desirable to do so for the purposes of

performing his functions (“information powers”). This includes situations where the Director is enforcing the domestic provisions of the Income Tax Law, as well as where he is responding to a request made by another jurisdiction under an agreement for the exchange of tax information with that country. These information powers are supported by, *inter alia*, provisions relating to “anti-tipping off” (section 75B(4)); a warrant to enter premises (sections 75I and 75J); and offences (section 75L).

- 2.4.2. Guernsey is a Member of the Global Forum on Transparency and Exchange of Information for Tax Purposes (“Global Forum”) and, as a consequence, is subject to the Global Forum Peer Review process under which Guernsey’s legal and regulatory framework and implementation of the international standards on transparency and exchange of information for tax purposes are examined. It is in Guernsey’s interest, in order to maintain its international reputation as a co-operative and transparent jurisdiction that complies with its international obligations, to constantly review its experience, and the experiences of its peers, in the exchange of information with treaty partners, to ensure that the relevant legislation is as robust as possible. As a consequence, the Department is proposing some, relatively minor, amendments to the information powers.
- 2.4.3. Section 75L of the Income Tax Law provides for the offence of falsifying, concealing, destroying or otherwise disposing of, or causing or permitting the falsification, concealment, destruction or disposal of, a document to which the Director has sought access. Section 75L(2) provides a number of exceptions to the offence, including where the person acted after a copy had been delivered to the Director, in accordance with section 75A(4), and the Director has examined the original document.
- 2.4.4. Section 75A(4) provides that, in order to satisfy an obligation to provide documents, following a notice issued under section 75A, a person may provide a copy of the document in place of the original (subject to certain conditions). Section 75A notices relate to requests made to a person in connection with their own income tax affairs.

Section 75B deals with notices requiring documents from one person concerning the affairs of another person. Section 75B(5) contains a similar provision as is contained in section 75A(4).

The Department proposes, therefore, that section 75L(2)(c) be revised to make a reference to both sections 75A(4) and 75B(5) for the sake of consistency.

- 2.4.5. Section 75D(5) of the Income Tax Law enables the Director, in contemplation of issuing a notice under the provisions of section 75A or 75B to first issue a notice to the person requiring that person to tell the Director what documents he has in his possession or power. The provisions

of sections 75A and 75B however enable the Director to require a person to deliver or, if the Director requires, make available for inspection relevant documents and to also furnish relevant information.

There are instances where it is unclear what information a person may have in their possession or power, therefore, the Department proposes that section 75D(5) be revised to make reference to both documents and information.

2.4.6. Section 75D(4) of the Income Tax Law provides that, when a notice has been given to a person under section 75A or 75B, the Director may require that person to:

- give an explanation of and to answer questions relating to any document or information produced or anything in it;
- if any document specified or described in the notice is not produced, to state to the best of his knowledge and beliefs its whereabouts; and
- to make any statement or give any information on oath or affirmation.

2.4.7. There are occasions when the Director has required a person, in accordance with section 75D(5) to tell him what relevant documents are in that person's possession or power and when the answer is received it is necessary to obtain a further explanation of the answer given or, where the person has stated they no longer have any relevant documents in their possession or power, to require them to state, to the best of their knowledge and beliefs the whereabouts of the documents.

The Department, therefore, proposes that section 75D(4) be revised to also make a cross reference with section 75D(5) so that the section 75D(4) powers are exercisable not only where a notice has been given under section 75A or 75B but also where the Director has asked for information under 75D(5).

2.4.8. Section 75B(4) of the Income Tax Law provides that, when the Director is seeking documents or other information from one person relating to the affairs of another, he may place a requirement on that third party information holder that he must not inform the person, who is the subject of the enquiry in respect of which the Director seeks information, that he has received a notice to supply information to the Director, or to disclose, or cause or permit to be disclosed, to any person any information which may prejudice that enquiry or the performance, by the Director, of his functions.

2.4.9. There are other sections of the Income Tax Law which allow the Royal Court and the Bailiff to stand in the place of the Director and to make orders requiring the production of documents or other information.

- Section 75F – under which the Royal Court may make an order equivalent to that which the Director could make under section 75B.
- Section 75I – under which the Bailiff may issue a warrant to enter premises (a “search warrant”).

The Department considers it appropriate to provide for a similar “anti tipping off” provision, as is available to the Director under section 75B(4), to be available to the Royal Court when making an order under section 75F.

2.4.10. Section 75I(8)(c) of the Income Tax Law provides that a person acting under the authority of a search warrant may:

“... require any person named in, or of a class or description specified in, the warrant –

- (i) to state to the best of his knowledge and belief the whereabouts of any such document, and
- (ii) to make an explanation of any such document”.

Failure to do so constitutes an offence under section 75I(13) of the Income Tax Law.

It is common these days for large quantities of information which may be relevant to the exercise of a search warrant to be kept in an electronic format.

Section 75I(5) of the Income Tax Law provides:

“In the case of any document which is stored or recorded in electronic form and which is accessible from the premises, the power of seizure ... includes a power to require the document to be produced in a form –

- (a) in which it can be taken away, and
- (b) in which it is visible and legible or from which it can readily be produced in a visible and legible form”.

2.4.11. Many information storage systems are protected by passwords and other security devices. In addition, the large variety of software and hardware systems may mean that actually accessing stored information may be complex or outside of the experience of those exercising the warrant.

2.4.12. As a consequence, the Department proposes that the Income Tax Law be revised so that an obligation is placed on any person named in, or of a class or description specified in, the search warrant, or otherwise appearing to have charge of, or otherwise be concerned with the operation of, the system under which any document is stored or recorded in electronic form, to afford assistance, as may be reasonably required, to the person exercising the search warrant. The Department proposes that anyone failing to provide such assistance may be subject to the penalty set out in section 75I(13) of the Income Tax Law (that is, on summary conviction, a liability to imprisonment for a term not exceeding one year, to a fine not exceeding twice level 5 on the uniform scale, or to both).

2.5. Awards made by the Employment and Discrimination Tribunal

2.5.1. When offices or employments are terminated by dismissal, it is common practice for payments (hereinafter called “termination payments”) to be made to the employee which are over and above his entitlement to salary, wages, commissions, bonuses, etc.

2.5.2. Following a resolution by the States in 1994 (Billet XVI), that such termination payments should be brought into charge to tax, section 209(1) of the Income Tax Law was amended, to make it clear that all payments, whether in pursuance of a legal obligation or not, which are made either directly or indirectly as a consequence of the termination of an office or employment, or a change in the functions or emoluments of an office or employment, and which are not already chargeable to tax, are deemed to be emoluments. Section 8(2A)(d) provides for an exemption from tax for the first £30,000 of any emoluments arising from the termination of any employment.

2.5.3. This amendment was made prior to the introduction of the Employment Protection (Guernsey) Law 1998, under which the Employment and Discrimination Tribunal (“the Tribunal”) may make an employee an award of compensation for unfair dismissal, for a failure to provide a written statement of reasons for dismissal or for subjecting a protected or opted-out Sunday shop worker to a detriment for refusing, or proposing to refuse, to work in a shop on Sundays. The Tribunal can also make awards in respect of the underpayment of the minimum wage, and for subjecting a minimum wage claimant to a detriment, under the Minimum Wage (Guernsey) Law, 2009 and for an act of discrimination prohibited by the Sex Discrimination (Employment) (Guernsey) Ordinance, 2005.

- 2.5.4. Awards made by the Tribunal for unfair dismissal will be equal to six months' pay, or for weekly paid staff, one week's pay multiplied by twenty-six, although the Tribunal may in certain circumstances reduce the award. Awards made for other complaints are of lesser amounts and are specified in the relevant legislation.
- 2.5.5. The Department believes that an award made directly or indirectly as a consequence of the termination of an individual's office or employment, is chargeable to tax, but proposes that section 209(1) of the Income Tax Law be amended, to put it beyond doubt that compensatory awards for unfair dismissal made by the Tribunal under the Employment Protection (Guernsey) Law 1998, and other awards described in paragraph 2.5.3 when made by the Tribunal in consequence of the termination of an individual's employment, fall within the definition of "emoluments". All such compensatory awards, as termination payments, will be subject to the £30,000 exemption outlined in paragraph 2.5.2.

2.6. Collection of unpaid tax through the Employees Tax Instalment Scheme

- 2.6.1. In order to assist islanders who are employed with managing their financial affairs, the Director may agree to accept payment of any unpaid tax in instalments. One way that this can be achieved is by a deduction directly from the employee's emoluments through the Employees Tax Instalment Scheme ("ETI Scheme"), by issuing the employer with a Direction Notice in accordance with regulation 8(3) of the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007.
- 2.6.2. Late payment surcharges are not imposed where the tax involved is being collected through the ETI scheme, and is paid in the year of charge in which it becomes due or the following year. It is therefore advantageous to the employee for payment of any tax liability to be collected through the ETI scheme, rather than paying the amount in a lump sum or by another method of instalments (which may be subject to surcharges).
- 2.6.3. This ability for the Director to issue a Direction Notice without the employee's consent reduces the resources required at the Income Tax Office, and the Office of Her Majesty's Sheriff, to collect that debt, and helps ensure timely collection of revenues owed to the States.
- 2.6.4. Currently, the Director requires the written consent of the employee to issue a Direction Notice if the amount of unpaid tax is £1,000 or more. Indications are that increasing the amount to £3000 could result in 200-300 fewer people having legal action taken against them, for unpaid tax, each year.

2.6.5. To facilitate the timely and efficient collection of debts, the Department proposes that the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007 be amended to increase the amount of unpaid tax that the Director may collect through the issue of a Direction Notice to the employee's employer, without prior consent, from amounts under £1,000 to amounts under £3,000, with effect from 1 January 2015. The Director would, however, continue to consider alternative payment proposals put forward by employees, if they would prefer to pay the unpaid tax in one lump sum or by another method of instalments (albeit the alternative methods of payment may be subject to surcharges).

2.7. Penalties for incorrect or incomplete ETI returns submitted by employers

2.7.1. The ETI Scheme was introduced in 1980, yet some employers are still submitting incorrect or incomplete returns. The impact of this, particularly as this group includes some of the island's largest employers, some of whom have outsourced operation of payroll overseas, can cause delays in the processing of their employees' personal income tax returns, whilst checks are made with the employer concerning differences between figures reported by the employer and the employee. The failure to submit complete and correct ETI returns in a timely manner, when these errors have been brought to the employer's attention, further compounds these delays.

2.7.2. In some circumstances, an incorrect or incomplete ETI return can lead to an employee receiving a demand for unpaid tax, because the credit for tax deducted directly from their emoluments has not been allocated to their income tax account (usually this is due to incorrect or missing income tax references being allocated to the employee by the employer). This may cause individuals worry and financial difficulties whilst enquiries are ongoing between the Income Tax Office and their employer to ascertain the correct position for that individual employee. The problems outlined above could be further compounded if the outcome of the enquiries is the need to reopen and/or adjust the records of, sometimes hundreds of, employees identified as having been the subject of an incorrect ETI return. This is labour intensive and not the most effective use of resources within the Income Tax Office, and in a number of cases significantly impacts on the Income Tax Office's ability to process the personal income tax returns of those employees in a timely manner.

2.7.3. The Income Tax Office is progressing a number of initiatives designed to remove individuals with relatively straight forward financial affairs from the need to complete a tax return at all. As this will remove the current check, between information submitted by the employee and employer, it is increasingly important that employers submit correct and complete ETI returns.

- 2.7.4. Section 193(2) provides for the imposition of a penalty where a person submits a return, other than a return of income, which is incorrect or incomplete in any material particular due to negligent or fraudulent behaviour. The Director may also impose a penalty under Section 193A on an employer for the failure to submit any form, schedule or list which they are required to submit by regulations made under Section 81A. There is not, however, any specific, equivalent penalty under Section 193A for submitting forms, schedules or lists which are incorrect or incomplete, necessitating enquiries, but where it is not possible to establish negligence or fraud as required by 193(2).
- 2.7.5. The Department therefore proposes that Section 193A of the Income Tax Law be amended to also enable the Director to impose penalties on employers who repeatedly submit incorrect or incomplete forms, schedules or lists, which they are required to submit by regulations made under section 81A, without prejudice to the provisions of Section 193(2).
- 2.7.6. An initial penalty imposed under Section 193A shall not exceed £300. In addition, an employer should be liable to a further daily penalty not exceeding £50, for the period after the date of notification to the employer of the error until it has been rectified. In comparison, under Section 193(2), any penalty imposed shall not exceed £1,000 if the person acts negligently or £5,000 if they act fraudulently.
- 2.7.7. The Income Tax Office is committed to continuing to support and communicate with employers throughout 2014 and early 2015 to ensure that common errors can be identified and corrected before the introduction of penalties. This includes updating information available on the Taxation pages of the States of Guernsey website. There is no intention to impose penalties on an employer who simply makes a genuine one-off mistake and, when made aware of the mistake, rectifies the matter in a timely manner. Rather, what is contemplated would be a deterrent to deal with those employers who do not correct identified mistakes in a timely manner and those who repeatedly make mistakes despite the Income Tax Office having communicated with the employer on the matter. It is further proposed that employers will first be informed of the aspects of their ETI returns which appear to be incorrect and will then be provided with an opportunity to submit complete and correct information, within a prescribed time limit, and if they submit the fully complete and correct ETI returns within that period then there will be no imposition of a penalty. The Department proposes that the amendment referred to at paragraph 2.7.5. above should take effect from the second quarter of 2015.

3. Principles of Good Governance

In preparing this Report, the Department has been mindful of the States Resolution to adopt the six core principles of good governance defined by the UK

Independent Commission on Good Governance in Public Services (Billet IV of 2011). The Department believes that the proposal in this Report complies with those principles.

4. 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 give effect to all the amendments proposed in this Report, except for the amendment proposed in 6.6., which will be amended by Regulations.
- 4.2. The Law Officers have been consulted about these proposals.

5. Resource Implications

- 5.1. There will be a minimal detrimental impact on staff resources at the Income Tax Office if these proposals are approved.
- 5.2. It is not anticipated that any of the proposals will give rise to any overall significant loss of, or increase to, the revenue of the States.

6. Recommendations

The Treasury & Resources Department recommends that the States agree that:

- 6.1. Section 172(1) of the Income Tax Law be revised to put it beyond doubt that arrangements made between the States of Guernsey and the government of another country, may include any arrangements such as, but not limited to, the apportionment of taxing rights, variations in the rates of tax and methods of computing a person's liability to tax in relation to, and the exemption from tax of, particular sources of income, and other ancillary provisions, provided that the main purpose, or one of the main purposes, of the arrangements or provisions is that they are made with a view to affording relief from double taxation.
- 6.2. Sections 43(2)(ii) and 51(5) of the Income Tax Law be revised to restrict an entitlement to claim personal and other allowances to an entitlement to the allowances applicable to single persons, in the circumstances set out in paragraphs 2.2.2. and 2.2.6.
- 6.3. Sections 51 and 51A of the Income Tax Law be revised to restrict an entitlement to claim personal allowances for individuals who are non-resident, or resident but not solely or principally resident, respectively, in the circumstances set out in paragraphs 2.3.5., 2.3.9. and 2.3.10.

- 6.4. Amendments be made to the information powers in sections 75D(4), 75D(5), 75L(2)(c), 75F and 75I, as set out in paragraphs 2.4.4., 2.4.5., 2.4.7., 2.4.9. and 2.4.12.
- 6.5. Section 209(1) of the Income Tax Law be amended to put it beyond doubt that compensatory awards made by the Employment and Discrimination Tribunal under the Employment Protection (Guernsey) Law 1998 and other relevant legislation, when made by the Tribunal in consequence of the termination of an individual's employment, fall within the definition of “emoluments”.
- 6.6. The Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007 be amended to increase the amount of unpaid tax that the Director may collect through the issue of a direction notice to an employee's employer, without prior consent, from amounts of less than £1,000 to amounts of less than £3,000.
- 6.7. Section 193A of the Income Tax Law be amended to enable the Director to impose penalties on employers who submit incorrect or incomplete forms, schedules or lists that they are required to submit by regulations made under section 81A, without prejudice to the existing enhanced penalties that may be imposed under section 193(2) where a return is incorrect or incomplete in any material particular and the employer has acted negligently or fraudulently.

Yours faithfully

G. A. St Pier
Minister

J Kuttelwascher
Deputy Minister

A H Adam
Member

R A Perrot
Member

A Spruce
Member

J Hollis
Non-States Member

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Report dated 3rd July, 2014, of the Treasury and Resources Department, they are of the opinion:-

1. That section 172(1) of the Income Tax (Guernsey) Law, 1975, as amended, be revised to put it beyond doubt that arrangements made between the States of Guernsey and the government of another country, may include any arrangements such as, but not limited to, the apportionment of taxing rights, variations in the rates of tax and methods of computing a person's liability to tax in relation to, and the exemption from tax of, particular sources of income, and other ancillary provisions, provided that the main purpose, or one of the main purposes, of the arrangements or provisions is that they are made with a view to affording relief from double taxation.
2. That sections 43(2)(ii) and 51(5) of the Income Tax (Guernsey) Law, 1975, as amended, be revised to restrict an entitlement to claim personal and other allowances to an entitlement to the allowances applicable to single persons, in the circumstances set out in paragraphs 2.2.2. and 2.2.6.
3. That sections 51 and 51A of the Income Tax (Guernsey) Law, 1975, as amended, be revised to restrict an entitlement to claim personal allowances for individuals who are non-resident, or resident but not solely or principally resident, respectively, in the circumstances set out in paragraphs 2.3.5., 2.3.9. and 2.3.10.
4. That amendments be made to the information powers in sections 75D(4), 75D(5), 75L(2)(c), 75F and 75I of the Income Tax (Guernsey) Law, 1975, as amended, as set out in paragraphs 2.4.4., 2.4.5., 2.4.7., 2.4.9. and 2.4.12.
5. That section 209(1) of the Income Tax (Guernsey) Law, 1975, as amended, be amended to put it beyond doubt that compensatory awards made by the Employment and Discrimination Tribunal under the Employment Protection (Guernsey) Law 1998 and other relevant legislation, when made by the Tribunal in consequence of the termination of an individual's employment, fall within the definition of "emoluments".
6. That the Income Tax (Guernsey) (Employees Tax Instalment Scheme) Regulations, 2007, be amended to increase the amount of unpaid tax that the Director may collect through the issue of a direction notice to an employee's employer, without prior consent, from amounts of less than £1,000 to amounts of less than £3,000.

7. That section 193A of the Income Tax (Guernsey) Law, 1975, as amended, be revised to enable the Director to impose penalties on employers who submit incorrect or incomplete forms, schedules or lists that they are required to submit by regulations made under section 81A, without prejudice to the existing enhanced penalties that may be imposed under section 193(2) where a return is incorrect or incomplete in any material particular and the employer has acted negligently or fraudulently.

COMMERCE AND EMPLOYMENT DEPARTMENT

REVIEW OF THE DAIRY INDUSTRY

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

1st July 2014

Dear Sir

1. Executive Summary

- 1.1 In December 2011, the States resolved that the Commerce and Employment Department would produce a comprehensive and coherent vision for the long-term future of the dairy industry in Guernsey.
- 1.2 The Department set up the Dairy Industry Review Group to produce this vision. Its report entitled “*Dairy Farming in Guernsey And The Future - A Plan for the Long Term Future of the Dairy Farming Industry in Guernsey*” (“the Review”) was issued by the Department in July 2014. This Review is included and circulated as part of this Billet d’État as a separate, stand-alone, document.
- 1.3 Section 3 of this States Report explains the vision and sets out a plan for the future of the dairy industry that includes proposals for –
 - a) Comprehensive controls on the importation of liquid milk;
 - b) Ongoing support for the Guernsey breed of cattle;
 - c) The principle of a review of the governance on Guernsey Dairy (which, if approved, will be the subject of a further Report to the States);
 - d) The end of the milk supply quota system and its replacement with more flexible milk supply contracts between the farmers and the Dairy;
 - e) A fixed wholesale (gate) price and an end to Retail Price control;
 - f) The continuation of dairy farm management contracts;
 - g) A reduction in dairy farm management payments by £1 million, phased in in equal amounts over a 5 year period beginning in 2015;

- h) The retention of non-exclusive licences for milk distribution; and
- i) The repeal of the 1958 Milk Ordinance¹ and its replacement with a new Milk Ordinance that provides robust protection from milk imports and reflects modern arrangements for milk supply, processing and distribution.

2. Background

- 2.1 On 1st December 2011, after consideration of a Report from the Commerce and Employment Department dated 21st October 2011 entitled “Independent Review of the Dairy Industry” (Billet d’État No XIX of 2011), the States resolved, inter alia:

2. To direct the Commerce and Employment Department to present to the States of Deliberation by no later than December 2013 a report containing:

- (a) The Department’s comprehensive and coherent vision for the long-term future of the dairy industry in Guernsey; and*
- (b) Any recommendations for reform that the Department considers necessary to realise its comprehensive and coherent vision, such recommendations to include, as far as is possible, cost implications, together with indications of how such expenditure could be funded.*

- 2.2 The Department established a Review Group to produce the vision required by the 2011 Resolution. This Group consisted of the Minister and Deputies Soulsby and Laurie Queripel.
- 2.3 In November 2013 the Minister advised States Members that the presentation of the vision would be delayed in order to allow the Review Group additional time to undertake further consultations with interested parties so that it could arrive at a thorough understanding of the relevant issues and how those issues affected stakeholders.
- 2.4 The Review Group has completed its work and its report entitled “*Dairy Farming in Guernsey And The Future - A Plan for the Long Term Future of the Dairy Farming Industry in Guernsey*” (“the Review”) was issued by the Department in July 2014. It is included as a stand-alone document with this States Report. The full Board of the Commerce and Employment Department endorses the conclusions contained in that report.

¹ The Milk (Control) (Guernsey) Ordinance, 1958, as amended

- 2.5 The way in which those conclusions can be taken forward are set out in section 3 of this States Report.

3. **Conclusions of the Review Group – a 10 Point Plan for the Future of the Dairy Industry**

Point 1: Effective statutory control on the importation of milk.

Review Group Conclusions 1, 3, 27 and 28.

1. *The Guernsey cattle breed is a distinctive local breed the maintenance of which will enhance the available pool of world farm animal genetic resources.*
 3. *Protecting the local Guernsey cattle breed is one of the key reasons and justifications for controls over the importation of milk and other breeds to the Island and recognises the change in attitude that now accepts the value of maintaining genetic resources as a legitimate balance to the free market and movement of goods in Europe.*
 27. *Useful powers in the Milk Ordinance should be strengthened and brought up to date, providing clear control over the importation of milk and modernising out of date elements in this legislation.*
 28. *A revised Milk Ordinance should be drafted without delay and it should be brought into force as soon as possible.*
- 3.1 The Milk Ordinance already includes provisions on the importation of milk which mean that only the Dairy can import milk that is intended for retail sale.
- 3.2 Unfortunately, these existing powers are not robust. The definition of “milk” in the Milk Ordinance dates from 1958 and reflects the fact that only whole (full cream) milk was retailed at that time. Since then a whole range of different types of milk have come onto the market, not least low fat, skimmed and UHT products. These new products fall outside of the existing narrow definition and therefore for any import control to be effective, this definition will have to be updated to encompass the full range of milk products that should be subject to such control.
- 3.3 In the early 1990s, the European Community harmonised the requirements for the movement of milk and milk products within the Community thus establishing standard rules for trade in those products. This opened up the possibility of a challenge to Guernsey import restrictions based on the Island’s obligations under Protocol 3 (the obligation to apply EU rules on trade in agricultural products – including milk and therefore to allow milk to be imported).

- 3.4 One recent key and fundamental development, both internationally and within the EU, has seen a growing recognition of the importance in biodiversity. In the context of dairy farming, there has been increasing concern about the growing worldwide reliance on the Friesian/Holstein breed for milk production and the consequential decline of many other milking breeds.
- 3.5 As these concerns have grown, there has also been a greater recognition of the importance of protecting as many cattle breeds as possible in order to maintain a broad base of genetic variation in cattle as a species in general. As a result, elsewhere, farmers are increasingly being encouraged and incentivised to retain cattle from rare and minority breeds to prevent their numbers declining further. There is a growing acceptance that biodiversity is important and that there are circumstances when it can be given greater weight than the purely commercial considerations of free trade.
- 3.6 In the World context, the Guernsey breed is a minor breed and the Department believes that the developments described above make robust local measures to protect the breed in its Island home fully justified.
- 3.7 This protection can be achieved not only by maintaining existing controls on the importation of cattle and bovine semen and embryos, but also by putting in place comprehensive measures to control the importation of liquid milk. Such protection will also preserve the farming heritage of the Island and help to maintain the existing character of the rural landscape.
- 3.8 Furthermore, the threat of a successful challenge to the existing import controls, leading to the importation of milk in large volumes, always hangs over the dairy industry and creates uncertainty about its future. This, in turn, affects decisions about investment on farms. The Department believes that the future of dairy farming will be at risk unless this uncertainty is removed.
- 3.9 The Department is therefore convinced that updated, robust import controls on liquid milk are essential and recommends that they are implemented as soon as possible. It believes that such controls can now be justified in order to:
- protect the Guernsey breed;
 - protect the rural environment and the existing rural character of the Island; and
 - create a stable environment for investment in dairy farming and thus protect the future of the dairy industry.
- 3.10 There are occasions when the supply of local milk is disrupted. A breakdown of equipment in May 2013 at the Dairy meant that milk had to be imported for a few days and it is clear that in certain exceptional circumstances imports may be

required to maintain the supply of milk to the public and commercial customers. The Department therefore proposes that the Dairy should have the authority to import milk in exceptional circumstances.

Point 2: A continuing commitment to the Guernsey Breed.

Review Group Conclusions 1, 2, 26, 34 and 35.

1. *The Guernsey cattle breed is a distinctive local breed the maintenance of which will enhance the available pool of farm animal genetic resources.*
 2. *Support for the breed is in line with policies for the protection of the rarer distinctive breeds in Europe. Protection for dairy farming and the breed, by the enabling of a self-sustaining dairy industry on the Island, will be a more cost effective approach in the future.*
 26. *The legislative controls protecting the Guernsey Cattle Breed should remain in place as they are essential for the future of the breed.*
 34. *Farm Services are a vital and well managed service for the industry.*
 35. *Farm Services represent good value for money and those involved should continue to work closely with the industry and identify further efficiency improvements in the coming years, as they have done in the past.*
- 3.11 The Department believes strongly that the Guernsey breed is a unique and iconic Island asset that must be preserved and protected and it considers that, if the breed is to have a long-term future on the Island, it is imperative that local dairy farming continues to make exclusive use of Guernsey cattle for milk production.

Breed Development

- 3.12 The further development of the breed is vital in order to prevent genetic stagnation and to ensure that it remains relevant and viable in terms of commercial milk production. The Department intends to continue to cooperate with the Royal Guernsey Agricultural and Horticultural Society and the World Guernsey Cattle Federation to help drive such development forward.
- 3.13 The Department's main involvement in breed development is through the provision of the milk recording and artificial insemination services.
- 3.14 The milk recording service collects the raw data that is used, not only to produce business information for farmers, but also to evaluate the genetic merit of individual cattle. The latter information is used to inform breeding decisions with the aim of securing specific improvements in terms of physical characteristics or production (or both).

- 3.15 The artificial insemination service is the principal means by which genetic improvement is delivered in the Guernsey cattle population.
- 3.16 Both of these services are essential for the future viability of the Guernsey breed and the Department intends to maintain them. Every effort has been made (with considerable progress achieved) and will continue to be made, to provide these services in an effective manner at minimum cost. Farmers contribute 50% of the cost of these services and the Department will continue with this funding arrangement.

Point 3: An independent, but still States owned, Dairy.

Review Group Conclusions 5, 6, 7, 9, 10 and 11.

5. *The Dairy should dispense with the Trade Counter as this was a limited approach to bulk sales of catering butter and cream. It should move swiftly to a situation where any commercial customer wishing to purchase any of its manufactured products (cream, butter, cheese etc.) is free to do so. The Dairy may specify any bulk purchase discounts it believes are commercially justified for these products. (Milk would be covered by other arrangements. See page 32 et seq.)*
6. *Bearing in mind the States' resolution in 2008 that gave distributors some limited and temporary exclusivity over sales of milk and retail sales of products on to doorsteps for a period until 31st December 2015, these arrangements should start from 1st January 2016.*
7. *The Dairy should pursue a link with Jersey Dairy for the manufacture of a Channel Islands UHT milk product.*
9. *The Guernsey Dairy should stay in overall States' control, but a governance structure should be put in place that allows it greater independence to act in a commercial manner for the good of the Island and the dairy industry, but largely freed from the constraints of political and States control.*
10. *Farmers should have a permanent place on the Board of a new Guernsey Dairy.*
11. *If the States agree in principle to the recommendations 9 & 10, careful research should be done by the Department, prior to a States Report being brought forward, with proposals on the best way to achieve these overall objectives for the future of the Dairy.*

Trade Counter

- 3.17 The Dairy established a Trade Counter in 2003 to give certain commercial customers access to catering butter and catering cream purchased in bulk. This arrangement allowed the Dairy to increase sales of these products so that they made a contribution to the business, rather than a loss.
- 3.18 This was, however, a limited approach and whilst milk sales constitute over 80% of the Dairy's turnover, other products make an important contribution to its overall profitability. The Department believes that the Dairy will make further gains by making the full range of its manufactured products available to trade customers and therefore the existing arrangements for the Trade Counter will be changed to allow for such sales.
- 3.19 The Department considers that this change is essential to protect the Dairy's financial position and help it to avoid any loss-making sales.
- 3.20 For the avoidance of doubt, this arrangement will not apply to liquid milk sales.

UHT Milk

- 3.21 The Department has noted that there have been calls from some commercial customers for the Dairy to provide local UHT milk and evidence received during consultation suggests that the market for this type of milk could be between 5% and 8% of total milk sales.
- 3.22 The ideal outcome would be for the Dairy to meet any local demand for UHT milk with a Guernsey product. However, the capital cost of setting up a UHT plant (estimated to be well in excess of £1 million) is too high to make local production financially viable.
- 3.23 The Dairy will therefore continue investigating an alternative approach, and that is to jointly produce a Channel Islands product with Jersey Dairy, which already has the necessary UHT equipment. The Department believes that there is merit in exploring this option.

Governance of the Dairy

- 3.24 The Department has concluded that the Dairy has a vital role to play in the future of the dairy industry. Given that important role, it is essential that the Dairy operates as efficiently as possible and this will be achieved through modernisation and by reducing costs further. However, the Department does not believe that the greatest efficiencies can be realised with the existing governance arrangements and that a more independent Dairy will be better placed to drive forward these projects.

- 3.25 It is the strong view of the Department that full responsibility for all operational issues must be given to a reconstituted Dairy Management Board and that the Dairy should have much closer links with dairy farmers to ensure that enough milk is produced to adequately meet in the year round demand for milk, to establish fair pricing and to jointly plan for the future of the industry. To help achieve this, the Department proposes that dairy farmers should be given representation on a (new) Dairy Management Board.
- 3.26 It also believes that the Dairy should not be a source of revenue for the States nor a liability to be supported and successful sales will be the key to financial self-sufficiency in relation to operational costs and maintaining an adequate fund for capital re-investment.
- 3.27 The Department does not believe that the Dairy should be fully privatised and does not recommend this option. However, there are other options in which it would remain under the overall control of the Department (which would provide strategic direction) whilst allowing it greater independence to operate in a commercial manner with less political interference.
- 3.28 The Department has not explored any of these options in detail and it recommends that, if the States agree in principle, that they should be examined and the Department should submit a report to the States on this issue with the aim of it being completed in 2015. The Department will however be mindful of, and as appropriate coordinate its work with that of, the States Review Committee which is considering the future governance and oversight of States' trading bodies
- 3.29 In the meantime, the Department intends to re-constitute the existing Dairy Management Board to reduce the political representation (from two members to one) and to appoint a farmers' representative to the Board.
- 3.30 A re-constituted Dairy Management Board will be tasked with:
- undertaking discussions, as a matter of priority, with farmers on milk supply contracts, the future use of milk quotas, and how to match supply to demand in the market; and
 - continuing discussions with Jersey Dairy about a Channel Islands UHT milk product.
- 3.31 A further task for the Dairy Management Board will be to examine the future needs of the Dairy and to consider the costs, benefits, and feasibility of the development of a more modern facility. This review will not exclude the possibility of building a new Dairy on another site.

- 3.32 The Department regards such a review as essential in order to determine how the Dairy can derive the greatest benefits from operational efficiencies and hence reduce its costs further.

Milk Tests

- 3.33 The Milk Ordinance requires the Dairy to carry out specific tests on milk. There are now industry standards for tests for gross contamination, water content, microbial content, somatic cells and antibiotics and the Department does not see any need for them to be specified in legislation. It therefore recommends that the relevant provisions are repealed.
- 3.34 If the standards change in the future, the Dairy will simply apply those new standards and in any event, it must operate in accordance with Guernsey food law as a food production facility.

Point 4: A firm commitment from farmers to a year-round supply of milk for the Island

Conclusions 4, 20 and 21.

4. *The Guernsey Farmers' Association must take responsibility for, and play an active role in, guiding, coordinating and encouraging farms to adjust calving patterns to sustain autumn and winter production to remove the risk of undersupply in winter and early spring.*
20. *An early task for the Dairy and farmers must be to establish the future form of milk supply contracts and amendment of the current system of milk quotas for introduction in 2015.*
21. *It would be valuable for the farmers to work closely with the Dairy to establish more commercially minded Milk Supply Agreements that match total farm milk supply to the needs of the market.*

Year-round supply

- 3.35 The Department shares the view of the Review Group that it is fundamental that annual raw milk production matches seasonal changes in demand.
- 3.36 Without enough milk, the Dairy has to import (which is costly). With too much production, it has to use any surplus to make dairy products. Some of these are profitable, but others less so, and the opportunities for exports are limited because the market is well supplied with products which are manufactured where the costs of production are significantly lower than they are in Guernsey.
- 3.37 If the Dairy can balance supply and demand it maximises its operating efficiency. Farmers are the key to achieving success in this respect and they need

to match what they produce to what the Dairy needs to supply the market at any particular time of year.

- 3.38 The Department strongly believes that farmers must take responsibility for regulating their production and cannot simply rely on the Dairy to deal with their milk as and when it arrives, regardless of what the market actually needs.
- 3.39 It considers that the Guernsey Farmers' Association must take the leading role in coordinating production, and a closer working relationship between farmers and the Dairy will assist this process.

Quota and Milk Supply Contracts

- 3.40 The Department has noted, with concern, two findings of the Review Group in relation to milk supply quota, namely that:
- existing farms are unlikely to risk expansion and investment in new facilities without quota (and hence a source of income to fund such activities); and
 - new entrants cannot, realistically, begin farming without a quota allocation.
- 3.41 All of the quota is normally allocated and so spare quota only becomes available when a farm closes. Existing farmers and any aspiring entrants, then have to compete for a share of what is available.
- 3.42 Available quota is allocated by an independent Milk Supply Panel and applicants must present a business case for a share. There is no guarantee that a particular farmer or aspiring entrant, will get anything and, if they do, it may be less than they requested.
- 3.43 Whilst the quota system successfully achieved its original objective of curtailing over-production in the supply of milk, it is now clear that it inhibits investment in the development of farm businesses and it is a substantial barrier to new entrants into the dairy industry, both of which are vital for the long-term future of that industry.
- 3.44 The Department believes that the quota system is now a significant constraint on the dairy industry and that both the Dairy and farmers will need to have greater freedom and flexibility to adapt to future challenges. The quota system will therefore be discontinued and replaced by milk supply contracts negotiated between farmers and the Dairy.
- 3.45 The Dairy can assess the annual demand for milk and negotiate with farmers to supply what is required. The Department believes that a closer and more pragmatic business relationship between farmers and the Dairy, as well as the

controls on intensive farm production that are contained in the Dairy Farm Management Contract system, will prevent uncontrolled over-production happening again, whilst allowing enough flexibility to negotiate additional supply if required and for the Dairy to agree supportive supply deals with new entrants.

- 3.46 Farmers will have greater opportunities to develop their businesses if they wish to do so and whilst prospective entrants into the dairy industry will still have to overcome the difficulties of finding enough land and suitable buildings and satisfying food production regulatory requirements, ending milk quota will remove a significant barrier to their aspirations.
- 3.47 In order to ensure that both farmers and the Dairy have time to plan for this change in the supply arrangements, the quota system will end in 2015 and in the meantime, as a matter of priority, both parties must discuss the details of milk supply contracts.

Point 5: A simpler approach to milk pricing in the industry.

Conclusions 8, 9, 16, 17, 18 and 19.

8. *The Dairy should work with farmers to investigate the differential pricing of raw milk to reflect the value of, for example, higher butter fat content.*
9. *The Guernsey Dairy should stay in overall States control, but a governance structure should be put in place that allows it greater independence to act in a commercial manner for the good of the Island and the dairy industry, but largely freed from the constraints of political and States control.*
16. *The Retail Price of milk should no longer be controlled.*
17. *The farmers' Producer Price for raw milk should be set by the Dairy in collaboration with farmers.*
18. *The Dairy's Gate Price should be set by the Dairy and must be non-negotiable.*
19. *With no Retail Price to set and a new arrangement for setting the Producer Price, the work of the Milk Price Review Panel can stop.*
- 3.48 At the present time the Department sets the price paid to dairy farmers for raw milk (the Producer Price), the wholesale price (Gate Price) for milk sold to commercial customers and the Retail Price of milk. Since 2007, the Milk Price Review Panel has carried out an annual independent review of all of these prices

and made recommendations for any changes. The recommendations have always been accepted by the Department.

Producer Price

- 3.49 As discussed above, the Department firmly believes that a much closer partnership between the Dairy and dairy farmers is essential so that they can work together to supply the year-round (seasonal) demand for liquid milk and milk products on the Island.
- 3.50 It also proposes that the Producer Price paid to dairy farmers for raw milk delivered to the Dairy should be determined jointly by the Dairy and farmers on the basis of detailed and open access to performance, sales and cost information.
- 3.51 Certain constituents of milk (such as butter fat) can be used to make profitable products such as butter and cream and hence these products are of benefit to the Dairy. In order to maximise that benefit, the Department believes there is merit in the Dairy and farmers investigating the possibility of varying the producer payment to encourage farmers to produce milk with a given percentage of these constituents.
- 3.52 The Milk Ordinance includes provisions on setting the Producer Price and the Department recommends that those provisions are repealed.

Wholesale (Gate) Prices

- 3.53 In line with the Department's view that the Dairy should have greater independence from hands-on political involvement, it considers that the Dairy should have the authority to set the price it charges its commercial customers for milk and dairy products. These are the wholesale (or gate) prices.
- 3.54 Whilst the Dairy will set Gate Prices, the Department is convinced that the Gate Price of liquid milk must be fixed, in the sense that it must be non-negotiable, in order to rule out pressure from purchasers who can buy in bulk and may well wish to discount the price that they pay. It believes that this is essential to protect the Dairy, farmers and distributors, and to eliminate the risk that farm incomes will be eroded and the operating costs of the Dairy adversely affected.
- 3.55 A non-negotiable wholesale price for liquid milk, together with strong controls on the importation of milk will be key elements of support for the dairy industry in the future.

Oversight of Dairy Pricing Policies

- 3.56 The Department will retain oversight of the Dairy's pricing policies and it will intervene if there is evidence that those policies are not properly taking into account operational efficiency and industry and market needs.

Retail Price

- 3.57 The Department has noted that evidence from sales data indicates that over the last decade the volume of milk sold by shops has significantly increased and is between 60% and 70% of the total and possibly more. The remainder represents sales to both catering customers, as well as doorstep customers. The actual volume of milk sales to customers via the doorstep could therefore be as low as 25% of total sales.
- 3.58 These estimates are based on sales information from the Dairy. It is unfortunate that, despite repeated requests both verbally and in writing, distributors' representatives did not provide more detailed information regarding the split of sales between doorstep customers and shops.
- 3.59 The distributors believe that Retail Price control is a key regulator of the pricing strategies of shops and that the removal of that control will undermine doorstep sales, an outcome which they consider will reduce total milk sales and thus damage the Dairy and the dairy industry.
- 3.60 The Department does not share this view. The evidence is that more and more people are buying their milk from shops. This has been the trend for the last decade and the Department does not see any reason why it will not continue. As total milk sales have remained relatively static over the same period, the switch to shop buying clearly has not had any significant effect on overall sales. The evidence from Jersey supports this view as, when the Jersey Dairy ended doorstep deliveries, there was no effect on total milk sales.
- 3.61 There is, therefore, no reason to believe that Retail Price control has protected doorstep sales and prevented the shift of sales to shops. The trend is more likely to be a reflection of changing buying habits and a growing preference of the majority of people to buy their milk with the rest of their grocery shopping.
- 3.62 The Department considers that the actual effect of Retail Price control has been to disadvantage the majority of the buying public in terms of price competition and it therefore recommends that that control is removed.
- 3.63 The Milk Ordinance includes provisions on setting the Retail Price and the Department recommends that those provisions are repealed.

Milk Price Review Panel

- 3.64 The changes in respect of Producer, Gate and Retail Prices discussed above mean that the Milk Price Review Panel will not be needed. The Department therefore recommends that it should be disbanded.

Point 6: The continuation of Dairy Farm Management Contracts.

Conclusions 22, 23, 24 and 25.

- 22. *Dairy Farm Management Contracts should continue, as they are key to the delivery of some of the Island's wider strategic objectives for the environment through a relatively low intensity farm management system.*
- 23. *Future contracts must maintain the current animal welfare and breed improvement requirements, the limits on stocking density, and the need to have a biodiversity action plan in place for the land farmed.*
- 24. *The fund for contract payments should be cut over a five year period reducing to an annual commitment of £1 million by 2019. A further review should be done at the end of this period to assess the need and level for such support beyond that date.*
- 25. *Consideration must be given to the mechanism for contract payments if quota is suspended as the Review Group believe it should be.*

Dairy Farm Management Contracts – to continue

- 3.65 Low intensity farm management helps to deliver some of the Island's wider strategic objectives for the environment and Dairy Farm Management Contracts are the means by which to deliver that type of management. They are also an effective means of channeling general revenue funding to farmers in recognition of the value and importance of the dairy industry and the work they carry out to assist in delivering those objectives.
- 3.66 The Department therefore believes that the Dairy Farm Management Contracts system should continue and that they should retain provisions on stocking density, breed development, animal welfare and the need to have a biodiversity action plan in place for land that is farmed.
- 3.67 Contract payments are currently based on the volume of quota milk supplied to the Dairy. As the Department intends to end the quota system in 2015 and replace it with a system of Milk Supply Contracts, the mechanism for calculating farm management payments will have to change.
- 3.68 The Department proposes that from 2015, the method of calculation should be based on factors such as the area of land managed for recognised environmental and wildlife purposes, the number of cows in milk (and producing more than a minimum level of production per lactation) and participation in the Guernsey breed development program. It intends to consult farmers on this issue before introducing a new funding mechanism.

Dairy Farm Management Payments

- 3.69 Dairy Farm Management Contract payments are an alternative income stream for farmers and the Department considers that the environmental benefits that they deliver justify their continuation in some form. Dairy farmers are also the custodians of the Guernsey breed and that breed helps to differentiate Guernsey from other places and contributes to the Island's unique character.
- 3.70 The Department believes, however, that given the financial circumstances currently being experienced by the States, the scale of payment to farmers has to be critically reviewed.
- 3.71 Contract payments were introduced in 2001 and as a consequence the Retail Price of milk was dramatically reduced. At the time there was concern that a high price for local milk would eventually lead to the importation of cheaper milk. Lowering the Guernsey Retail Price diminished that possibility, but the price has subsequently increased as farming and Dairy costs have risen.
- 3.72 As part of the current review, the Department has been advised that it is possible to redraft the Island's milk legislation to prohibit the importation of milk (discussed in Point 1). Without this control, the industry would be vulnerable to a serious loss of sales if imported milk were to gain a foothold in the local market and the finances of the Dairy and of dairy farms would be undermined.
- 3.73 The Department considers that, with the implementation of effective import controls, the States' annual support funding into the dairy industry can be reduced in the future.
- 3.74 As the contract payments are an income stream for dairy farms, a reduction in those payments may have an impact of the Producer Price paid by the Dairy to farmers for their milk, which may also create an upward pressure on the wholesale price of milk.
- 3.75 This can be mitigated by achieving further operating efficiencies at the Dairy, which in turn, will be facilitated by the changes in Dairy governance discussed earlier in this Report. In addition, the Department believes that farmers must continue to review their operational costs and, if the trend towards fewer, larger farms continues, they must also take advantage of any efficiencies of scale that result from enlargement.
- 3.76 The Department proposes that dairy farm management payments should be reduced by 50% to £1 million per annum, but it recognises that an immediate reduction of that scale would be a shock to farmers and they will need time to adapt to any change in contract payments.
- 3.77 It therefore proposes to introduce the reduction over a five year period, commencing from 1st January 2015, reducing to an annual commitment of £1

million by 2019 with a further review carried out at the end of this period to assess the need for, and level of, support beyond that date.

- 3.78 In the first year the reduction in dairy farm management payments will be made up by an increased Producer Price paid by the Dairy and underwritten from Dairy reserves in order to allow farmers time to adjust to the changing circumstances.
- 3.79 From 2016 onwards, farmers and the Dairy will negotiate the Producer Price and as a consequence the Dairy may increase the Gate Price of milk. In the past an increase in the Gate Price usually led to an increase in the Retail Price and the Department believes that the abolition of Retail Price controls will mean that this is no longer inevitable. The abolition of such price controls from 1st January 2015 is therefore essential to coincide with the introduction of the other measures set out in this Report.

New Slaughterhouse and Beef Production

- 3.80 The new slaughterhouse is operational and supplying the local market. Full licensing (to allow exports) is expected to be granted in the near future.
- 3.81 The construction of this facility opens new opportunities for farmers to derive an income from cull cattle and additional income from rearing beef cattle. It is clear that the number of animals being slaughtered for human consumption has increased since the new slaughterhouse opened and there is evidence that local businesses are already actively looking at new ways to get Guernsey meat onto the local market.

Point 7: Support for farm business development and new entrants.

Conclusions 29 and 30.

- 29. *In the future, farms should be of a size that is suited to generating a reliable operating profit and thus making the industry more sustainable and creating farm businesses that will be commercially attractive to new entrants.*
- 30. *The Department should evaluate the benefit of financial assistance to existing farm businesses and new entrants, perhaps as part of a wider business development scheme for the Island.*
- 3.82 The Department recognises that the capital expense of acquiring stock, land, buildings and equipment is a significant barrier to new entrants into dairy farming.
- 3.83 The trend in the industry has been towards larger farms in order to improve efficiency and achieve economies of scale. The more traditional route into farming, starting with small numbers of animals and increasing the herd size

over time, is no longer a guaranteed way of making a living as the financial viability of small farming units can be precarious.

- 3.84 A more recent development has seen new farmers take over existing farms either outright or by means of an equity agreement whereby a new entrant acquires (say) animals and equipment and rents land and buildings from a retiring farmer.
- 3.85 The Department recognises that, looking at business in general, aspiring entrepreneurs can face significant problems raising start-up funding and existing businesses can also face difficulties raising funds to develop or expand. These difficulties are not confined to farming businesses.
- 3.86 In recognition of this, the Department is working on a more general work stream to review a wide range of business development issues across the economy and this will take into account the requirements of dairy farming and aspiring farmers.

Point 8: Protection for agricultural land and flexibility for ancillary uses.

Conclusions 31, 32 and 33.

- 31. *Agricultural and open land should continue to be protected and left undeveloped, leaving a strategic “land bank” for the future of food production and farming. Using the TRP system to create an incentive could have a positive impact on the availability of land for farming.*
- 32. *Suitable modern farm buildings should be protected for truly agricultural purposes and not given a change of use. Farmers should be able to develop the facilities needed to support the operation of their farms.*
- 33. *Some flexibility in planning should exist to assist farms who want to develop uses linked to the operation of a working farm, such as farm shops, to sell the farm’s produce and so encourage the buying of locally produced food and create interest for visitors and locals.*
- 3.87 There is growing pressure for open land to be put to non-farming uses including incorporation into domestic curtilage and permanent recreation facilities (such as horse stabling). However, the Department believes strongly that if dairy farming is to have a viable and sustainable future, the land that it needs must be strongly protected.
- 3.88 A great deal of open land on the Island has value for agriculture and land of moderate or lower quality should not be discounted as it can be used for the production of grass which is a key element of the feeding regime of dairy cattle.
- 3.89 Furthermore, the increasing costs of importing animal feed are likely to persuade more dairy farmers to explore the possibility of growing their own grain and root

crops to supplement cattle rations as an alternative to such imports. If current trends continue, even in part, then more land will be needed for dairy farming in the coming years rather than less.

- 3.90 The Department believes strongly that there are real opportunities for some dairy farms to diversify to assist their profitability. While such activities as farm shops and visitor focused attractions may not fit the business models of most dairy farms they may be a key development for some. However, any such developments should be carefully controlled and not create a “back-door” to permanent non-farming uses of farm facilities.
- 3.91 The Department also believes that there is merit in examining the possibility of introducing an incentive, using the TRP system, such that land zoned as agricultural which is not used for agricultural purposes should attract a higher charge than land in active use in farming.

Point 9: Modernised arrangements for milk distribution and retailing.

Conclusions 12, 13, 14 and 15.

12. *The Milk Ordinance should be brought up to date, replacing all licences, whether actually issued or not, with non-exclusive Milk Distribution Licences.*
13. *The Dairy should only supply milk to licensed milk distributors and should not deal directly with commercial outlets such as shops unless, in exceptional circumstances, this is unavoidable on a temporary basis to ensure continuity of supply.*
14. *There is no case, or need, for the Department or the Dairy to become involved in matters of the zoning of milk rounds.*
15. *These changed arrangements should come into force as soon as the Milk Ordinance can be revised, hopefully, during 2015.*

Licenses

- 3.92 The Milk Ordinance provides that:
- “10 *Except under and in accordance with the conditions of a licence granted by or on behalf of the Committee for the purposes of this Part of this Ordinance, a person shall not sell by retail any milk*”
- 3.93 This means that a shop that sells (retails) milk to the public requires a licence, but for reasons that are unknown these licences do not appear to have ever been issued. However, the Department does not believe that such a licence is required in modern times as the sale of food to the public is already regulated by food law.

- 3.94 Some milk distributors deliver solely to shops and under a literal interpretation of the Milk Ordinance, this activity does not involve the sale of milk by retail because the distributor sells to a shop and not the final consumer. The Department believes that this situation should be clarified.
- 3.95 It therefore recommends that the Milk Ordinance be amended so that:
- a shop does not require a licence to sell milk; and
 - a “Milk Distribution Licence” will be required by any person who is engaged in the sale of milk to doorstep customers or to shops and other commercial customers (or a combination of both).

Exclusivity

- 3.96 The exclusive right to deliver any Dairy product has been a controversial issue.
- 3.97 It is the Department’s view, based on firm legal advice, that the arrangements for distribution have never been exclusive and the fact that a distributor may have a licence does not, of itself, confer any exclusive rights. The Dairy has always been able to licence additional distributors, but has never chosen to do so and again, the failure to exercise this option does not impart any form of exclusive right to existing distributors.
- 3.98 Notwithstanding these considerations, in 2008, the States directed the Department to give a temporary period of limited exclusivity over the distribution of milk (and of milk products to doorsteps) to distributors until the end of 2015 while the dairy industry was reviewed.
- 3.99 As long ago as 2003, the Department was informed by an adviser to the Guernsey Milk Retailers’ Association that the status of a milk retailer [*sic*] was:
- “ an independent trader who bears the risks and rewards of his/her business.”*
- 3.100 Given that status, the Department does not believe that distributors can justifiably expect to retain any exclusive rights to deliver any Dairy products beyond 2015. Other businesses on the Island accept the same risks as milk distributors without enjoying the protection of exclusive access to the market for the products or services that they sell.
- 3.101 The Department therefore recommends that the milk distribution licences proposed above should be explicitly non-exclusive.

- 3.102 This does not mean that the Dairy will sell milk to anybody. In the future, only licensed milk distributors will be able to purchase milk from the Dairy and the Dairy will be directed not to sell milk directly to shops or undertake milk deliveries of any sort, other than in exceptional circumstances when it is unavoidable to ensure continuity of supply. The Department will require the Guernsey Dairy to adopt the above mentioned commercial trading policies to protect the value and viability of milk rounds, while enabling commercial development that ensures that milk distribution rounds add value to the milk supply chain.
- 3.103 Whilst the Department does not recommend giving exclusive rights to distributors, given the arrangements with the Dairy described above, they will still enjoy a considerable degree of protection from competition, particularly if they honour the agreements they make amongst themselves in terms of zoning (discussed below).

Zoning

- 3.104 The Department has had firm legal advice that a licence does not, nor has it ever, conferred exclusivity in relation to a territory (zone) or particular shop or other outlet. For some time, zones have changed and restructured through commercial discussions, negotiations, and decisions between distributors and between distributors and their customers.
- 3.105 There was little comment during the consultations on the topic of the zoning of milk distribution rounds and the Department notes that for some years the matter has been exclusively handled by the Guernsey Milk Retailers' Association working with distributors as needed. The Dairy and Department have had no information about, or involvement in, zones for some years.
- 3.106 The Department considers that zoning is now, and must remain, a matter for distributors to organise amongst themselves.

Distribution Agreements

- 3.107 As discussed above, the Department endorses a much closer working relationship between the Dairy and farmers.
- 3.108 It also believes that the Dairy should have a more direct working relationship with distributors and that it should be able to negotiate distribution agreements with the distributors to ensure minimum standards for the delivery of its products.

Delivery Charge

- 3.109 The Department accepts the stated (but unverified) position of distributors that doorstep deliveries are not viable and it considers that the obvious solution for

these businesses is to charge for the home delivery service they offer just like any other business that provides such a service.

- 3.110 Clearly, despite the trend of increasing sales of milk through shops, some people prefer the convenience of having their milk delivered. That being so, the Department believes that a person who makes this choice should reasonably expect to pay for the service that has been provided.
- 3.111 It notes that distributors reported that they were currently often hampered from charging a realistic sum for the provision of a doorstep delivery service because of the perception that such a charge effectively increased the Retail Price of milk (which at present is fixed).
- 3.112 The removal of Retail Price control will eliminate this difficulty and to further clarify the position, the Department recommends that any existing provisions of the Milk Ordinance that constrain the distributor's ability to charge for their delivery service should be repealed.

Public Health

- 3.113 There are some limited provisions on public health in the Milk Ordinance that apply to anybody who is involved in the reception, storage, distribution, sale or delivery of milk. These provisions have been superseded by more comprehensive and modern public health legislation and the Department therefore recommends that the relevant provisions be repealed.

Point 10: A new Milk Ordinance.

Conclusions 12, 27 and 28.

- 12. *The Milk Ordinance should be brought up to date, replacing all licences, whether actually issued or not, with non-exclusive Milk Distribution Licences.*
- 27. *Useful powers in the Milk Ordinance should be strengthened and brought up to date, providing clear control over the importation of milk and modernising out of date elements in this legislation.*
- 28. *A revised Milk Ordinance should be drafted without delay and it should be brought into force as soon as possible.*

- 3.114 The Milk Ordinance has been amended several times and the amendments and repeals discussed above will change it further. The outcome of the further amendments and repeals is likely to be a fairly disjointed document and the Department considers that there is merit in repealing the whole of this Ordinance and enacting a new and more coherent (and understandable) Ordinance.

3.115 A new Ordinance would:

- include a new and more comprehensive definition of “milk”, at the very least to include low-fat, skimmed and UHT products (but to retain existing exclusions for milk formulated with other products such as flavoured milk);
- retain the requirement that milk produced by dairy cattle is delivered to the Dairy, subject to certain exemptions for own use by a farmer and retain the power to authorise the use of milk for other purposes (at present one farmer is approved to use some of his milk to make his own ice cream on his farm);
- retain the provision that the Dairy would not pay anything for milk that was unfit for human consumption (either because it had failed to meet the requirements of industry standard tests or it was declared unfit in accordance with local food law);
- retain the general provision that the Dairy could only accept raw milk from farm premises that met the requirements of local food law;
- retain the provisions for licensing, but amended such that a shop would not require a licence and that the requirement to hold a licence would apply to milk distributors generally, regardless of whether they delivered milk to doorsteps, catering establishments, shops or a combination of any or all of these types of customer; and
- include comprehensive controls on the importation of milk, the Dairy being excluded from such controls (there may have to be some exemptions, such as small amounts for personal use which might, for example have been brought to the Island on a visiting yacht and milk on vessels in port, which might also have been acquired elsewhere).

3.116 For the avoidance of doubt, a new Ordinance would not include provisions on price setting, the testing of raw milk, delivery or similar charges or public health.

3.117 The States is empowered to make such an Ordinance under the provisions of the Milk and Milk Products (Guernsey) Law, 1955.

3.118 If the States accepts the Department’s proposal for a new Milk Ordinance, it will have to be drafted and returned to the Assembly for approval. If this has not occurred on 1st January 2015, the Department intends to repeal the Retail Price Order that is in effect at that time.

4. Resource Implications

4.1 The Department will not require any additional staff or financial resources to implement the recommendations in this Report.

- 4.2 Indeed, a fundamental thread running through the entire dairy industry review process, and reported in greater detail in the Review Report, has been to seek to ensure that the Island gets good the value for money from the support provided to the industry.
- 4.3 The Department believes firmly that this approach answers the request from the Treasury and Resources Department for the subsidies provided to the dairy industry to be the subject of a value for money review, when developing its comprehensive and coherent vision for the future of industry.
- 4.4 For the avoidance of doubt, the Department intends that funding removed from the dairy farm management payments as proposed in this Report should be returned to general revenue.

5. Consultation

- 5.1 The consultations carried out by the Review Group are set out in Appendix 2 of its report (“the Review”) and the Law Officers have been consulted on this States Report.

6. Principles of Good Governance

- 6.1 The proposals in this States Report comply with the principles of Good Governance as defined in Billet d’État IV of 2011.

7. Recommendations

- 7.1 The Commerce and Employment Department recommends that the States:
 - a) Agrees in principle to the investigation of options for the granting of greater commercial freedom for the operation and governance of the Guernsey Dairy and directs the Commerce and Employment Department to submit a report on this matter to the States of Deliberation with the aim of this being done in 2015, but mindful of the work of the States Review Committee in respect of the future governance of States Trading bodies:
 - b) Agrees that the general revenue funding for dairy farm management payments should be reduced by £1 million in five equal steps over a five year period commencing on 1st January 2015:
 - c) Agrees that the Milk Price Review Panel be disbanded:
 - d) Repeals the Milk Control (Guernsey) Ordinance, 1958, as amended:

- e) Approves the proposals for a new Milk Ordinance as set out in paragraphs 3.114 to 3.116 of this Report:
- f) Directs the preparation of the legislation necessary to give effect to the above decision.

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

- (N.B. The Treasury and Resources Department notes the comprehensive and evidenced report on the Review of the Dairy Industry and is broadly supportive of its recommendations, particularly the desire to modernise the governance and structure of support given to the dairy industry. However, it is noted that there are a number of risks to delivery of the recommendations which could have financial implications which undoubtedly the Commerce and Employment Department will consider and, if necessary, put into place appropriate mitigation measures.

The July 2014 States Report entitled “States Capital Investment Portfolio” includes “The Treasury and Resources Department is of the opinion that there should be clearly understood and documented governance and approval processes in place for all such [internal trading] entities including delegated authority from the States where necessary. The Department intends to initiate, in collaboration with other interested Departments, a review of the overall governance arrangements for internal trading entities to ensure consistency and suitable ongoing States oversight of these operations.” The Department looks forward to working with the Commerce and Employment Department to progress this review in conjunction with its investigation of options for the granting of greater commercial freedom for the operation and governance of the Guernsey Dairy.

The return to General Revenue of £1million, phased in equal amounts over a five year period beginning in 2015, is welcomed and the £200,000 arising in 2015 will be added to the Budget Reserve.)

- (N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d’État IV of 2011.)

The States are asked to decide:-

IX.- Whether, after consideration of the Report dated 1st July, 2014, of the Commerce and Employment Industry, they are of the opinion:-

1. To agree in principle to the investigation of options for the granting of greater commercial freedom for the operation and governance of the Guernsey Dairy and to direct the Commerce and Employment Department to submit a report on this matter to the States of Deliberation with the aim of this being done in 2015, but mindful of the work of the States Review Committee in respect of the future governance of States Trading bodies.
2. To agree that the general revenue funding for dairy farm management payments be reduced by £1 million in five equal steps over a five year period commencing on 1st January 2015.

3. To agree that the Milk Price Review Panel be disbanded.
4. To repeal the Milk Control (Guernsey) Ordinance, 1958, as amended.
5. To approve the proposals for a new Milk Ordinance as set out in paragraphs 3.114 to 3.116 of this Report.
6. To direct the preparation of the legislation necessary to give effect to their above decisions.

TREASURY AND RESOURCES DEPARTMENT

GUERNSEY ELECTRICITY LIMITED – ANNUAL REPORT AND ACCOUNTS

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

2nd July 2014

Dear Sir

Executive Summary

1. The Annual Report and Accounts of Guernsey Electricity Ltd are hereby presented to the States.

Guernsey Electricity – Annual Report and Accounts

2. Under the terms of section 8 of the States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, the Department is required to submit Guernsey Electricity's Annual Report and Accounts to the States for their consideration.
3. Guernsey Electricity's Annual Report and Accounts for the year ending 31st March, 2014, are therefore appended to this Report.
4. The Company made a loss on ordinary activities before taxation of £231,000 for the year ending 31st March, 2014, compared to a loss of £3,353,000 for the previous year. As a consequence, no dividend will be payable in 2014.

Principles of Good Governance

5. This report is produced in accordance with the principles of good governance. In submitting this report to the States in accordance with its legal obligations, the Department is complying with those principles relating to effective performance in clearly defined functions and roles.

Recommendation

6. The Treasury and Resources Department recommends the States:
 - (i) To note the Annual Report and Accounts for Guernsey Electricity Ltd for the year-ending 31st March, 2014.

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)

Guernsey Electricity Limited

Report and financial statements

31 March 2014

Guernsey Electricity Limited

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Directors, officers and professional advisers

Directors:	Advocate IH Beattie	(non-executive chairman)
	AM Bates	(managing)
	DS Hipple	(finance) from 9 July 2013
	IJ Limond	(finance) retired 9 July 2013
	RW Beebe	(operations)
	S-A David	(corporate strategy)
	D Farrimond	(non-executive) retired 6 August 2013
	MJ Mann	(non-executive)
	RP Lawrence	(non-executive)
	IA Hardman	(non-executive)
	RJ Dutnall	(non-executive) appointed 6 August 2013
	CM Holmes	(non-executive) appointed 6 August 2013

Secretary: SB Pattimore

Bankers: Barclays Bank Plc
PO Box 41
Le Marchant House
St Peter Port
Guernsey
GY1 3BE

HSBC Bank Plc
Arnold House
St Julians Avenue
St Peter Port
Guernsey
GY1 3AT

Legal advisers: Mourant Ozannes
1 Le Marchant Street
St Peter Port
Guernsey
GY1 4HP

Independent auditor: KPMG Channel Islands Limited
PO Box 20
20 New Street
St Peter Port
Guernsey
GY1 4AN

Registered office: PO Box 4
Electricity House
North Side
Vale
Guernsey
GY1 3AD

Company number: 38692

Guernsey Electricity Limited

Chairman's statement

The 2013/14 financial year has been a much improved one for Guernsey Electricity. Following the cable failures of 2012, we have not experienced any further major operational issues and the organisation has been able to continue to deliver electricity supplies and a high quality service to its customers.

The major focus during the year has been planning for and the proposed delivery of further imported power. Working with our colleagues at Jersey Electricity I am pleased to report that we expect the next cable between Jersey and France to be operational this autumn which will significantly increase our importation capacity. Our plans now are directed to delivering increased resilience of imported supplies and we will be making proposals to our shareholder this summer to support further investment.

We are acutely aware of our responsibility to our customers and the infrastructure of the Island and our commitment remains to provide reliable and affordable energy. It is clear to me that this can only be achieved with the loyalty and commitment of our dedicated staff and I would like to take this opportunity to thank them for their support.

There are a number of changes to the Board which I would like to note. Martyn Mann who has served the Board as a non-executive director for the past 6 years is retiring on 1 July 2014. He has provided reliable guidance and support during that period and we are indebted to him. Also following the departure of David Farrimond in 2013 and in anticipation of Martyn's departure, we recruited two new non-executives; Bob Dutnall and Christine Holmes, both of whom joined the Board in August 2013.

Guernsey Electricity Limited

Managing director's report

The last year has been a much more stable one for Guernsey Electricity in terms of its operational activities. Following the repair of the Guernsey to Jersey sub-sea cable in 2012 we have had a full year in which we have been able to import power from France, although the actual amount of that import has been significantly lower than we would like. Nevertheless we have almost been able to return to a breakeven operating result following last year's £3.4m loss, and more importantly, maintain our tariffs at the levels that were set in October 2012.

Business Performance

Our import capability has been restricted for the whole of the financial year due to the fact that the Channel Islands Electricity Grid, of which Guernsey Electricity is a joint venture partner, has only one operational cable between Jersey and France. As a result, the amount of electricity available to us via this route has been limited, equating to 156 MWh, just 41% (28% last year) of our total supply to the Island. As last year, the consequence of less imported power has adversely affected our financial performance.

Another factor affecting the financial performance was that we experienced a particularly mild winter. Temperatures during that period were almost two degrees above 2012/13 and there were no cold spells; this contrasted with the previous year which brought heavy snowfalls and very cold weather. The result is that we have seen a 4% reduction in electricity usage by our customers and these combined factors have led to a reduction in revenue, however, by carefully controlling costs, we have limited our financial loss to only £0.2m before tax.

The winter storms in January led to a complete loss of imported power for over two hours as RTE, the French transmission operator, experienced an interruption to their network. This affected both Guernsey and Jersey but the resilience that our on-Island generation provides meant that we were able to minimise disruption and maintain supplies in Guernsey with just 13,000 customers being off supply for up to 25 minutes.

Whilst the loss of power is never good news, I am pleased to report that Island customers, both domestic and commercial, only experienced 37.2 minutes loss of supply on average compared to 68.6 minutes lost during the previous financial year. The risk mitigation and standby procedures we have introduced, and which we continually monitor, have enabled us to continue to meet customers' demands for electricity supply.

Major Project

In February of this year we commissioned and began operating our new medium speed Diesel engine, 2D which provides us with an additional 17MW of on-Island generating capacity. This enormous piece of equipment, weighing in at almost 400 tonnes, could be seen by many Islanders as it was unloaded at St Sampson's Harbour in August 2012 and transported along the quayside to the power station. Its installation has been a major project for the company and represents a significant investment.

Financial Performance

The last year has seen a significant improvement in the company's trading performance with overall results showing an operating loss of £0.3m compared with a loss of £3.4m the previous year. The improvement has come from lower costs and the full year impact of the October 2012 price increase of 9%. In 2012 we suffered the loss of our import cable for 6 months which resulted in reliance on generation whilst this year the cable has operated without interruption. Our costs therefore, show a reduction in generation expenditure and an increase in lower priced imports, however due to the restrictions in our import capacity it has still been necessary to generate locally to meet 59% of customer demand.

Guernsey Electricity Limited

Managing director's report - continued

Overall loss before tax was £0.2m, an improvement of £3.2m from the prior year loss of £3.4m. The results reflect a good performance given the operational difficulties. The company continues to benefit from a strong balance sheet with our fixed asset base of £112.3m increasing by £12.1m from the previous year reflecting our investment of £12.6m in the Normandie 3 (N3) cable from Jersey to France.

The net cash outflow for the year of £10.7m compared with £8.1m in the previous year is largely attributable to net capital expenditure which had a net cash cost of £18.7m. This comprised an £8m increase over the previous year, principally as a result of the investment in the N3 cable. Cash inflow from operating activities increased from £2.2m last year to £7.7m this year as a result of the company's improved operating results.

At the year-end we had net debt of £1.8m comprising £6.0m loans and closing cash balances of £4.2m compared to net cash balances of £9.0m last year; these amounts include balances with the States of Guernsey of £3.5m (2013:£4.3m)

Shareholder's funds have decreased by £2.1m, from £98.5m to £96.4m. This was a result of £0.2m of post-tax losses for the year and the actuarial loss in the pension scheme, net of the movement in deferred tax relating to the pension deficit of £1.9m. The company is part of the States of Guernsey Pension Scheme.

The net pension deficit after deferred tax, reported under Financial Reporting Standard 17 ("FRS 17") Retirement Benefits, has increased from £15.2m to £18.1m. We await the outcome of the current changes proposed for the States' Public Servants Pension Scheme; we support the position that the scheme is no longer affordable or sustainable.

The Future

For Guernsey Electricity, our strategic priorities are aligned with delivering a reliable and efficient electricity service in a challenging environment, both in terms of size and energy supply. Guernsey is a small Island with only 30,000 customers and as a guiding principle, our aim is to ensure we maintain affordability today whilst also planning for increased security and carbon reductions into the future. The geographic location of the Island in relation to Jersey and France is such that the importation of electricity supplies does present problems and risks which will remain until the import infrastructure is more robust. As a consequence we have to be in a position to generate locally to meet the whole Island's demands if necessary.

We have been working closely with Jersey Electricity for a number of years strategically and practically, planning the installation of a further cable from Jersey to France (N3) which, when commissioned, will enable us to increase our electricity imports to between 80 and 90%. We are moving towards a future whereby we will only need to operate the power station for short periods of high demand or when imported supplies are interrupted.

Guernsey Electricity Limited

Managing director's report - continued

A key issue for the company is that even with a robust and resilient cable network in place we are still required to maintain an on-Island generation facility under the N-2 security standard previously set by the States of Guernsey; this standard requires Guernsey Electricity to ensure sufficient capacity to meet maximum demand in the event of the loss of its two largest sources of supply. Following a recent investigation by the States of Guernsey Scrutiny Committee, we expect to receive feedback as to the appropriateness of the current security requirement later this year. In addition, a report on strategy and security of supply has been jointly produced by the Policy Council, Treasury & Resources Department and the Commerce & Employment Department and following consultation will be considered by the States in July. It would appear unlikely that there will be significant changes to the security policy or the requirement to maintain on-Island generation, however Guernsey Electricity continues to keep a watching brief on commercially viable alternatives, particularly in relation to the role both renewables and energy storage will play in the future.

The Team

I would like to finally stress that the company and its employees remain fully committed to providing a high level of service to its customers and that we will continue to deal with the challenges we face whilst striving to improve what we do in the future.

Guernsey Electricity Limited

Directors' report

The directors present their report and the audited financial statements for the year ended 31 March 2014. These comprise the Profit and Loss Account, Statement of Total Recognised Gains and Losses, Balance Sheet, Cash Flow Statement and notes to the financial statements set out on pages 21 to 38.

Incorporation

Guernsey Electricity Limited was incorporated on 24 August 2001.

Principal activities

The principal activities of the company are the generation, importation and distribution of electricity and the sale of associated goods and services.

Customers

The number of customers as at 31 March 2014 is 29,812 (2013: 29,633).

Units

Importation through the cable link between Guernsey, Jersey and the European grid provided 41% (2013: 28%) of the island's electricity needs in the year ended 31 March 2014 and 59% (2013: 72%) was generated on the island, as shown by the units analysis below:

	2014	2013
Units imported MWh	155,964	111,244
Units generated MWh	<u>227,057</u>	<u>288,760</u>
Total units imported/generated MWh	<u>383,021</u>	<u>400,004</u>

Average price

The average price per kWh sold in the year ended 31 March 2014 was 14.92 pence (2013: 14.43 pence) and this change was primarily as a result of the 9% tariff increase which was effective from 1 October 2012.

Reliability

The reliability of Guernsey Electricity's supply is measured by minutes lost per customer. Power outages can be caused by failures of generation plant, the distribution network or the cable link. Customers lost 10.80 minutes due to generation activity (2013: 24.65 minutes) and 26.35 minutes were lost per customer in respect of distribution (2013: 43.95 minutes).

Directors and their interests

The directors of the company, who served during the year and to date, are as detailed on page 1. The directors have no beneficial interests in the shares of the company.

Guernsey Electricity Limited

Directors' report - continued

Disclosure of Information to auditor

The directors who held office at the date of approval of this directors' report confirm that, so far as they are each aware, there is no relevant audit information of which the company's auditor is unaware; and each director has taken all the steps that he ought to have taken as a director to make himself aware of any relevant audit information and to establish that the company's auditor is aware of that information.

Auditor

A resolution for the appointment of auditor will be proposed at the forthcoming Annual General Meeting.

For and on behalf of the Board of Directors



IH Beattie



DS Hipple
Directors

10 June

2014

Guernsey Electricity Limited

Corporate governance

Guernsey Electricity's corporate governance arrangements are based on the proportionate and relevant application of good practice principles in corporate governance and predominantly those contained within the UK Corporate Governance Code published in September 2012.

Directors

In accordance with The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, as amended, the non-executive directors are appointed by the States of Guernsey on the nomination of the States of Guernsey Advisory & Finance Committee, now the Treasury & Resources Department. The first executive directors were appointed by the Advisory & Finance Committee after consultation with the non-executive directors. Further appointments of executive directors are made by the company's Board of Directors.

The Board's role is to provide entrepreneurial leadership of the company within a prudent framework of risk management and internal control. The Board is responsible for setting and implementing strategy, allocating the necessary human and financial resources to meet the company's objectives and monitoring the performance of management against those objectives. The Board is collectively accountable for the success of the company, sets its values and standards and takes decisions objectively in the interests of the company, its shareholders and other stakeholders.

Non-executive directors help to develop and challenge the company's strategy. They evaluate the performance of management and monitor the reporting of performance. They consider the integrity of financial information and the strength of financial controls and risk management systems. They oversee executive remuneration and play the main role in the appointment, removal and succession planning for executive directors.

Matters referred to the Board are governed by a scheme of delegated authorities that provides the framework for the decisions to be taken by the Board, those which must be referred back to the shareholder and those which can be delegated to Sub-Committees of the Board or senior management.

There were 10 Board meetings held during 2013/14. If a Board member cannot attend a meeting, they receive a copy of the agenda and the accompanying papers in advance of the meeting and are able to comment on the matters to be discussed.

The names of directors and the membership of the Board Sub-Committees are set out in the sections below. The Board Sub-Committees have authority to make decisions according to their terms of reference.

Chairman and Chief Executive

Guernsey Electricity has a non-executive chairman and a managing director. There is a clear division of responsibilities between the two positions with the chairman responsible for the running of the Board and the managing director responsible for the running of the company's business.

Ian Beattie spends on average 1 day per week in his role as chairman. The Board consider that he has no other external directorships which make conflicting demands on his time as chairman.

Robert Lawrence is the deputy chairman appointed by the Board.

Guernsey Electricity Limited

Corporate governance - continued

Board balance and independence

Throughout the year the company has had a balance of independent non-executive directors on the Board who ensure that no one person has disproportionate influence. There are currently six non-executive directors and four executive directors on the Board.

All of the non-executive directors bring with them significant commercial experience from different industries, which ensures that there is an appropriate balance of skills on the Board.

Appointments to the Board

During 2013 Iain Limond and David Farrimond retired from the Board. David Hipple, Robert Dutnall and Christine Holmes joined the Board.

Recommendations for appointments to the Board are the responsibility of the Remuneration & Nominations Sub-Committee. The appointment of non-executive directors is made by resolution of the States of Deliberation. All Board appointments are made in accordance with the provisions of the States Trading Companies (Bailiwick of Guernsey) Ordinance 2001 and the company's Articles of Incorporation.

Information and professional development

For each scheduled Board meeting the chairman and the Company Secretary ensure that the directors receive a copy of the agenda for the meeting, company financial, strategic and operating information and information on any other matter which is to be referred to the Board for consideration. The directors also have access to the Company Secretary for any further information they require. In the months where there is no scheduled Board meeting, the directors receive the prior month and cumulative company financial and operating information.

All newly appointed directors participate in an internal induction programme that introduces the director to the company and key stakeholders.

The Company Secretary, who is appointed by the Board is responsible for facilitating compliance with Board procedures. This includes recording any concerns relating to the running of the company or proposed actions arising there from, that are expressed by a director in a Board meeting. The Company Secretary is also secretary to all of the Board's Sub-Committees. The Company Secretary is available to give ongoing advice to all directors on Board procedures and corporate governance matters.

Guernsey Electricity Limited

Corporate governance - continued

Attendance at Board meetings

Attendance during the year for Board meetings is given in the table below:

Director	Meetings Attended/Total Meetings Held
IH Beattie	10/10
AM Bates	10/10
DS Hipple	7/8
RW Beebe	7/10
S-A David	8/10
MJ Mann	10/10
RP Lawrence	10/10
IA Hardman	9/10
RJ Dutnall	6/7
CM Holmes	5/7
IJ Limond (retired during year)	2/2
D Farrimond (retired during year)	2/2

Performance evaluation

The Board undergoes an annual evaluation of its performance. The last assessment was for the period up to 30 April 2013 and the next assessment is currently taking place. The evaluation consists of an internally produced confidential questionnaire, which is independently assessed by the Company Secretary who then prepares a report for consideration by the Board.

Election and re-election of directors

Guernsey Electricity's Articles of Incorporation require that non-executive directors retire by rotation but provide that they are eligible for re-election. Non-executive directors are submitted for re-election in accordance with the principles agreed with the company's shareholder. Non-executive directors serve the company under letters of appointment, which are generally for an initial three year term.

At the 2014 annual general meeting, IA Hardman and RP Lawrence will retire from the Board by rotation and will be recommended by the Board for re-election. M Mann will retire from the Board at the 2014 annual general meeting in accordance with the principles agreed with the shareholder.

Remuneration

The Board recognises the importance of executive directors' remuneration in recruiting, retaining and motivating the individuals concerned. Executive directors' remuneration consists of basic salary, benefits in kind, bonus and retirement benefits. Fees for the chairman and non-executive directors are determined by the Treasury & Resources Department.

Guernsey Electricity Limited

Corporate governance - continued

Remuneration (continued)

The Remuneration & Nominations Sub-Committee, which is chaired by Martyn Mann, consists solely of a minimum of two non-executive directors and determines remuneration levels and specific packages appropriate for each executive director, taking into account the executive director and senior management remuneration policy as agreed from time to time by the Board. No director is permitted to be involved in deciding the amount of his or her own remuneration. The Remuneration & Nominations Sub-Committee considers that the policy and procedures in place provide a level of remuneration for the directors which is both appropriate for the individuals concerned and in the best interests of the shareholder.

The Remuneration & Nominations Sub-Committee is also tasked with considering the balance of the Board, director and senior management job descriptions and objective criteria for Board appointments and succession planning.

Accountability and Audit

Financial reporting

The company has a comprehensive system for reporting the financial performance of the company and each of its business units. Management and the Board of Directors review these monthly. The financial statements for the accounting period ending on the accounting reference date of 31 March are reviewed and signed on behalf of the Board of Directors, and will be presented to the shareholder at the forthcoming annual general meeting.

Internal control and risk management

During 2013/14 the executive team continued to identify, monitor and review the risks facing the business, so as to be able to put into place and maintain robust controls and actions to manage them. The Board is updated regularly on risk matters. The risk management process is the responsibility of the Corporate Strategy Director.

All directors are responsible for establishing and maintaining an effective system of internal control. Whilst all elements of risk cannot be eliminated, the system aims to identify, assess, prioritise and where possible, mitigate the company's risks. Although no system of internal control can provide absolute assurance against material misstatement or loss, the company's systems are designed with the purpose of providing the Board with reasonable assurance that assets are safeguarded, transactions are properly authorised and recorded and that material errors and irregularities are either prevented or detected within a timely period.

The Board obtains its assurance on the effectiveness of the system of internal control from a variety of sources, including internal audit, regular updates on risk management and internal control, health and safety, monthly management information and representations from the executive team.

Internal audit has a continuing role in monitoring and reporting on business risks. This service continues to be provided by Baker Tilley (formerly RSM Tenon), a leading entity in providing such services. The Corporate Strategy Director, in association with Baker Tilley, reports on all internal audit work in accordance with the plan approved by the Audit & Risk Sub-Committee. Specialist engineering audits complement this, again as approved by the Audit & Risk Sub-Committee.

The company has established controls and procedures over the security of data held on IT systems and has in place comprehensive disaster recovery arrangements. These arrangements are tested regularly and reviewed by independent consultants.

Guernsey Electricity Limited

Corporate governance - continued

Audit & Risk Sub-Committee and auditor

The purpose of the Audit & Risk Sub Committee is to assist the Board of Directors of Guernsey Electricity Limited in the effective discharge of the Board's responsibilities for risk management, financial reporting and internal control in order to ensure high standards of probity and good corporate governance. In doing so, the Audit & Risk Sub-Committee is required to act independently of the executive and seek to safeguard the interest of the company shareholder.

The Board has delegated responsibility to the Audit & Risk Sub-Committee for reviewing the effectiveness of the system of internal control and compliance, accurate external financial reporting, fulfilling its obligations under the law. Whilst the Sub-Committee has no executive powers, it has wide ranging terms of reference and reports to the Board on a regular basis. It is empowered to make recommendations to the Board where such are considered necessary to ensure the proportionate and relevant application of good practice principles in corporate governance and the management of the company's relationship with the company's external auditor.

The Audit & Risk Sub-Committee members comprise non-executive directors. Robert Lawrence is the chairman of the Audit & Risk Sub-Committee and the Board is satisfied that the Sub-Committee has through its membership, access to recent and relevant experience to enable the duties of the Sub-Committee to be fully discharged.

The Audit & Risk Sub-Committee meets at least once a year with representatives of the company's external auditor.

The membership of this Sub-Committee during the financial year was as follows:

For the period from 1 April 2013 to 6 August 2013:

Chairman: D Farrimond
Member: IH Beattie
RP Lawrence

With effect from 6 August 2013:

Chairman: RP Lawrence
Members: IH Beattie
RJ Dutnall
CM Holmes

Attendance during the year for Audit & Risk Sub-Committee meetings is given in the table below:

Director	Meetings Attended/Total Meetings Held
RP Lawrence	3/4
IH Beattie	4/4
RJ Dutnall	2/3
CM Holmes	3/3
D Farrimond	1/1

Guernsey Electricity Limited

Corporate governance – continued

Sub-Committees of the Board and main terms of reference

In addition to regular scheduled Board meetings, the company operates through Board Sub-Committees, of which the main terms of reference are set out below (except the Audit & Risk Sub-Committee which is outlined above).

Remuneration & Nominations Sub-Committee

Martyn Mann is the chairman of the Remuneration & Nominations Sub-Committee.

The purpose of the Remuneration & Nominations Sub-Committee is to assist the Board in the effective discharge of its responsibilities for the remuneration and other employment conditions of executive directors and senior management and to act as a Nominations Sub-Committee as the need arises.

In deciding the remuneration and other employment conditions of executive directors, the Sub-Committee acts independently of the executive and seek to safeguard the interests of the company's shareholder.

In respect of remuneration matters the Sub-Committee's responsibilities include:

- The determination, maintenance, and development of documentation, detailing broad company policy and clear, formal and transparent procedures in regard to remuneration and performance related issues in respect of executive and senior management remuneration, bonus and performance matters. This is done on behalf of the Board and all significant policy and procedural changes in relation to remuneration matters must be approved by the whole Board.
- The determination of the remuneration and other employment conditions of executive directors and senior management (including contractual issues) with the objective of ensuring that executive directors and senior management are provided with appropriate incentives which will encourage enhanced performance and that they are competitively, fairly and responsibly rewarded for their individual contributions to the company's overall performance.

In respect of nomination matters, the main terms of reference of this Sub-Committee are to review regularly the structure, size and composition of the Board and to make recommendations on the role and nomination of directors for appointment to the Board and holders of any executive office.

The membership of this Sub-Committee during the financial year was as follows.

For the period from 1 April 2013 to 6 August 2013:

Chairman: MJ Mann
 Members: IH Beattie
 IA Hardman

With effect from 6 August 2013:

Chairman: M J Mann
 Members: IH Beattie
 IA Hardman
 RJ Dutnall
 CM Holmes

Guernsey Electricity Limited

Corporate governance - continued

Remuneration & Nominations Sub-Committee (continued)

Attendance during the year for Remuneration & Nominations Committee meetings is given in the table below:

Director	Meetings Attended/Total Meetings Held
MJ Mann	3/3
IH Beattie	3/3
IA Hardman	3/3
RJ Dutnall	2/2
CM Holmes	1/2

Land & Property Sub-Committee

David Hipple is chairman of the Land & Property Sub-Committee. The main terms of reference for this Committee are to review and approve all routine property transactions undertaken by the company up to a limit set by the Board and to undertake such other tasks relating to land and property as directed by the Board. This Sub-Committee comprises the chairman of the Board together with all of the executive directors.

Attendance during the year for Land & Property Sub-Committee meetings is given in the table below:

Director	Meetings Attended/Total Meetings Held
DS Hipple	3/4
S-A David	5/7
RW Beebe	5/7
IH Beattie	7/7
AM Bates	5/7
IJ Limond (retired during year)	2/2

Relations with the shareholder

The company's issued share capital is wholly owned by the States of Guernsey. The States Trading Companies (Bailiwick of Guernsey) Ordinance, 2001, as amended, provided for the States of Guernsey Advisory & Finance Committee (now Treasury & Resources Department) to undertake, on behalf of the States, the role of shareholder. In accordance therewith, the share certificates for the whole issued share capital are held equally in the names of the Minister and Deputy Minister of the Treasury & Resources Department, in trust, as nominees, on behalf of the States of Guernsey. Provision is also in place for the States to give guidance to the Treasury & Resources Department on the policies it wishes to be pursued in fulfilling this role. Each year, the company submits its forward plan to the Treasury & Resources Department. In addition, the company has signed a memorandum of understanding with the States' shareholder representative concerning the manner in which the company and its shareholder's representatives will interact in respect of stewardship and corporate governance matters generally.

Guernsey Electricity Limited

Statement of directors' responsibilities

The directors are responsible for preparing the Directors' Report and the financial statements in accordance with applicable law and regulations.

Company law requires the directors to prepare financial statements for each financial year. Under that law, they have elected to prepare the financial statements in accordance with UK Accounting Standards and applicable law.

The financial statements are required by law to give a true and fair view of the state of affairs of the company and of the profit or loss of the company for that period.

In preparing these financial statements, the directors are required to:

- select suitable accounting policies and then apply them consistently;
- make judgements and estimates that are reasonable and prudent;
- state whether applicable accounting standards have been followed, subject to any material departures disclosed and explained in the financial statements; and
- prepare the financial statements on the going concern basis, unless it is inappropriate to presume that the company will continue in business.

The directors are responsible for keeping proper accounting records which disclose, with reasonable accuracy at any time, the financial position of the company and to enable them to ensure that the financial statements comply with the Companies (Guernsey) Law, 2008. They have general responsibility for taking such steps as are reasonably open to them to safeguard the assets of the company and to prevent and detect fraud and other irregularities.

Independent auditor's report to the members of Guernsey Electricity Limited

We have audited the financial statements of Guernsey Electricity Limited (the "Company") for the year ended 31 March 2014 which comprise the Balance Sheet, Profit and Loss Account, Statement of Total Recognised Gains and Losses, the Cash Flow Statement, and the related notes. The financial reporting framework that has been applied in their preparation is applicable law and United Kingdom Accounting Standards.

This report is made solely to the Company's members, as a body, in accordance with section 262 of the Companies (Guernsey) Law, 2008. Our audit work has been undertaken so that we might state to the Company's members those matters we are required to state to them in an auditor's report and for no other purpose. To the fullest extent permitted by law, we do not accept or assume responsibility to anyone other than the Company and the Company's members as a body, for our audit work, for this report, or for the opinions we have formed.

Respective responsibilities of directors and auditor

As explained more fully in the Statement of Directors' Responsibilities set out on page 15, the directors are responsible for the preparation of the financial statements and for being satisfied that they give a true and fair view. Our responsibility is to audit and express an opinion on the financial statements in accordance with applicable law and International Standards on Auditing (UK and Ireland). Those standards require us to comply with the Auditing Practices Board's (APB's) Ethical Standards for Auditors.

Scope of the audit of the financial statements

An audit involves obtaining evidence about the amounts and disclosures in the financial statements sufficient to give reasonable assurance that the financial statements are free from material misstatement, whether caused by fraud or error. This includes an assessment of: whether the accounting policies are appropriate to the Company's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Board of Directors; and the overall presentation of the financial statements. In addition, we read all the financial and non-financial information in the Directors' Report to identify material inconsistencies with the audited financial statements and to identify any information that is apparently materially incorrect based on, or materially inconsistent with, the knowledge acquired by us in the course of performing the audit. If we become aware of any apparent material misstatements or inconsistencies we consider the implications for our report.

Opinion on financial statements

In our opinion the financial statements:

- give a true and fair view of the state of the Company's affairs as at 31 March 2014 and of its loss for the year then ended;
- are in accordance with United Kingdom Accounting Standards; and
- comply with the Companies (Guernsey) Law, 2008.

Matters on which we are required to report by exception

We have nothing to report in respect of the following matters where the Companies (Guernsey) Law 2008 requires us to report to you if, in our opinion:

- the Company has not kept proper accounting records; or
- the financial statements are not in agreement with the accounting records; or
- we have not received all the information and explanations, which to the best of our knowledge and belief are necessary for the purpose of our audit.

KPMG Channel Islands Limited
 KPMG Channel Islands Limited
 Chartered Accountants
 Guernsey
 11/5/14

2014

Guernsey Electricity Limited

Profit and loss account for the year ended 31 March 2014

	Note	2014 £'000	2013 £'000
Turnover	2	55,895	56,443
Cost of sales		<u>(43,928)</u>	<u>(48,140)</u>
Gross profit		11,967	8,303
Net operating expenses		<u>(12,222)</u>	<u>(11,714)</u>
Operating loss	3	(255)	(3,411)
Loss on disposal of assets		<u>(88)</u>	<u>(235)</u>
Loss on ordinary activities before interest, other finance cost and other income		(343)	(3,646)
Interest receivable	4	402	257
Interest payable	4	(82)	(1)
Other finance cost		(208)	(161)
Other income	5	<u>-</u>	<u>198</u>
Loss on ordinary activities before taxation		(231)	(3,353)
Taxation	6	<u>37</u>	<u>831</u>
Loss for the financial year after taxation		<u>(194)</u>	<u>(2,522)</u>

All activities derive from continuing operations.

The notes on pages 21 to 38 form an integral part of these financial statements.

Guernsey Electricity Limited

Statement of total recognised gains and losses for the year ended 31 March 2014

	<i>Note</i>	2014 £'000	2013 £'000
Loss for the financial year		(194)	(2,522)
Actuarial loss recognised in the pension scheme	23	(2,298)	(1,540)
Movement on deferred tax relating to pension deficit	14	443	301
		<hr/>	<hr/>
Total recognised loss for the year		<u>(2,049)</u>	<u>(3,761)</u>

The notes on pages 21 to 38 form an integral part of these financial statements.

Guernsey Electricity Limited

Balance sheet

at 31 March 2014

	Note	2014 £'000	2013 £'000
Tangible fixed assets	8	<u>112,300</u>	<u>100,186</u>
Current assets			
Stocks and work in progress	9	6,385	7,236
Debtors and prepayments	10	11,714	12,525
Balances with States Treasury	11	3,510	4,346
Cash at bank and in hand		<u>734</u>	<u>4,632</u>
		<u>22,343</u>	<u>28,739</u>
Creditors: amounts falling due within one year	12	<u>(9,260)</u>	<u>(10,612)</u>
Net current assets		<u>13,083</u>	<u>18,127</u>
Total assets less current liabilities		125,383	118,313
Creditors: amounts falling due after more than one year	13	(10,159)	(4,057)
Provision for liabilities and charges	14	(750)	(619)
Net pension deficit	23	<u>(18,064)</u>	<u>(15,178)</u>
Net assets including pension deficit		<u>96,410</u>	<u>98,459</u>
Share capital	15	109,209	109,209
Reserves	19	<u>(12,799)</u>	<u>(10,750)</u>
Shareholders' funds	20	<u>96,410</u>	<u>98,459</u>

The financial statements on pages 17 to 38 were approved by the Board of Directors on 10 June 2014.

Signed on behalf of the Board of Directors

IH Beattie

DS Hipple
Directors

The notes on pages 21 to 38 form an integral part of these financial statements.

Guernsey Electricity Limited

Cash flow statement
for the year ended 31 March 2014

	<i>Note</i>	2014 £'000	2013 £'000
Net cash inflow from operating activities	<i>16</i>	<u>7,669</u>	<u>2,191</u>
Returns on investments and servicing of finance			
Interest received		389	241
Interest paid		<u>(44)</u>	<u>(1)</u>
Net cash inflow from returns on investments and servicing of finance		<u>345</u>	<u>240</u>
Capital expenditure and financial investment			
Payments to acquire tangible fixed assets		(19,076)	(11,050)
Proceeds of disposal of tangible fixed assets		12	12
Customers' contributions towards capital expenditure		<u>316</u>	<u>305</u>
Net cash outflow from capital expenditure and financial investment		<u>(18,748)</u>	<u>(10,733)</u>
Other income	<i>5</i>	-	198
Net cash outflow before use of liquid resources and financing		<u>(10,734)</u>	<u>(8,104)</u>
Management of liquid resources			
Net cash movements with States Treasury		<u>(836)</u>	<u>(12,483)</u>
Financing			
Amounts drawn under medium term credit facility	<i>13</i>	<u>(6,000)</u>	<u>-</u>
(Decrease)/increase in cash	<i>17 & 18</i>	<u>(3,898)</u>	<u>4,379</u>
Net cash outflow		<u>(10,734)</u>	<u>(8,104)</u>

Movements in balances with States Treasury and the other income are deemed liquid resources in accordance with Financial Reporting Standard 1, "Cash Flow Statements", ("FRS1") (as revised).

The notes on pages 21 to 38 form an integral part of these financial statements.

Guernsey Electricity Limited

Notes to the financial statements

Year ended 31 March 2014

1. Principal accounting policies

The following accounting policies have been applied consistently in dealing with items which are considered material in relation to the company's financial statements:

Basis of preparation

The financial statements have been prepared under the historical cost convention, they give a true and fair view, have been prepared in accordance with UK GAAP and are in compliance with the Companies (Guernsey) Law, 2008.

Transfer of undertaking

The company was established in accordance with the provisions of the States Trading Companies (Bailiwick of Guernsey) Law 2001 (Commencement) Ordinance and the States Trading Companies (Bailiwick of Guernsey) Ordinance 2001 to take over the generation, importation and distribution of electricity previously carried out by the States of Guernsey Electricity Board with effect from 1 February 2002.

Sales of electricity

Sales of electricity are accounted for on an accruals basis and include the estimated value of unbilled units at the year end. The unbilled units are valued at current tariff rates.

Hire purchase

The company provides hire purchase facilities on the provision of goods and services ancillary to the principal activities of the company. The sales value is included in turnover at the inception of the hire purchase transaction and interest is included in interest receivable over the finance period of the transaction.

Interest

Interest receivable and payable are accounted for on an accruals basis.

Deferred income

Customers' contributions towards capital expenditure are credited in equal annual amounts to the profit and loss account over the estimated life of the assets to which they relate.

Tangible fixed assets and depreciation

Tangible fixed assets are stated at cost less depreciation. Assets transferred from the States of Guernsey Electricity Board as at 1 February 2002 are being depreciated over their residual estimated useful lives from that date applying the periods noted below.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

1. Principal accounting policies - continued

Tangible fixed assets and depreciation - continued

Depreciation is calculated so as to write off the cost of tangible fixed assets over the period of their estimated useful lives using the straight line method. The estimated life of each class of fixed asset is set out below. Depreciation commences in the year of acquisition, or on completion of construction. Any shortfall of depreciation arising on the disposal, or write-off, of fixed assets is charged to the disposals account and any proceeds arising from the disposal are credited to that account. Land is not depreciated. The estimated lives are as shown below:

	Estimated life in years
Buildings	40
Buildings Equipment	10
Cable Link	25
Plant and machinery - Generation	25 – 35
- Distribution	35
- Street Lights	20
Distribution network comprising:	
Distributors	35
Meters	5 – 15
Cyclocontrol receivers	5
Motor vehicles	5
Furniture and equipment	3 – 10
Minor plant	5 – 10

Stocks and work in progress

Stocks and work in progress are valued at the lower of cost and net realisable value. In respect of goods held for resale, a provision is made based on the time elapsed since the goods were purchased. Provision is made for other stocks relating to strategic plant, based upon the remaining useful economic life of the assets to which they relate.

Leases

Operating lease rentals are charged to profit and loss in equal annual amounts over the lease term.

Deferred taxation

Provision for deferred tax is made in full on timing differences which result in an obligation at the balance sheet date to pay tax at a future date, at rates expected to apply when they crystallise, based on current tax rates and laws. Deferred tax assets are only recognised to the extent that it is regarded as more likely than not that they will be recovered. The pension scheme deficit shown in the accounts is net of the deferred tax asset. Deferred tax assets and liabilities are not discounted.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

1. Principal accounting policies - continued

Foreign exchange

Transactions denominated in foreign currencies are translated into sterling at the rates ruling at the dates of the transactions. Monetary assets and liabilities denominated in foreign currencies at the balance sheet date are translated at the rates ruling at that date. Foreign currency profits and losses are dealt with in the profit and loss account.

Financial instruments

The company enters into forward exchange contracts to mitigate the risk of fluctuations in the currency rate between the Euro and the Pound Sterling in meeting its financial obligations for the import of electricity units from the European grid and on major infrastructure projects, including the new on-island generator, 2D. Gains and losses on these contracts are deferred and recognised in the profit and loss account only when the delayed transaction has itself been reflected in the company's account. The company does not hold, or issue, financial instruments for speculative purposes. The company also hedges against the fluctuation in the price of heavy fuel oil, including the movement in the US Dollar, which is inherent in the pricing. Gains and losses are recognised in the profit and loss account when realised.

Pension costs

The employees' pension scheme is a defined benefits scheme. The company applies Financial Reporting Standard 17, "Post retirement benefits", ("FRS17"). In so doing, current service cost and any past service cost is charged to the profit and loss account, together with finance costs/income for the scheme which are charged/credited to the profit and loss account. The difference between the expected and actual actuarial gains and losses are charged to the statement of total recognised gains and losses. Full actuarial valuations are carried out on a triennial basis and annual updates are carried out to disclose the values and assumptions in accordance with FRS17.

Joint Arrangements

The Channel Islands Electricity Grid Limited is a Joint Arrangement between Jersey Electricity plc and Guernsey Electricity Limited who each own an equal 50% shareholding. The company was formed to manage the project and the ongoing operation of the cable link between Guernsey, Jersey and France. In accordance with Financial Reporting Standard 9, "Associates and Joint Ventures", ("FRS9"), these financial statements include the company's entitlement to the assets, liabilities, cash flows and the shared items of this Joint Arrangement where the company's entitlements are fully determined by contracts with the other party to the Joint Arrangement.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

2. Turnover

	2014 £'000	2013 £'000
Sales of electricity	52,526	52,894
Other sales	<u>3,369</u>	<u>3,549</u>
	<u>55,895</u>	<u>56,443</u>

All sales of electricity arise from customers in the Island of Guernsey. Other sales are made to customers throughout the Bailiwick of Guernsey. As stated in the accounting policy for sales of electricity, each year an estimate of the unbilled units as at 31 March is determined.

3. Operating Loss

Operating loss is after charging / (crediting):

	2014 £'000	2013 £'000
Depreciation (note 8)	5,598	5,632
Rentals under operating leases	12	12
Auditor's remuneration - statutory audit	41	33
- non-audit services	15	-
Bad debts	25	65
Emoluments		
- non-executive directors	65	53
- executive directors		
- basic remuneration	493	455
- other benefits (including pension costs under FRS17)	216	180
Regulatory costs - external	75	129
- internal	19	71
Other operating income	<u>(619)</u>	<u>(668)</u>

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

4. Interest

	2014 £'000	2013 £'000
Interest receivable:		
Deposits with banks and States Treasury	266	122
Hire purchase	<u>136</u>	<u>135</u>
	<u>402</u>	<u>257</u>
Interest payable:		
Medium term credit facility	81	-
Other interest payable	<u>1</u>	<u>1</u>
	<u>82</u>	<u>1</u>

5. Other income

Of the £5,350,000 that the States of Guernsey Electricity Board had on deposit with the Bank of Credit and Commerce International when it ceased trading on 5 July 1991, £5,623,633 has been recovered. £Nil was received in the current year (2013: £197,477). Distributions by the liquidator are denominated in US Dollars and therefore exposed to Sterling / Dollar fluctuations. This represents a full recovery of the original capital deposit together with interest.

6. Taxation

The company's profits, or losses, from the activities subject to licence from the Guernsey Competition and Regulatory Authority will be chargeable to tax at the company higher rate of 20%, as will rental income from Guernsey properties. For all other company activities, the company standard rate of 0% is applicable. The tax adjusted profits of the company have been determined so that the appropriate amounts are taxed at the applicable rate.

The basis of assessment to Guernsey tax continues to be on an actual current year basis. The assessable profits for the current year have been offset against the unrelieved trading losses and excess capital allowances carried forward from prior years. Consequently, all tax is deferred and there is no tax payable for the current year.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

6. Taxation - continued

Deferred tax in the financial statements is measured at the actual tax rates that are expected to apply to the income in the periods in which the timing differences are expected to reverse. Various rates of income tax are applied depending on the activity of the company. The rate applied in relation to the company's activities is a combination of the company standard rate and the company higher rate. Deferred tax has been provided on timing differences depending on which rate they are expected to reverse out in the future. Where deferred tax balances relate to items which may be taxed at either 20% or 0% a blended rate of 19.2811% (2013: 19.6173%) has been used to provide for deferred tax. The blended rate has been calculated by reference to the company's effective rate of tax in the year ended 31 March 2014.

The deferred tax credit in the profit and loss account for the year is:

	2014 £'000	2013 £'000
Timing differences on capital allowances and depreciation	252	(50)
Short term timing differences (pension)	(168)	(228)
Short term timing differences (other)	(22)	(55)
Movement on unrelieved trading losses	<u>(99)</u>	<u>(498)</u>
	<u>(37)</u>	<u>(831)</u>

7. Dividend

At the Annual General Meeting, the company will be proposing a dividend in specie to its shareholder out of the profits it made during 2011/12. It is proposing to transfer the ownership of Tidal and Bathymetry Data that it has built up to its shareholder. As this data has a zero net book value it will be transferred for this amount.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

8. Tangible fixed assets

	1 April 2013 £'000	Additions £'000	Written off/ disposals £'000	31 March 2014 £'000
<i>Cost</i>				
Land and buildings	30,589	396	100	30,885
Cable link	29,316	13,890	-	43,206
Plant and machinery:				
Generation	46,469	1,173	-	47,642
Distribution	12,047	592	2	12,637
Distribution network	31,266	1,583	106	32,743
Motor vehicles, furniture and equipment, minor plant	<u>5,426</u>	<u>179</u>	<u>45</u>	<u>5,560</u>
	<u>155,113</u>	<u>17,813</u>	<u>253</u>	<u>172,673</u>
	1 April 2013 £'000	Charge for the year £'000	Written off/ disposals £'000	31 March 2014 £'000
<i>Depreciation</i>				
Land and buildings	9,380	871	57	10,194
Cable link	13,706	1,242	-	14,948
Plant and machinery:				
Generation	17,013	1,468	-	18,481
Distribution	2,700	355	1	3,054
Distribution network	8,777	1,162	49	9,890
Motor vehicles, furniture and equipment, minor plant	<u>3,351</u>	<u>500</u>	<u>45</u>	<u>3,806</u>
	<u>54,927</u>	<u>5,598</u>	<u>152</u>	<u>60,373</u>
Net book value	<u>100,186</u>			<u>112,300</u>

Included above are assets in the course of construction of £16,739,000 (2013: £13,352,000), which are not depreciated.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

9. Stocks and work in progress

	2014		2013	
	£'000	£'000	£'000	£'000
Fuel stocks		4,190		5,109
Purchased goods for resale	329		283	
Provision	<u>(7)</u>	322	<u>(3)</u>	280
Other stocks	3,612		3,444	
Provision	<u>(1,865)</u>	1,747	<u>(1,743)</u>	1,701
Work in progress		<u>126</u>		<u>146</u>
		<u>6,385</u>		<u>7,236</u>

10. Debtors and prepayments

	2014	2013
	£'000	£'000
Estimated value of unbilled units	6,512	7,867
Customer accounts outstanding	3,708	3,687
Other debtors	1,108	360
Prepayments	<u>386</u>	<u>611</u>
	<u>11,714</u>	<u>12,525</u>

Included in "Customer accounts outstanding" is an amount totalling £306,000 (2013: £293,000) due after more than one year.

11. Balances with States Treasury

The Treasury Department of the States of Guernsey is engaged to invest the company's liquid funds in excess of its daily requirements.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

12. Creditors: amounts falling due within one year

	2014 £'000	2013 £'000
Trade creditors	1,786	4,361
Customer payments received in advance	5,638	4,833
Employee taxes and Social Security	165	168
Deferred income	154	146
Accruals and other creditors	<u>1,517</u>	<u>1,104</u>
	<u>9,260</u>	<u>10,612</u>

The company has a £1,000,000 overdraft facility with Barclays Bank Plc (2013: £750,000), and interest is payable quarterly at 1.75% over UK base rate. This facility is unsecured, is repayable on demand and is reviewed and approved by the Board annually. The facility is due for review on 18 February 2015. The States of Guernsey, by way of resolution at its meeting on 15 December 2011, authorised the Treasury & Resources Department to make an overdraft facility of £5m available to the company for a four year period from 1 January 2012 with interest payable at the States Treasury rate.

13. Creditors: amounts falling due after more than one year

	2014 £'000	2013 £'000
Deferred income	4,159	4,057
Amount drawn under medium term credit facility	<u>6,000</u>	<u>-</u>
	<u>10,159</u>	<u>4,057</u>

The company entered into a five year, £20m revolving credit loan facility with HSBC to finance its share of the cost of the "Normandie 3" project relating to the installation of a new sub-sea cable interconnector between Jersey and France. The facility is guaranteed by the States of Guernsey and a facility charge payable to the States of Guernsey of 0.50% is levied on the value of the amount drawn down for the term of the loan. The loan incorporates an option to increase the credit facility to £30m for the purpose of the future financing of the company's share of the "Normandie 1" project which will see an overlay of the failed "EDF1" cable between Jersey and France. During the year, the company utilised £6m of the loan in a single drawdown.

14. Provision for liabilities and charges

	2014 £'000	2013 £'000
Deferred taxation:		
Balance at 1 April	(3,085)	(1,953)
Profit and loss account credit	(37)	(831)
Statement of total recognised gains and losses	<u>(443)</u>	<u>(301)</u>
Balance at 31 March	<u>(3,565)</u>	<u>(3,085)</u>
Which comprises:		
Capital allowances in excess of depreciation	7,861	7,609
Short-term timing differences (other)	(215)	(193)
Unrelieved trading loss for tax purposes	<u>(6,896)</u>	<u>(6,797)</u>
Provision for liabilities and charges	<u>750</u>	<u>619</u>
Deferred tax asset on pension deficit (note 23)	<u>(4,315)</u>	<u>(3,704)</u>

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

15. Share capital

	2014 £'000	2013 £'000
<i>Authorised:</i>		
125,000,000 ordinary shares of £1 each	<u>125,000</u>	<u>125,000</u>
<i>Issued and fully paid:</i>		
109,208,844 ordinary shares of £1 each	<u>109,209</u>	<u>109,209</u>

Two shares were issued on formation of the company and the remaining 109,208,842 shares were issued to equate to the consideration of £109,208,844 for the net assets acquired by the company from the States of Guernsey with effect from 1 February 2002.

16. Reconciliation of operating loss to net cash inflow from operating activities

	2014 £'000	2013 £'000
Operating loss	(255)	(3,411)
Depreciation charge	5,598	5,632
Pension service cost	2,082	1,812
Employer's pension cash contributions	(1,092)	(1,062)
Deferred income	(154)	(146)
Decrease in stocks and work in progress	851	594
Decrease/(increase) in debtors and prepayments	825	(1,747)
(Decrease)/increase in creditors	<u>(186)</u>	<u>519</u>
	<u>7,669</u>	<u>2,191</u>

17. Reconciliation of net cash flow to movement in net (debt)/funds

	2014 £'000	2013 £'000
(Decrease) / increase in cash in the year	(3,898)	4,379
Cash used to decrease liquid resources	(836)	(12,483)
Amount drawn under medium term credit facility	<u>(6,000)</u>	<u>-</u>
Change in net funds	(10,734)	(8,104)
Net funds at 1 April	<u>8,978</u>	<u>17,082</u>
Net debt at 31 March	<u>(1,756)</u>	<u>8,978</u>

18. Analysis of changes in net funds/(debt)

	At 1 April 2013 £'000	Cash flows £'000	At 31 March 2014 £'000
Cash at bank and in hand	4,632	(3,898)	734
Balances with States Treasury	4,346	(836)	3,510
Credit facility due after one year	<u>-</u>	<u>(6,000)</u>	<u>(6,000)</u>
	<u>8,978</u>	<u>(10,734)</u>	<u>(1,756)</u>

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

19. Reserves

	2014 £'000	2013 £'000
Balance at 1 April brought forward	(10,750)	(6,989)
Loss for the financial year	(194)	(2,522)
Actuarial loss recognised in the pension scheme, net of movement in deferred tax relating to pension deficit	(1,855)	(1,239)
	<hr/>	<hr/>
Balance at 31 March carried forward	<u>(12,799)</u>	<u>(10,750)</u>

20. Reconciliation of movements in shareholders' funds

	2014 £'000	2013 £'000
Shareholders' funds at 1 April brought forward	98,459	102,220
Loss for the financial year	(194)	(2,522)
Actuarial loss recognised in the pension scheme, net of movement in deferred tax relating to pension deficit	(1,855)	(1,239)
	<hr/>	<hr/>
Shareholders' funds at 31 March	<u>96,410</u>	<u>98,459</u>

21. Commitments

Capital commitments, for which no provision has been made in these financial statements, amounted to £11,615,000 as at 31 March 2014 (2013: £6,117,000). These relate to outstanding commitments on capital projects across a range of asset categories.

Cable link commitments

For the import of power from the European Grid, the company has a contract with Electricite de France ("EdF"). The existing electricity import contract with EdF is effective for a 10 year period which commenced from 1 January 2013. The related transmission agreement with Réseau de transport d'électricité ("Rte") also commenced from 1 January 2013. Under the import contract, there is a take or pay commitment, whereby the company is jointly and severally liable, along with the Channel Islands Electricity Grid Limited ("CIEG") and Jersey Electricity plc, for a block of power over the term of the contract. The price at which the take or pay block is charged increases annually over the period of the contract and for calendar year 2015 this equates to a total commitment of €8.7m (2014: €8.3m) for Guernsey Electricity Limited.

Operating lease commitments

Commitments to make payments during the next year in respect of an operating lease are as follows:

	2014 £'000	2013 £'000
<i>Land and Buildings</i>		
Lease which expires:		
Within one year	13	-
Within two to five years	-	12

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

22. Financial instruments

(a) Import Financial Hedge

Import contracts with EdF and RTE are denominated in Euros. The company has entered into forward and participating forward currency exchange contracts to manage the currency risk. The company's commitment to forward contracts at the balance sheet date was as follows:

	2014 €'000	2013 €'000
Forward contracts to purchase Euro	<u>3,850</u>	<u>5,572</u>
	£'000	£'000
Contracted prices	<u>3,281</u>	<u>4,778</u>
Closing value at 31 March	<u>3,183</u>	<u>4,700</u>
Unrecognised and unrealised loss	<u>(98)</u>	<u>(78)</u>

If the spot exchange rate falls below the forward rate, the company is protected by forward contracts to purchase Euros as follows:

	2014 €'000	2013 €'000
Forward contracts to purchase Euro	<u>5,500</u>	<u>7,960</u>
Forward exchange rate range	1.1540 to 1.2027	1.1460 to 1.1810

The sterling/euro rate at 31 March 2014 was 1.2098 (2013: 1.1853).

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

22. Financial instruments - continued

(b) On-island Generation Financial Hedge

The company has entered into a financial hedge on the commodity price of heavy fuel oil used for its on-island generation. The commitment to this is for an annual volume for financial year 2014/15 of 23,000 metric tonnes at an average price of £397.15/metric tonne amounting to a total hedged position of £9.1m. The prior year financial statements reported financial hedges on heavy fuel oil totalling £15.6m comprising 32,500 metric tonnes at an average price of £415.72/metric tonne and 5,000 metric tonnes at an average price of £413.00/metric tonne for 2013/14 and 2014/15 respectively.

(c) 2D Project Hedge

The main contract for the new medium speed diesel engine, 2D, was also denominated in Euros. The company entered into forward and participating forward currency exchange contracts to manage the currency risk. The company's commitment to forward contracts at the balance sheet date was as follows:

	2014 €'000	2013 €'000
Forward contracts to purchase Euro	<u>—</u>	<u>174</u>
	£'000	£'000
Contracted prices	<u>—</u>	<u>148</u>
Closing value at 31 March	<u>—</u>	<u>147</u>
Unrecognised and unrealised loss	<u>—</u>	<u>(1)</u>

(d) Interest Rate Cap

The company has entered into an interest rate cap to hedge part of the interest rate risk associated with the £20m revolving credit facility. An interest rate cap of 3% has been applied to a notional amount of £8.4m and is referenced against the three month sterling LIBOR rate. The valuation of this instrument as at 31 March 2014 was £52,000.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

23. Pension Scheme

Employee benefit obligations for Guernsey Electricity Limited

The employees of the company are members of the States of Guernsey Public Servants Pension Scheme (PSPS). This is a defined benefits pension scheme funded by contributions from both employer and employee to the PSPS at rates which are determined on the basis of independent actuarial advice, and which are calculated to spread the expected cost of benefits payable to employees over the period of those employees' expected service lives.

As the PSPS is a multi entity arrangement, the States of Guernsey contracted the Scheme's qualified independent actuaries to identify the actuarial account for each entity and, therefore, the value of the pension fund assets and liabilities attributable to this company. The triennial valuation at 31 December 2010 recommended the decrease of employer's contribution from 17.3% to 14.6% from 1 April 2012 and this was approved by the States of Guernsey. The value of these employer contributions to the Fund from 1 April 2014 to 31 March 2015 are estimated at £1,115,000.

The triennial actuarial valuation of the PSPS as at 31 December 2013 is still in progress and consequently, the results of this latest valuation were not available at the time of reporting.

Description of the Guernsey Electricity Limited Actuarial Account of the States of Guernsey Superannuation Fund ("the Fund")

The Fund is a funded defined benefit arrangement which provides retirement benefits based on final pensionable salary.

The company recognises the requirements of Financial Reporting Standard 17 ("FRS17") Retirement Benefits on the following basis:

The valuation used for FRS17 disclosures has been based on a full assessment of the liabilities of the Fund. The present values of the defined benefit obligation, the related current service cost and any past service costs (if applicable) were measured using the projected unit method.

Guernsey Electricity Limited

Notes to the financial statements - continued
Year ended 31 March 2014

23. Pension Scheme - continued

The amounts recognised in the balance sheet are as follows:

	2014 £'000	2013 £'000
Fair value of Fund assets	50,611	47,981
Present value of funded obligations	<u>(72,990)</u>	<u>(66,863)</u>
Deficit in scheme	<u>(22,379)</u>	<u>(18,882)</u>
Related deferred tax asset	<u>4,315</u>	<u>3,704</u>
Net pension liability	<u>(18,064)</u>	<u>(15,178)</u>

The amounts recognised in the profit and loss account are as follows:

	2014 £'000	2013 £'000
Current service cost	2,082	1,812
Interest on obligation	2,973	2,650
Expected return on Fund assets	<u>(2,765)</u>	<u>(2,489)</u>
Expense recognised in the profit and loss account	<u>2,290</u>	<u>1,973</u>
Actual return on Fund assets	<u>(2,814)</u>	<u>(4,687)</u>

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

23. Pension Scheme - continued

Changes in the present value of the defined benefit obligation are as follows:

	2014	2013
	£'000	£'000
Opening defined benefit obligation	66,863	59,615
Service cost	2,082	1,812
Interest cost	2,973	2,650
Contributions by members	493	479
Actuarial losses	2,347	3,738
Benefits paid	<u>(1,768)</u>	<u>(1,431)</u>
Closing defined benefit obligation	<u>72,990</u>	<u>66,863</u>

Changes in the fair value of Fund assets are as follows:

	2014	2013
	£'000	£'000
Opening fair value of Fund assets	47,981	43,184
Expected return	2,765	2,489
Actuarial gains	48	2,198
Contributions by employer	1,092	1,062
Contributions by members	493	479
Benefits paid	<u>(1,768)</u>	<u>(1,431)</u>
Closing fair value of Fund assets	<u>50,611</u>	<u>47,981</u>

Analysis of amounts recognised in the statement of total recognised gains and losses (STRGL):

	2014	2013
	£'000	£'000
Total actuarial losses	<u>(2,298)</u>	<u>(1,540)</u>
Total loss recognised in STRGL	<u>(2,298)</u>	<u>(1,540)</u>
Cumulative amount of loss recognised in STRGL	<u>(24,013)</u>	<u>(21,715)</u>

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

23. Pension Scheme - continued

The major categories of Fund assets as a percentage of the total Fund assets are as follows:

	2014 %	2013 %
Equities	70	69
Gilts	3	4
Corporate bonds	14	15
Property	9	7
Other assets	4	5

Principal actuarial assumptions at the balance sheet date (expressed as weighted averages where applicable):

	31 March 2014 % p.a.	31 March 2013 % p.a.
Discount rate	4.3	4.5
Expected return on Fund assets at 31 March (for following year)	6.6	5.8
Rate of increase in pensionable salaries	4.35	4.35
Rate of increase in deferred pensions	3.6	3.6
Rate of increase in pensions in payment	3.6	3.6

Mortality Assumptions

The mortality assumptions are based on standard mortality tables, which allow for future mortality improvements. The assumptions are that a member aged 65 will live, on average, until age 87, if they are male, and until age 89, if female. For a member currently aged 45, the assumptions are that, if they attain age 65, they will live on average until age 89, if they are male, and until age 91, if female.

Description of the basis used to determine the expected rate of return on the assets

The company adopts a building block approach in determining the expected rate of return on the Fund's assets. Historic markets are studied and assets with high volatility are assumed to generate higher returns, consistent with widely accepted capital market principles.

Each different asset class is given a different expected rate of return. The overall rate of return is then derived by aggregating the expected return for each asset class over the actual asset allocation for the Fund at the disclosure year end.

Guernsey Electricity Limited

Notes to the financial statements - continued

Year ended 31 March 2014

23. Pension Scheme - continued

Amounts for the current and previous periods are as follows:

	2014	2013	2012	2011	2010
	£'000	£'000	£'000	£'000	£'000
Defined benefit obligation	72,990	66,863	59,615	51,521	51,168
Fund assets	50,611	47,981	43,184	42,756	37,560
Deficit	(22,379)	(18,882)	(16,431)	(8,765)	(13,608)
Experience gains / (losses) on Fund assets	48	2,198	(2,620)	1,860	6,068
Experience (losses) / gains on Fund liabilities	(15)	28	932	504	1,208
Change in assumptions underlying the Present value of Fund liabilities	(2,332)	(3,766)	(5,530)	2,835	(14,464)
Total Experience (losses) / gains on Fund liabilities	(2,347)	(3,738)	(4,598)	3,338	(13,256)

The balance sheet position in respect of the Actuarial Account has worsened, due to the effect of the economic assumptions derived from the market.

An important financial factor underlying the change in assumptions item was the change in relationship between the corporate bond discount rate and the market derived assumption for future inflation. The discount rate decreased by 0.2%, while the inflation assumption remained the same. The effect of the change in assumptions was to increase the value placed on liabilities. The net position was an increase of around £3.5m in the deficit determined under FRS17.

24. Statement of control

The company is wholly owned and ultimately controlled by the States of Guernsey.

25. Related party transactions

There are no disclosable related party transactions in this financial year. Of the company's annual income and expenditure, less than 20% of their respective value is due to transactions with other States entities.

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

X.- Whether, after consideration of the Report dated 2nd July, 2014, of the Treasury and Resources Department, they are of the opinion to note the Annual Report and Accounts for Guernsey Electricity Ltd for the year-ending 31st March, 2014.

HEALTH AND SOCIAL SERVICES DEPARTMENT
EMERGENCY MEDICINE CONSULTANT (CHARGING)

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

7th July 2014

Dear Sir

Executive Summary

1. The Health and Social Services Department is in the process of recruiting a Consultant in Emergency Medicine, who will help to enhance clinical leadership in the Accident and Emergency (A&E) Service.
2. Alongside his or her other responsibilities, the Emergency Medicine Consultant will deliver emergency care to patients in A&E, in the same capacity as other doctors working in A&E.
3. The purpose of this States Report is to correct an anomalous situation created by an existing States Resolution which would prevent HSSD charging for the services of the Emergency Medicine Consultant, when all other patients who attend A&E are obliged to pay for a consultation.
4. The situation is created by the fact that the Emergency Medicine Consultant would be a direct employee of HSSD, whereas the other doctors in A&E are provided by a private company (the Primary Care Company Ltd, or PCCL). In line with a States Resolution from 2002, HSSD is not permitted to charge for the work done by States-Employed Consultants.
5. In theory this means that, once a Consultant is in post, one patient who attends A&E and is seen by a PCCL doctor may be billed; while another, who has identical treatment, but is seen by the HSSD-employed Consultant, cannot be.
6. HSSD does not believe that this is a viable or appropriate situation, and is seeking a States Resolution to authorise the Department to charge for the services of the Emergency Medicine Consultant on an equal basis with other A&E doctors.

Context and Background

7. The Health and Social Services Department agreed, in July 2013, that clinical leadership in A&E should be enhanced, preferably through the appointment of a Consultant in Emergency Medicine. The Consultant is expected to be a hands-on member of the A&E team, providing frontline emergency care to patients.
8. The A&E Department is located in the Princess Elizabeth Hospital. The facilities, support services, equipment and nursing staff are all provided by HSSD. HSSD has a contract with PCCL for the provision of A&E doctors.
9. HSSD has discussed the options for provision of an Emergency Medicine Consultant with PCCL, as well as with the Medical Specialist Group (MSG).
10. All three organisations were in agreement that HSSD should employ the proposed Consultant directly. This takes into account a number of considerations, especially the fact that the current contract with PCCL for the provision of A&E services expires in 2018 at the latest, and both organisations have indicated that they wish to enter a re-negotiation well before that expiry. If HSSD employs the Consultant directly, this allows for greater stability and continuity within A&E.
11. The cost of the contract with PCCL was £878,000 in 2013. PCCL have agreed a reduction of £210,000 (at 2013 rates) in the contract price, which will cover the costs of HSSD employing the Consultant. This reflects the fact that, while the Emergency Medicine Consultant is on duty, PCCL will not have to provide the same level of doctor cover as at present. Negotiations on the level of cover, and on other arrangements (such as the income from the Consultant's work) remain to be concluded.
12. It should be noted that the first round of recruitment for an Emergency Medicine Consultant, in early 2014, did not result in any applications. There is a significant demand for A&E doctors in the NHS, so HSSD is competing with health services across the UK. But the Department is continuing to pursue potential options, and to seek to conclude negotiations with PCCL, in order to get a Consultant in post during 2014 if possible. While the appointment could in theory wait until the expiry of the PCCL contract in 2018, both organisations are committed to finding a mutually acceptable resolution much sooner. In any case, it is important that the anomaly in the charging structure, discussed below, is dealt with before the Consultant starts work.

Charging for States-Employed Consultants

13. Charging for services provided by States-Employed Consultants is prevented by the States Resolution of 28 February 2002¹ which says:

¹ Concerning the Board of Health's Report on "Consultant Fees and the Provision of Wholly Private Care Including Radiology and Pathology Investigations." (Article 5, Billet d'Etat III, 27 February 2002.)

“That residents of Guernsey and Alderney shall be entitled to the following health services, provided through general revenue or through contributions to the Guernsey Social Security Authority **without charge to the patient at the point of delivery**:

“[...] **all medical care and treatment provided by States-Employed Consultants**, except that provided for long-stay patients which is included as part of the total long-stay fees; [...]”

14. As the new Consultant in Emergency Medicine would be a direct employee of HSSD, any work that he or she does would be covered by this Resolution.
15. However, it is quite clear that the States’ general policy position on A&E is that patients should be charged. A States Resolution in 1995², which related to the scope of the Specialist Health Insurance Scheme (which covers the cost of the Medical Specialist Group contract, meaning that secondary health care services are free to patients at the point of use) explicitly excluded A&E:

“d. Treatment at the Accident & Emergency Department of the Princess Elizabeth Hospital, unless the attendance of a specialist is necessary. As is the present situation, a patient seen by a general practitioner at A&E will not be covered by the scheme and will receive a bill.”

16. In practice, the HSSD-employed Consultant in Emergency Medicine will be providing patients with exactly the same treatment as other A&E doctors, although he or she will also have other responsibilities in the Department. For patients, it will be a matter of chance whether they are seen by the Consultant or by another A&E doctor. Yet, under present arrangements, those seen by the Consultant could not be billed for their treatment.
17. This is an anomaly which would result in an inequitable and unworkable situation. HSSD is therefore seeking a further States Resolution that would authorise the Department to charge for the work of the Emergency Medicine Consultant, on an equal basis with other doctors working in A&E.

Impact of Charging for the Emergency Medicine Consultant

18. Patients who see a doctor in A&E are already charged. From a patient’s perspective, there would be no change as a result of allowing HSSD to charge for the work of the Emergency Medicine Consultant. The Consultant will be doing the same kind of work as other A&E doctors, and patients will be charged the same tariff for the same procedure.

² Concerning the Guernsey Social Security Authority’s Report on the “Specialist Health Insurance Scheme.” (Billet d’Etat XIII, 28 June 1995.)

19. From HSSD's perspective, there will be an increase in the amount of income the Department is able to generate. It will not be possible to confirm an exact value until the Consultant is in post, and HSSD has a clearer picture of the volume of work he or she will be doing, but the Department anticipates that it could raise up to £100,000 per annum³.
20. HSSD is in discussion with PCCL about how the income should be collected. HSSD could itself bill patients who are seen by the States-employed Emergency Medicine Consultant. Alternatively, billing could be done by PCCL in return for a proportion of the fee to cover the administration. The preferred arrangement is still to be finalised.
21. The Social Security Department currently pays a £12 Health Benefit grant for patients seen by a PCCL-employed doctor in A&E, and it is anticipated this grant will also apply to the work of the States-employed Consultant. There will be no net impact on the Guernsey Health Service Fund, as the overall volume of patients coming through A&E is not expected to change.
22. While this proposal does not strictly relate to the introduction of a new charge, but to ensuring the A&E tariff applies equally to the work of the Emergency Medicine Consultant, HSSD has nonetheless considered the 2007 States Resolution⁴ on the criteria for introducing new charges for services, and the Policy Council guidance on Fees and Charges released in 2013.
23. This proposal relates simply to the equitable application of an existing States policy: that patients who attend A&E and are seen by a doctor should be charged. There will be no detrimental impact on the public, or on the success of other States' policies (particularly the Fiscal & Economic, Social Policy, and Environmental Policy Plans) in doing so. The appointment of a Consultant in Emergency Medicine forms part of HSSD's Operational Plan for 2014.

Alternative Options

24. Allowing a situation in which some A&E patients are charged for their consultations and others are not, simply because of the employment arrangements of the doctor who is treating them, would be completely inequitable. HSSD's preferred option, as set out in this Report, is to seek a States Resolution that would enable the Department to charge for the work done by the Emergency Medicine Consultant, who would be a direct employee of HSSD, on an equal basis with all other doctors working in A&E.
25. An alternative would be for the Emergency Medicine Consultant to be employed by PCCL, like the other A&E doctors. In that situation, PCCL would

³ The income expected to be raised (para 20) is lower than the cost of employing a consultant (para 11). This reflects the funding structure of the overall A&E doctor service, the costs of which are partly covered by the contract between HSSD and PCCL and partly by income generation.

⁴ Concerning the Treasury and Resources Department's Report on "Fees and Charges." (Article 4, Billet d'État III, 31 January 2007.)

automatically have been able to bill for the Consultant's work, and patients would not have seen the difference.

26. However, as noted above, the current A&E contract will come to an end in 2018. As such, both organisations favour HSSD employing the Consultant.
27. It is expected that the Consultant will be an asset to HSSD in continuing to develop its Emergency Care services. With so much going on in Emergency Care – with the Ambulance Service under review, as well as a commitment in HSSD's Operational Plan to begin negotiations on the future of A&E no later than 2015 – there is clearly a role for clinical leadership in that area, which the Consultant could provide once recruited. The appointment of a Consultant in Emergency Medicine would also enable HSSD to enhance its Major Incident capabilities.
28. For the time being, the proposal in this States Report is therefore considered to be the most reasonable and fair approach.

Resource Implications

29. The cost of appointing the Emergency Medicine Consultant will be covered by the £210,000 reduction in the A&E contract which has been agreed between HSSD and PCCL.
30. It can be expected that there will be changes in practice in A&E over time, as a result of the appointment of an Emergency Medicine Consultant. Some of the changes may have resource implications for HSSD or PCCL. Any proposed new developments will be dealt with, on their merits, through HSSD's ordinary evaluation and prioritisation processes.

Governance

31. HSSD has worked with PCCL and MSG on the proposals to introduce a Consultant in Emergency Medicine, and all three organisations support the plans.
32. HSSD has consulted with the Law Officers on earlier drafts of this Report, and assistance was provided with the wording of the Proposition.
33. The Department has consulted with the Social Security Department on the application of the Health Benefit grant to work done by the Emergency Medicine Consultation.
34. The proposals in this report are consistent with HSSD's 2014 Operational Plan and with the recommendations of the 2011 College of Emergency Medicine Report on the Accident and Emergency Service.

Future of the A&E Service

35. HSSD is committed to providing high-quality health and social care services, which result in good outcomes for patients and service users, and which represent good value for public money. The Department has confidence in the quality of its A&E service, but welcomes the opportunity to enhance clinical leadership by the appointment of a Consultant in Emergency Medicine.
36. HSSD intends to open negotiations on the future of the A&E service in 2015. PCCL have indicated their willingness for a renegotiation ahead of the 2018 expiry of the current contract. In reviewing the contractual arrangements, there will be, among other things, a focus on improving value for money for the taxpayer; considering affordability for the service user; and continuing to develop the service and improve outcomes.
37. The Department is committed to maximising efficiency in health and social care services, while continuing to deliver vital frontline services. This does not mean significant change is not an option, but that changes must be well-planned, not disruptive. The appointment of an Emergency Medicine Consultant will help to provide continuity and stability at a time when there is a lot of focus on, and a lot of potential change within, the Islands' emergency care services.

Conclusion

38. The purpose of this States Report is to correct an anomalous situation, arising from a 2002 States Resolution, which would prevent HSSD charging for the services of the Emergency Medicine Consultant, when all other patients who attend A&E are charged for a consultation.
39. HSSD does not believe that this is a viable or appropriate situation, and is seeking a States Resolution to authorise the Department to charge for the services of the Emergency Medicine Consultant on an equal basis with other A&E doctors.

Recommendation

The Health and Social Services Department requests the States to resolve:

- i. That, notwithstanding the 2002 States Resolution referred to in this Report, or any other States Resolution to the contrary, the Department is authorised to charge for the services of States-employed doctors (e.g. the Emergency Medicine Consultant) provided within the Accident and Emergency Service.

M H Dorey
Minister

M J Storey
Deputy Minister

E G Bebb
Member

B L Brehaut
Member

A H Brouard
Member

(N.B. The Treasury and Resources Department has reviewed this report in line with the Policy Council guidance on Fees and Charges released in 2013 and supports the proposals to allow that consultations undertaken by the Emergency Medicine Consultant are charged for in the same way as any other medical consultations at the Accident & Emergency department.

The Report sets out the Health and Social Services Department's expectation that this activity is likely to raise circa £100,000 per annum of net additional income to General Revenue which is a net benefit given that the contract value with the Primary Care Company Limited (PCCL) has been reduced in order to fund the post.)

(N.B. The Policy Council supports the proposals in this States Report and confirms that the Report complies with the Principles of Good Governance as defined in Billet d'État IV of 2011.)

The States are asked to decide:-

XI.- Whether, after consideration of the Report dated 7th July, 2014, of the Health and Social Services Department, they are of the opinion to agree that, notwithstanding the 2002 States Resolution referred to in this Report, or any other States Resolution to the contrary, the Department is authorised to charge for the services of States-employed doctors (e.g. the Emergency Medicine Consultant) provided within the Accident and Emergency Service.