



BILLET D'ÉTAT

WEDNESDAY, 29th JULY, 2015

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 **29th JULY, 2015** 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

19th June 2015

**THE INCOME TAX (ZERO 10) (COMPANY INTERMEDIATE RATE)
(AMENDMENT) (GUERNSEY) ORDINANCE, 2015**

The States are asked to decide:-

I.- Whether they are of the opinion to approve the draft Ordinance entitled “The Income Tax (Zero 10) (Company Intermediate Rate) (Amendment) (Guernsey) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Income Tax (Guernsey) Law, 1975 by extending the company intermediate income tax rate (10%) to income from the provision of administration services (as defined in the Protection of Investors (Bailiwick of Guernsey) Law, 1987), to unconnected third parties.

**THE COMPANIES (GUERNSEY) LAW, 2008 (AMENDMENT) ORDINANCE,
2015**

The States are asked to decide:-

II.- Whether they are of the opinion to approve the draft Ordinance entitled “The Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Companies (Guernsey) Law, 2008 to give effect to those parts of the resolution of 28th November 2012 not already implemented by the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2013 and the Companies (Guernsey) Law, 2008 (Amendment) Ordinance, 2014. The amendments will, by way of example, permit the conversion of the cell of a protected cell company into a stand-alone company, allow cross border company amalgamations on a short form basis, and strengthen shareholder protection in a takeover. It will come into force on a day appointed by the Commerce and Employment Department.

THE PRISON (GUERNSEY) (AMENDMENT) ORDINANCE, 2015

The States are asked to decide:-

III.- Whether they are of the opinion to approve the draft Ordinance entitled “The Prison (Guernsey) (Amendment) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance amends the Prison (Guernsey) Ordinance, 2013 to allow the Home Department to appoint more than eight members to the Independent Monitoring Panel, which monitors the prison.

**THE PAROCHIAL ADMINISTRATION (MISCELLANEOUS AMENDMENTS)
LAW, 2014 (COMMENCEMENT) ORDINANCE, 2015**

The States are asked to decide:-

IV.- Whether they are of the opinion to approve the draft Ordinance entitled “The Parochial Administration (Miscellaneous Amendments) Law, 2014 (Commencement) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance brings into force the Parochial Administration (Miscellaneous Amendments) Law, 2014 ("the Law") on 1st September, 2015, with the exception of section 6 of the Law. That is because section 6 of the Law repeals the Law entitled "Loi ayant rapport à la réparation ou la démolition de murs, fossés, maisons et bâtiments qui sont dans un état dangereux" of 1919 (“the Dangerous Structures Law”), and the legislation which will replace the Dangerous Structures Law has not yet been prepared. When it is, section 6 of the Law will be commenced at the same time as that replacement legislation is commenced.

The sections of the Law that are brought into force by this Ordinance amend several Laws and the Public Health Ordinance, 1936 to give effect to recommendations made by the Parochial Legislation Working Group and approved by the States at their meeting on 30th June 2010 (see Article III of Billet d'État No. XV of 2010).

**THE LOI RELATIVE AUX DOUITS (AMENDMENT) LAW, 2013
(COMMENCEMENT) ORDINANCE, 2015**

The States are asked to decide:-

V.- Whether they are of the opinion to approve the draft Ordinance entitled “The Loi Relative aux Douits (Amendment) Law, 2013 (Commencement) Ordinance, 2015”, and to direct that the same shall have effect as an Ordinance of the States.

EXPLANATORY MEMORANDUM

This Ordinance brings into force the Loi relative aux Douits (Amendment) Law, 2013 on 1st September, 2015. The 2013 Law amends the Law entitled "Loi relative aux Douits" of 1936 by inserting provisions which create the offence of impeding a Constable or Douzenier in the execution of their respective duties under the Law, enable warning notices to be served, confer powers on the Central Committee to execute work, enable appeals to the Parochial Appeals Tribunal and deal with the service of documents.

ORDINANCE LAID BEFORE THE STATES

**THE SOUTH SUDAN (RESTRICTIVE MEASURES) (GUERNSEY)
ORDINANCE, 2015**

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, 2015” made by the Legislation Select Committee on the 18th May, 2015, 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. 735/2015 of the 7th May, 2015, concerning restrictive measures against certain persons who are believed to obstruct the political process in South Sudan or to have involvement in actions or policies that threaten the peace, security or stability of 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 18th May, 2015. 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 the Statutory Instruments detailed below.

THE HEALTH SERVICE (BENEFIT) (LIMITED LIST) (PHARMACEUTICAL BENEFIT) (AMENDMENT) (NO.2) REGULATIONS, 2015

In pursuance of Section 35 of the Health Service (Benefit) (Guernsey) Law, 1990, “The Health Service (Benefit) (Limited List) (Pharmaceutical Benefit) (Amendment) (No.2) Regulations, 2015” made by the Social Security Department on 7th April 2015, 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 7th April 2015.

THE INSURANCE BUSINESS (BAILIWICK OF GUERNSEY) (AMENDMENT) ORDINANCE, 2014 (COMMENCEMENT) REGULATIONS, 2015,

In pursuance of section 86 of the Insurance Business (Bailiwick of Guernsey) Law, 2002, the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 (Commencement) Regulations, 2015, made by the States of Guernsey Policy Council on 27th April 2015, are laid before the States.

EXPLANATORY NOTE

These Regulations bring the Insurance Business (Bailiwick of Guernsey) (Amendment) Ordinance, 2014 into force on the 1st May, 2015. That Ordinance amends the Insurance Business (Bailiwick of Guernsey) Law, 2002 by replacing the margin of solvency and approved asset requirements currently applicable to licensed insurers with capital resource requirements which will be prescribed by rules of the Commission under sections 38A to 38C of that Law.

**THE COMPANIES (TRANSITIONAL PROVISIONS) (AMENDMENT)
REGULATIONS, 2015**

In pursuance of section 537 of the Companies (Guernsey) Law, 2008, “The Companies (Transitional Provisions) (Amendment) Regulations, 2015” made by the Commerce and Employment Department on 7th May, 2015, are laid before the States.

EXPLANATORY NOTE

These regulations further amend the Companies (Transitional Provisions) Regulations, 2008 which prescribe savings and transitional provisions in connection with the commencement of the Companies (Guernsey) Law, 2008 by extending the transitional period for the provisions of that Law relating to the memorandum of incorporation, the articles of incorporation, shadow directors, the duties of secretaries, conversion of shares into stock and the powers of the directors to issue shares.

The regulations repeal the Companies (Transitional Provisions) (Amendment) Regulations, 2013 which were in force from 2nd September 2013 which extended the aforementioned transitional provisions to the 31st December, 2015.

These regulations came into operation on the 7th May, 2015.

POLICY COUNCIL

POPULATION MANAGEMENT REGIME: TRANSITION ARRANGEMENTS AND OTHER MATTERS

1.0 Executive Summary

- 1.1 In June 2013,¹ the States approved a number of recommendations on managing the size and makeup of the Island's population and noted the Policy Council's intention to return to the States with further detailed recommendations as the new population management regime was developed.
- 1.2 There are a number of key areas where such detailed recommendations are required, namely:
- a) the future definition and use of a Part A Open Market property;
 - b) the arrangements that will apply as the community moves from one system to another; and
 - c) setting up an advisory body to assist with the formulation of policies relating to Employment Permits.
- 1.3 This report is therefore divided into sections dealing with each of the three areas separately.
- 1.4 As the report uses terminology that may not be well-known to many readers, a glossary is included as Appendix 1 to explain what is meant by a number of potentially unfamiliar terms.
- 1.5 Furthermore, please note that for ease of reading the terms "he" and "him" have been used throughout when referring to persons of either gender.

Open Market

- 1.6 In June 2013, the States agreed proposals to change the way the Open Market Register will be operated in future with regard to Houses in Multiple Occupation. Specifically, this will affect properties inscribed in Part A of the Housing Register (i.e. private family dwellings) that are being occupied by groups of largely unrelated adults.

¹ Billet d'Etat XI, 2013

- 1.7 In order to make the proposals workable, and to avoid the ‘misuse’ of Open Market properties intended for use as private family dwellings, it is necessary to define a Part A property. The simplest way to do so is by reference to the types of individuals who may occupy a Part A property without specific permission.
- 1.8 This Policy Letter therefore recommends a definition of a Part A property.

Transition

- 1.9 Various groups of people will be affected by the transition from the existing Housing Control regime to the new population management regime; and whilst that transition will be very straightforward for most individuals, it is necessary to determine, in advance, how certain groups will be treated when the new regime comes into effect.
- 1.10 This policy letter contains proposals for the arrangements that will apply in the transition from the Housing Control regime to the new regime with the aim of ensuring that transition is as simple as possible for most people when the new system commences.
- 1.11 In July 2014,² the States also considered the issue of whether individuals with strong ancestral connections with the Island should have the ability to acquire residential qualifications as a result of being born in Guernsey (“birthright”).
- 1.12 This Policy Letter addresses whether the acquisition of such birthright should be conferred retrospectively, concluding that to do so in the absence of any firm information regarding the potential ramifications of such a decision and its potential impact on population and Local Market housing stock, both in the short- and long-term would be unwise.

Advisory Body

- 1.13 In 2013 the States agreed that it would be helpful for whichever body has responsibility for formulating population management policies³ to be assisted, in regard to policies pertaining to Employment Permits, by an advisory panel with relevant experience.
- 1.14 This Policy Letter recommends a mandate and constitution for such a panel, and suggests how the panel and the policy-making body might interact in future.

² Billet d’Etat XVI, 2014

³ set to be the Policy Council, subject to any changes that may occur after the States Review Committee’s recommendations have been implemented

2.0 Open Market

- 2.1 A separate policy letter has been submitted for consideration regarding the administration of the Housing Register in terms of the issues around dwellings and how alterations, etc. might affect their inscriptions in future.
- 2.2 However, there are a number of issues that the Policy Council considers need to be addressed regarding the people who may occupy Open Market dwellings – specifically those inscribed in Part A of the Housing Register. Given that these are population management issues, they are dealt with in this Policy Letter.

Background

- 2.3 The Housing (Control of Occupation) (Guernsey) Law, 1994 (“the 1994 Law”) provides no specific definition of a Part A dwelling. Instead, it defines the circumstances in which an Open Market dwelling will be inscribed in Parts B, C and D of the Housing Register, thus making Part A the default for all Open Market dwellings not meeting the criteria for inscription in one of the other three Parts of the Register. Given the history of the Open Market Housing Register, the absence of a Part A definition is logical as, when the Register was initially created, there was only one Part, with Parts B, C and D added at later dates.
- 2.4 Operationally, when describing the four Parts of the Housing Register, Part A dwellings are generally referred to as “private family homes”, but this loose term lends itself to wide interpretation, especially when people are sharing communal facilities and spaces within the dwelling, and thus living together in a “family-like” way.

Part A Properties in Multiple Occupation

- 2.5 Section 42 of the 1994 Law provides that where a Part A property is, in the opinion of the Housing Department, being used as a lodging house, (i.e. in multiple occupancy by largely unrelated adults) it shall be transferred to Part D, which would mean that all occupants other than the owner or principal tenant would need housing licences, and thus their ability to reside in the property becomes restricted in a way that does not apply to Part A Open Market properties.
- 2.6 At present, this provision is not proving sufficient to manage the proliferation of Part A dwellings in multiple occupation and, now that population management issues will be the focus of the new Law, the States have agreed that further measures need to be introduced to reduce the incidence of Part A properties being used for occupation by groups of unrelated adults. Such measures were set out in Billet d’Etat XI, 2013 and are reproduced below.

2.7 This is not a new issue. It was recognised as long ago as the 1980's, when Billet d'Etat XI, 1984 reported "at least two" Part A properties in multiple occupation. By December 2011 there were known to be 121 such dwellings housing 781 people and, during the 3-year period between then and December 2014, that number had risen to 154 dwellings housing 1,033 people. Given the potential implications for long-term population numbers as a result of the increased incidence of the use of Part A properties as houses in multiple occupation, in 2013 the States recognised that action was necessary to address this growing issue, and resolved as follows: -

"24. To agree to redefine Part D of the Open Market Housing Register such that it will incorporate all lodging houses and all Part A properties in use for the multiple occupation of unrelated adults and that such properties will be defined as Houses in Multiple Occupation."

2.8 In order to ensure that the new provisions are meaningful and enforceable, it is necessary to be clear about what constitutes a "private dwelling" as, by definition, any property inscribed in Part A of the Register and not meeting the relevant criteria is unlikely to be able to remain on Part A of the Register.

2.9 It is therefore recommended that the legislation should specify who will automatically be able to occupy a Part A dwelling, and what steps will have to be taken to gain permission for other people to occupy such a dwelling. Dwellings not operating within these occupancy restrictions will be unable to remain inscribed in Part A of the Housing Register.

2.10 It is acknowledged that in 2013 an amendment was put forward by Deputies Dorey and Brehaut seeking to direct the Policy Council to return to the States with proposals to restrict the occupation of Part A Open Market properties in the very way proposed in this report.

2.11 It is further acknowledged that the amendment in question was defeated, which may beg the question of why the issue is being revisited now. However, when the amendment was placed, the issue of Houses in Multiple Occupation and a new Part D of the Housing Register had not been examined in detail. As work on these proposals was progressed, it became increasingly apparent that it would be problematic to implement the will of the States in respect of restricting the multiple occupation of Part A properties in the absence of a clear definition of such properties.

2.12 Consequently, despite the previous lack of support for such a move, the Policy Council considers that it is necessary to establish a definition of a Part A property and that the simplest way to do so is by reference to occupation thereof.

"Automatic" Occupation

2.13 It is proposed that Part A dwellings should be occupied by only one household, and that the people described below can be included in that household.

- 2.14 An adult “householder”, who must be either:
- a) the (beneficial) sole or joint owner of that dwelling; or
 - b) a person to whom the owner of the dwelling has leased the property (either solely or jointly) under a formal lease agreement.

For the avoidance of doubt, for each Part A dwelling, only one adult will be considered to be the “householder”.

- 2.15 In addition to the adult householder, it is proposed that the dwelling can also be occupied, without the need to seek separate permission from the Population Office, by that adult householder’s immediate family members as follows:
- a) spouse or partner (only one person is permitted in this category);
 - b) children;
 - c) parents and parents-in-law; and
 - d) grandchildren.

- 2.16 It is also proposed that Part A dwellings can be occupied by house guests of the householder who will not work in Guernsey during their stay in the Island, and who will not exceed a maximum aggregate of 90 days’ residence in the Island in any 12-month period.

- 2.17 This mirrors the current provisions in respect of Local Market dwellings, and those already agreed for Local Market properties in the future, and is considered equitable in the context of ensuring that those dwellings inscribed in Part A of the Register are used only as genuine family homes – i.e. for occupation by one group of people, each of whom is somehow related to the other occupants.

Live-in Staff

- 2.18 It is recognised that, particularly in the case of large Open Market properties that may include extensive grounds, there can be a need for the owner(s) to employ live-in staff, whose duties are to run the household and/or estate. There is no intention to prevent this from continuing and it is therefore proposed that full-time live-in staff, and the immediate family members of those staff, should be permitted to occupy the dwelling in question along with the householder and other members of the household.
- 2.19 The only difference between staff and members of the household, as set out above, would be that such employees will not have an automatic right of ongoing occupation, despite the property’s Open Market status.

- 2.20 The Policy Council proposes that, in line with the restrictions being introduced in other areas, such as occupation of a property inscribed in Parts B or C of the Register (hotels and care homes), live-in staff (and their immediate family members) in Part A Open Market dwellings should be restricted to 5 years' residence in the Island.
- 2.21 Notwithstanding this, if an employer can make a case for long-term essentiality – just as for employees in hotels and care homes – then it would be possible for the employee to benefit from a Long-Term Employment Permit such that they could remain in the same accommodation and employment indefinitely, and for them and their immediate family to accrue residential qualifications in exactly the same way as any other holder of such a Permit.

Lodgers

- 2.22 As at January 2015 there were approximately 90 Part A lodgers living in private family homes inscribed in Part A of the Register (as distinct from those living in Part A properties in multiple occupation), and at the present time it is possible for lodgers to live in Part A accommodation for an indefinite period of time.
- 2.23 The Policy Council recognises that the owners of some Part A private family dwellings derive some income from letting a room or rooms to lodgers; however, in order to maintain the clear distinction in the new legislation between Part A family homes and Part D homes in multiple occupation, the Policy Council considers that, in future, the owner of a Part A property should only be able to accommodate one lodger as more than one such person sharing the accommodation would amount to multiple occupation by unrelated adults.
- 2.24 Consequently, it is proposed that, after the commencement of the new regime, only one lodger will be permitted in a Part A Open Market dwelling. Any additional lodgers will mean that the Part A inscription will be jeopardised. The only exception to this would be where a second or subsequent lodger could demonstrate a right to occupy Local Market accommodation, in which case he would be permitted to occupy the Open Market property in question for so long as his Permit remained valid.
- 2.25 Thus, for example, an individual in possession of a 1-year Short-Term Permit, which would entitle him to live in a Local Market property, could live in a Part A Open Market dwelling as a lodger but, if that person were not the only lodger in the property, he would have to move out when the Short-Term Permit expired.
- 2.26 Given that the primary purpose of the new regime is to provide a mechanism via which the size and make-up of the Island's population can be managed, the Policy Council considers it illogical to allow a Part A lodger to remain in the Island for an extended period of time with no assessment of their skills or wider contribution to the Island. This is particularly so as it is unlikely that a Part A lodger would have the means to purchase or rent a Part A dwelling outright but

after a protracted period of residence, it would become increasingly difficult, on Human Rights grounds, to require such a person to leave the Island. It is therefore proposed that Part A lodgers – other than those with permission to occupy Local Market accommodation for more than 5 years – should be limited to 5 years’ residence in the Island in total.

Other occupants

- 2.27 In the event that the above proposals are accepted, the Policy Council recognises that, just as is the case for Local Market households, there will be occasions when a Part A householder wishes to accommodate people other than those listed above. In such cases, it is proposed that prior permission would be required from the Population Office, by way of an application for a Permit, and any such application would be considered on its merits, taking into account a number of factors including the circumstances giving rise to the Permit application, and the connection between the person for whom the Permit is sought and the other occupants of the dwelling.
- 2.28 For the avoidance of doubt, it is proposed that time spent living in Part A accommodation (other than as Live-In Staff on a Long-Term Employment Permit) under the relevant Permit would not be considered to be qualifying residence for any person aged over 18 when that residence commenced.
- 2.29 It is recognised that some Open Market owners may be concerned about these proposals in so far as they may be perceived to be an erosion of some of the freedoms they have hitherto enjoyed. However, the Policy Council does not believe that the proposals will have any adverse effect on the majority of people occupying Open Market properties who are using these properties as family homes.
- 2.30 Indeed, both the Policy Council and the Housing Department receive requests from Open Market owners and others to intervene in instances where Part A Open Market properties are being occupied by groups of unrelated individuals, on the basis that such occupants may have lifestyles that differ from their nearest neighbours, thereby causing friction. This is not to say that such residents are not law-abiding citizens but often they work in industries that require them to keep different hours, which can be disruptive to near neighbours.
- 2.31 Those who have invested substantial sums in Open Market dwellings have expressed concern about potential erosion of their properties’ value and marketability, as well as un-neighbourly behaviour. Whilst the proposals are unlikely to bring about any change in the use of dwellings already in multiple occupation, they do mean that the practice will be severely curtailed, if not eliminated in the future, thereby preserving the “exclusivity” of the Open Market, which is an important factor to many who wish to invest in such a property.

3.0 Transition

- 3.1 This section of the policy letter deals with the principal arrangements that are recommended to apply as the Island makes the move from the current system of controls on occupation of dwellings to the new system of population management.

Background

- 3.2 In June 2013 the States approved a number of principles on managing the size and composition of the Island's population and also noted the intention of the Policy Council to return to the States with further detailed recommendations as the new Population Management system was developed. It is now in a position to make recommendations on the transition from the existing Housing Control system to the new Population Management regime.
- 3.3 In 2013, the States agreed seven high-level objectives of the new regime. The Policy Council considers that of those objectives, the following apply to the period of transition:

the new system should be:

- a) as effective as possible in enabling the States to manage the size and make-up of the Island's population;
- b) legally robust and designed to meet the Island's domestic and international obligations, taking into account that human rights considerations and the immigration regime are of particular significance in managing the size and make-up of the Island's population;
- c) supported by an efficient and flexible administrative process which contributes to making the Island an attractive place to live, work and to do business and which is not so complex and bureaucratic as to deter people from using that process; and
- d) transparent in its policies, procedures and rules in order that the public understands how and why decisions are made.

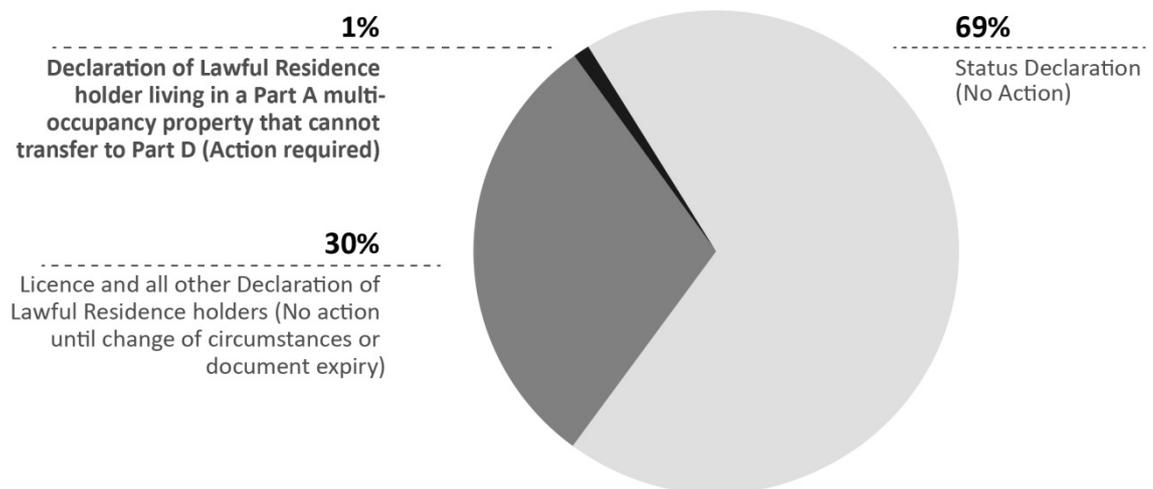
The recommendations in this Policy Letter reflect these objectives.

Introduction

- 3.4 There are a number of terms used in this Policy Letter that may not be familiar to the majority of readers. Therefore, to aid understanding, a glossary is included as Appendix 1.

- 3.5 The Policy Council recognises that individuals will, quite naturally, be asking what the proposals mean for them, and whilst it believes that the proposals in this report address the circumstances of most people, it is not possible to address every conceivable situation, not least because the purpose of this section of the report is primarily to achieve States' agreement on policy issues around the transition period.
- 3.6 Notwithstanding this, in order to help those with questions on this issue, a summary of the implications for the main groups of residents is attached to this Policy Letter as Appendix 2. In addition, a list of Frequently Asked Questions (FAQs) is available on the States of Guernsey website at www.gov.gg/populationmanagement. An online interactive -guide is also available which will help people to find out how they might be affected by the introduction of the new regime.
- 3.7 The diagram below illustrates, in broad terms, the composition of the working population by reference to their status under the Housing Control Law. It will become apparent in this report that some of the more complicated circumstances that could potentially arise during transition in fact apply only to a small minority of the population. By making one or two key decisions the States can deal with the circumstances of a very large proportion of the population.

Figure 1: Transition: Impact for Guernsey's Working Population



Key principles

- 3.8 The Policy Council is of the view that the following key principles should be applied for the transitional period in order to ensure that, for the majority, dealing with the move to the new system is straightforward.

- 3.9 **The first such principle is that, as far as possible, a person's position should not be worsened as a result of moving to the new system.** Given that previous States decisions have been to move to provisions in the new Law that are generally more favourable than those in the existing Housing Control Law, particularly where qualification periods are concerned, there are few cases envisaged where situations could potentially be worsened. Where this is the case, every attempt will be made to minimise the impact of the changes.
- 3.10 **The second principle is that, at the point of transition, documents issued under the Housing Control/Right to Work Laws will continue to be valid under the new system.** To do otherwise would be to require over half of the Island's population to exchange their current document for a new one in anticipation of the introduction of the new system. Such a decision would result in significant inconvenience to Islanders, as well as being administratively burdensome and costly when, in most cases, there would be no real benefit, either for the individual or for those administering the new system, of swapping from one document to another.
- 3.11 **A third key principle relates to the acknowledgement of the "milestones" previously agreed by the States;** specifically the point when a person's lawful residence in Local Market accommodation under the new system would be acknowledged, regardless of his situation or expectations under the current Law.
- 3.12 In this regard, in the case of adults, the States have previously resolved⁴ that individuals will not be required to leave Local Market accommodation once they have been lawfully resident in such accommodation for a continuous period of 8 years: the first "milestone". The new system will refer to such persons as Established Residents.
- 3.13 Should such individuals stay in Guernsey lawfully occupying Local Market accommodation until they complete 14 years' continuous residence - the second "milestone" - they will then become Permanent Residents. This confers on them the right to occupy Local Market accommodation on a permanent basis, unaffected by any absences from the Island. There would, however, be no automatic right of return to Local Market accommodation after a period of absence from the Island before the completion of 14 years' residence.
- 3.14 Given that the rights described above will be conferred under the new system once the relevant milestones are reached, the Policy Council believes there can be no justification for withholding such rights from current residents who started their period of residence prior to the introduction of the new Law, even though at the outset they would have had no expectation of acquiring them in the time scale that will now apply.

⁴ See Resolutions - Billet D'Etat XI 2013

- 3.15 **Consequently, it is recommended that all persons ordinarily resident in the Island upon the introduction of the new regime and who have completed at least 8 years' continuous lawful residence in Local Market accommodation immediately prior to the introduction of the new Law should be granted Established Resident status on the introduction of the new Law.**
- 3.16 **It is further recommended that all persons resident in the Island upon the introduction of the new regime and who have completed 14 years' continuous lawful residence in Local Market accommodation immediately prior to the introduction of the new Law during their current period of residence in the Island should be made Permanent Residents on the introduction of the new Law.**
- 3.17 Acceptance of these principles has negligible implications for population numbers or housing stock as those who will benefit them already have the right to occupy Local Market accommodation in Guernsey on a long-term basis.

What does this mean for individuals?

- 3.18 The application of the key principles will have different effects on different groups of people but, as will become evident from what follows, the majority will find transition a seamless process that requires no immediate action on their part.

Qualified Residents

- 3.19 The Policy Council recommends that a person who has acquired the status of Qualified Resident – i.e. those with a permanent and unconditional right to occupy Local Market accommodation - should transition to the status of Permanent Resident. Given that most people currently living in Guernsey are Qualified Residents, this will mean that the majority of the population will be covered by this arrangement.
- 3.20 In line with the second key principle above, it is recommended that documents issued under the Housing Control regime will remain valid under the new system. Therefore, Qualified Residents who hold Status Declarations will not need to take any action at the point of transition but, in order to ensure that, in time, documents issued under the Housing Control regime are phased out, such that the majority of documents will be “new”, it is proposed that those holding Status Declarations be advised to apply to replace that document with a Permanent Residence Permit if they change jobs or take up employment for the first time after the commencement of the new regime.
- 3.21 Anyone who has acquired residential qualifications but does not hold a Status Declaration will need to apply for a Permanent Residence Permit on changing jobs or taking up employment for the first time. Persons who are residentially qualified but living elsewhere when the new regime is introduced will need to

apply for a Permanent Residence Permit if they wish to take up employment on their return to the Island. Effectively they will be treated in the same way as existing residents in this category who are changing employment.

Holders of Licences issued for Essential Employment

- 3.22 As at January 2015 there were approximately 1,500 persons resident in Guernsey under essential employment-related licences. The lengths of these licences vary and can be up to 15 years' duration; therefore, some licence holders will be able to reach the milestones set out above while others will not.
- 3.23 In accordance with the principles described above, for those resident licence holders who can achieve the relevant milestone it is recommended that they should become Established or Permanent Residents as the case may be; some at the commencement of the new regime (if they have already been lawfully resident in Local Market accommodation for 8 or 14 years at that time). Others will qualify during the term of their licences after the new regime comes into effect. Existing documents will remain valid until the second milestone is reached but the Policy Council recognises that, subsequent to achieving the first milestone, some individuals wishing to change employment or move house will need to exchange their licence for a Permit⁵.
- 3.24 Holders of licences of less than 8 years' duration, who currently have no expectation of becoming a Qualified Resident under the Housing Control Law, will need to vacate Local Market accommodation on the expiry of their licences. This group will not need to take any action, as their situations will not alter as a result of the introduction of the new regime. The existing expiry dates of their documents will remain valid.

Holders of Non-Employment-Related Licences

- 3.25 In January 2015 there were just under 700 persons resident under licences granted on grounds other than employment, sometimes colloquially referred to as "compassionate" licences, although the term is misleading. Such licences are issued for a variety of reasons, ranging from situations such as relationship breakdowns to short-term extensions to enable, for example, a child to complete a school year before the family relocates from the Island.
- 3.26 As with employment-related licence holders, there will be people who currently hold non-employment-related licences who have already reached one of the two milestones, and for these persons it is recommended that they should become either Established Residents or Permanent Residents at the commencement of the new regime, depending on which milestone has been reached.

⁵ A new document will be needed on a change of employment or accommodation because the original one will be linked to current employment and residential address.

- 3.27 Those individuals who have not yet reached the first milestone, and cannot do so within the period of validity of the current licence, and who want to remain in Local Market accommodation when the document expires, will need to make a new application and their circumstances will be assessed by reference to:
- a) their current situation;
 - b) the reasons why the existing licence was issued; and
 - c) the population policies that prevail at that time the licence expires.

Immediate family members of Qualified Residents and licence holders

- 3.28 In January 2015 there were approximately 2,200 persons holding Right to Work documents issued because they were living in the household of a Qualified Resident or licence holder as a close family member. Under the Housing Control regime, such individuals do not need to hold a document unless they work and, therefore, there will be persons living in such circumstances who are not known to the Housing Department. In addition, there were just over 1,000 persons in possession of licences enabling them to live with a Qualified Resident or licence holder as his partner.
- 3.29 In respect of this group, a minor change, not related to transition, is recommended to what has already been agreed. In 2013 the States decided that immediate family members of Qualified Residents and licence holders would be issued with documents known as Temporary Resident Permits. The Policy Council considers that this title is unclear and does not accurately reflect the status of the holder, as many will not be resident in the Island on only a 'temporary' basis. Consequently, it is recommended that this Permit be renamed as a Family Member Permit.
- 3.30 Under the new regime (as now) immediate family members will be expected to continue to live in the household of a Permit holder until they reach the second milestone (i.e. until they complete 14 years' consecutive residence) and requests to deviate from this will be determined by reference to the policies that are in place at that time.
- 3.31 However, at the present time, the spouse/partner of a person who is a Qualified Resident is able to gain residential qualifications after only 10 years' continuous residence with that person in the Island. Given the principle set out in paragraph 3.9 that, as far as possible, individuals' circumstances will not be worsened as a result of the introduction of the new system, it would seem inequitable to "move the goal posts", particularly for those who may be very close to completing 10 years' residence. It is, therefore, recommended that any person who, on the day the new Law commences, is ordinarily resident as the spouse/partner of a person who is or becomes a Qualified or Permanent Resident, should be granted

Permanent Resident status after a period of 10 consecutive years' residence with that person in Guernsey.

Short-Term Licence Holders

- 3.32 As at January 2015 there were approximately 1,000 short-term licence holders resident in the Island (although this number tends to be higher in the summer months). Under the current Law such licences can be issued for periods of up to 3 years, although the majority are issued only for 9 months, and the holder is required to take a break in residence before another similar licence can be issued¹. Such licences are issued to address labour shortages rather than skills shortages and, as such, are also classed as non-essential licences.
- 3.33 The majority of holders of such documents will be expecting to leave the Island in the relatively near future (certainly no more than 3 years from the date of issue of the most recent licence): albeit that many will also expect to return to employment in the Island after a break in residence, which could be as short as 3 months.
- 3.34 The Policy Council recommends that any period of residence under a short-term licence already started at the commencement of the new regime should continue until the expiry of the current document so long as all the conditions attached to the validity of that document continue to be met.
- 3.35 However, under the new regime the overall period of residence for non-essential workers will be capped at an aggregate of 5 years in total; and, subject to an employer demonstrating that attempts to recruit someone who does not need an employment-related Permit have been unsuccessful, that employer will be able to renew a Short-Term Employment Permit annually (up to the 5-year cap), without the relevant employee having to leave the Island.
- 3.36 Individuals who are resident in the Island under a short-term licence at the time of the commencement of the new regime will fall into two groups upon the expiry of their licences; namely:
- a) those who will not yet have accrued an aggregate of 5 years' residence in the Island; and
 - b) those who will have accrued an aggregate of more than 5 years' residence in the Island (regardless of how that residence was achieved).

¹ A 3 year break is required between 3-year licences, and a 3 month break is required between 9-month licences – see Section 4 of the Housing (Control of Occupation) (Guernsey) Law, 1994

Those who have not yet reached an aggregate of 5 years' residence

- 3.37 For the sake of clarity, it is perhaps worth explaining what is meant by an aggregate of 5 years' residence in this context. The 5-year limit will be reached when a person has, over any period of time and regardless of any breaks in residence, spent 5 years living in Guernsey.
- 3.38 For example, someone might come to the Island to work and stay for 2 years before spending a year away. That person will complete the 5 years' residence in aggregate when he completes a further 3 years' residence in total, whether continuous or with breaks.
- 3.39 For those who have not yet been in Guernsey for an aggregate of 5 years, it is recommended that the 5-year cap is applied and that a person cannot accrue more than 5 years' residence in aggregate in Local Market accommodation whilst undertaking non-essential employment in the Island.
- 3.40 Therefore, upon the expiry of an existing short-term housing licence, if an employer can show that the relevant job cannot be filled by a person who does not require an employment-related Permit, a Short-Term Employment Permit could be issued, and renewed annually, until the holder completes an aggregate of 5 years' residence in Guernsey, after which that person would not be permitted to return to the Island under a Short-Term Employment Permit at any time in the future.

Those who have already exceeded 5 years' residence

- 3.41 In these circumstances, the Policy Council recognises that an individual may have an expectation, built up over a number of years, that there will be no limit to the number of times that he can return to the Island to undertake non-essential employment.
- 3.42 In such cases, it is not proposed to apply the residence cap retrospectively; rather it is recommended that the individual should be able to continue to work in Guernsey on the basis of Short-Term Employment Permits but such Permits will be valid only for a maximum of 12 months at a time, after which a break in residence that must be at least equal to the duration of the last period of residence in the Island must be taken. For example, if a 6-month Permit is issued, it must be followed by a break in residence of at least 6 months before a new Permit can be issued, and a 12-month Permit must be followed by a 12-month break in residence.
- 3.43 In addition, it is recommended that before a new Short-Term Employment Permit can be issued (i.e. the first Permit issued to that individual after the introduction of the new regime) the relevant individual must undertake a break in residence at least equal to the last period of residence in the Island – known as a recognised break in residence.

- 3.44 For some individuals, this may mean leaving the Island for a period longer than anticipated when their existing document was issued. Therefore it is the intention of the Policy Council and Housing Department to disseminate appropriate information as soon as possible to relevant employers and individuals likely to be affected by this changed requirement.
- 3.45 Finally, it is also recommended that if a person to whom the concessionary arrangements outlined above apply is absent from the Island for a period of three years or more, then the special arrangements applied to them during transition will cease to apply, and the person will be unable to return to the Island under a Short-Term Employment Permit at any time in the future.

Short-term licence holders not resident at the time of transition

- 3.46 At the time of the commencement of the new regime, there will be individuals who are undertaking a break in residence, but who will be expecting to return to employment in the Island after that break.
- 3.47 It is recommended that such persons are treated in the way set out in paragraphs 3.37 – 3.45 above, depending upon which of the two groups they fall into when they return to the Island. It is also recommended that, if a person has already commenced a break in residence at the time of transition, a Short-Term Employment Permit can be issued despite the fact that the break might not be considered to be a recognised break in residence under the new system. Again, the intention is to ensure the new arrangements are communicated to relevant stakeholders well in advance of their introduction so that, as far as possible, the need to take a longer break will have been communicated before that break begins.

Long-established short-term licence holders

- 3.48 The Policy Council considers that the above recommendations will address the majority of circumstances; however, there will be individuals who have complex residence histories during which they will have held a variety of documents and occupied different types of accommodation.
- 3.49 For people with complex and protracted residence histories, regardless of whether or not they stand to become Qualified Residents under the current Law, they might have achieved sufficient residence in the Island for it to be considered an unjustifiable interference with their Human Rights to require them to leave permanently, or to take a break in residence that is considerably longer than any of their previous breaks in residence.
- 3.50 These complex histories are likely to be particular to an individual and the Policy Council considers that it is neither possible nor desirable to make express provision in legislation for every such case. It therefore believes that in terms of transition, the positions of this group of people will have to be considered on a

case by case basis in the light of policies that apply at the time, with due consideration given to their Human Rights and the key objectives set out earlier in this report. This is no different to the arrangements in place today in respect of people who have accrued long periods of lawful residence in the Island under the existing Housing Control regime, but who might not be potential Qualified Residents.

Residents in States-owned accommodation

- 3.51 Under the Housing Control Law, properties owned by the States are exempt from any restrictions regarding who may occupy them, and for how long. For the avoidance of doubt, these are Local Market dwellings, not Open Market dwellings.
- 3.52 There are existing policies that ensure that the occupation of social and other housing owned by the States (but excluding purpose-built staff accommodation) is restricted to residents who would otherwise be permitted to live in Local Market accommodation. As at January 2015 there were only 11 documents in existence on this basis.
- 3.53 States-owned staff accommodation (such as that provided by the Health and Social Services Department) is often occupied by persons who might not otherwise be allowed to live in Local Market accommodation, or who have exceeded the duration of residence that would be permitted under an employment-related housing licence. As at January 2015 there were just under 300 persons living in States-owned staff accommodation.
- 3.54 Under the new regime, persons living in States' accommodation will need a Residence Permit in the same way as everyone else living in Local Market accommodation. This could have implications for individuals already resident in this accommodation who do not have residential qualifications and who would be unlikely to meet the criteria for a housing licence.
- 3.55 The persons in question are currently lawfully occupying Local Market accommodation with the expectation that such occupation can continue unhindered provided their circumstances do not change. The Policy Council considers that it would be unreasonable to require them to leave their homes on the introduction of the new regime and it therefore recommends that such persons should be permitted to remain in their current accommodation until their circumstances change. A similar principle was applied when the 1994 Housing Control Law was introduced. This will mean that there will be a finite number of individuals who have a special status when the new regime commences, but that number will diminish over time.
- 3.56 Some individuals living in States-owned accommodation may have reached the 8- or 14-year milestone already, which means that, following the principle set out in paragraph 3.11, they will become Established or Permanent Residents as

applicable. They need not apply for new documents under the new regime until such time as they wish to change accommodation or their existing documents expire.

- 3.57 For most, the change of circumstance referred to in paragraph 3.55 is likely to be the end of their employment by the Health and Social Services Department. When this happens, some might apply to live in the general Local Market housing stock, but any such application would have to be considered on its merits and in accordance with the population policies in place at that time.
- 3.58 Anyone who has not reached the 8-year milestone is unlikely to be able to gain access to the wider Local Market housing stock but will, under the proposed transitional arrangements, be able to remain in his current accommodation until such time as that milestone is reached or there is a change in his circumstances.
- 3.59 Any individual taking up occupation of States-owned accommodation after the commencement of the new Law will be subject to the requirements of the new regime, and thus will require an employment-related Permit to live in any Local Market accommodation. This means that whilst in the short term there may be a small increase in the number of people able to gain long-term access to Local Market housing, any such increase will be more than offset by the tighter controls being introduced in the future.

Children

- 3.60 Under the Housing Control Law, children born in Guernsey at a time when their parent/s were ordinarily resident in the Island, and those who first live in the Island as minors in the household of their parent/s, are currently able to acquire permanent residential qualifications after a period of residence in Guernsey – either 10, 15 or 20 years in aggregate in a 20-, 25- or 30-year period respectively (depending on their circumstances).
- 3.61 Under the new regime the qualification period for all people first living in Guernsey as a minor, or born outside the Island but with strong ancestral connections with the Island, will be reduced, such that they can attain Permanent Resident status either at birth or after a period of either 8 or 14 years' residence in aggregate in an 18- or 24-year period respectively.

Children born in Guernsey of Guernsey ancestry

- 3.62 In July 2014, the States made the decision that individuals with strong ancestral connections with the Island would have the ability to acquire residential qualifications at birth if born in Guernsey to a parent who was also born in Guernsey and who is himself the child of a person born in Guernsey (“birthright”). In other words, the child must have a Guernsey-born parent and grandparent in the same ancestral line.

- 3.63 The Policy Council has considered the issue of whether this principle should be applied to people who would otherwise meet the criteria, but were born before the commencement of the new regime. It is believed that there may be an expectation in some quarters that this will be the case, but the Policy Council has considered different options in order to assess what represents the best approach overall.
- 3.64 One option would be to apply the new provision retrospectively, which would mean that anyone with a Guernsey-born parent and grandparent who was himself born in Guernsey at any time up to the commencement of the new regime would become a Permanent Resident as soon as the new Law commences. This would apply to people no matter where they are living now and regardless of the duration of any period of absence from Guernsey.
- 3.65 The effect of such a decision would be to create a pool of individuals, currently resident outside of Guernsey, who, as a result of the introduction of the new regime, would immediately gain a right to return to the Island and to live in Local Market accommodation at any time, that they ought to have had no expectation of acquiring. Such persons would also gain an automatic right to bring their immediate family members to the Island, and to undertake employment in the Island.
- 3.66 There are no statistics showing how many people living outside the Island would fall into this category and it is impossible to know how many of that pool of people would exercise their new-found right. However, there is a concern that applying the birthright provision retrospectively without any information about the size or future intentions of the group of people who would benefit from it, would be to risk (potentially over many years) an influx of Permanent Residents some of whom might have never made – and might not make in the future – any economic contribution to the Island, and all of whom would be entitled to accommodate immediate family members.
- 3.67 A second option would be to apply the new provision only from the day on which the new regime is introduced – i.e. not to apply the new qualification rules retrospectively. This would mean that only children born on or after the commencement date of the new Law could qualify under the relevant provisions and anyone already born in Guernsey with a Guernsey-born parent and grandparent in the same ancestral line would not benefit from immediate qualification under the new regime.
- 3.68 It has been usual in the past to apply the provisions of the Law in relation to residential qualifications from the point at which the Law was introduced, and this approach would be consistent with that historical stance. It is acknowledged that applying this principle could create certain anomalies, such as younger siblings qualifying before older ones, but this would be an issue only if a family decided to relocate off-Island at a time when an elder child had yet to gain

residential qualifications (i.e. before the older child had completed 8 years' residence).

- 3.69 The Policy Council accepts that, in respect of the first option, there is no evidence that the retrospective application of this provision would result in an influx of Permanent Residents, but it nevertheless considers it prudent to err on the side of caution and not to confer the birthright provision retrospectively when the new regime commences. This has the advantage of allowing the situation to be monitored and would not rule out the possibility of widening the scope of that provision at a later date.
- 3.70 The possibility of a compromise solution was carefully considered but it is difficult to devise such a solution that has a sound, logical basis. In the absence of logical supporting arguments, critics of any compromise can easily argue against it.
- 3.71 **On balance, therefore, the Policy Council recommends that the birthright qualification should be conferred only from the day on which the Law comes into force.** This mirrors what has been done in the past and is considered equitable and justifiable. It also avoids the risks associated with applying the relevant provisions of the new Law retrospectively but allows scope for doing so in the future if required.

Others born in Guernsey or first resident as minors

- 3.72 There are of course others who are currently able to gain permanent rights on the basis of birth in Guernsey plus a period of residence, or because they were first resident as a minor in the household of their parent/s and have subsequently completed a period of residence prescribed under the Housing Control Law; and it is necessary to determine how to deal with their situations upon commencement of the new Law.
- 3.73 The Policy Council believes that the most logical and consistent approach is to apply the "milestone" principle, as set out in paragraph 3.11. This would mean that anyone ordinarily resident in Guernsey on the day the new Law commences will, if he meets the requisite "milestone" of 8 or 14 years' residence become a Permanent Resident.
- 3.74 Should such a person be part-way through a qualification period – having completed, say, 7 years out of the 10 needed to qualify – then he will become a Permanent Resident on completion of 8 years' residence.
- 3.75 For the avoidance of doubt historic residence in Guernsey will not count towards qualification periods under the new regime unless it can be aggregated with current or future periods of residence in the Island to maintain a person's right, gained under the Housing Control Law, to complete their qualifying period in this way. This is in line with the principle described in paragraph 3.9.

Open Market residents

- 3.76 This section presupposes that the recommendations set out in Section 2.0 of this report are agreed. Should any successful amendments be put forward, or should those earlier proposals be rejected, then this may well have a knock-on effect on the proposals that follow.
- 3.77 Open Market properties comprise only a small percentage⁷ of Guernsey's housing stock, and compared with the Local Market there are fewer restrictions regarding their occupation. Notwithstanding this, there are some groups of Open Market residents who will potentially be affected by the introduction of the new regime and it is necessary to consider how to deal with their situations.
- 3.78 The Open Market Register currently comprises four different Parts – A, B, C and D. The distinction between each Part is as follows:
- Part A – private dwellings (1597 properties)
 - Part B – hotels and guest houses (57 properties)
 - Part C – nursing and residential homes (10 properties)
 - Part D – lodging houses (26 properties)

Owners and Principal Tenants of Properties

- 3.79 Under the Housing Control Law, the owners of dwellings on each Part of the Register can occupy the properties without needing a housing licence, as can the principal tenants of dwellings on Parts A, B and C of the Register, and the immediate family members of both of these types of people. There are no proposals to change this situation.
- 3.80 Therefore, no action is needed by such people as a result of the introduction of the new regime and any document issued under the Housing Control Law will remain valid until its expiry date and, if there has been no change to the status of the dwelling or the basis of the occupation, in due course it will be possible for a new document to be issued under the new regime.

Lodgers in Part A – Private Dwellings

- 3.81 As at January 2015 there were 90 people in possession of Right to Work documents who were lodgers in Part A Open Market dwellings. These individuals are not related to the owner or principal tenant, nor are they parties to the lease with the owner, if applicable, but they are sharing the property with the owner or tenant. Such occupants will have the expectation of being able to benefit from the Open Market status of the property, and thus live in the Island free from restrictions, for so long as they remain in that dwelling. In future, it is

⁷ 5.9% - Guernsey Annual Housing Stock Bulletin 2014

proposed that lodgers in Part A Open Market accommodation should be restricted to 5 years' residence.

- 3.82 Consequently, when the new regime is introduced, it is recommended that lodgers in Part A accommodation should be subject to the following provisions, dependent on their residence histories in Guernsey.

Those with fewer than 5 years' residence

- 3.83 Lodgers in Part A Open Market accommodation who have not yet lived in Guernsey for 5 years will be permitted to stay in their current accommodation until the 5-year threshold is reached, at which point they will need to take a recognised break in residence.

Those who have exceeded 5 years' residence

- 3.84 There may be a number of lodgers living in Part A Open Market accommodation who have already been in Guernsey for 5 years or more when the new regime comes into force. It is not proposed to apply the 5-year "cap" retrospectively to such residents and so it is recommended that where a Part A property is being used to house the owner or principal tenant (possibly plus his family) and other unrelated adults who are living there as lodgers, the lodgers will be permitted to stay indefinitely provided that there is no change to the status of the property and it remains on Part A of the Open Market Housing Register.
- 3.85 It is further recommended that this provision will apply only to those who have already entered into such living arrangements by the publication date of this Policy Letter. Where a person is relying on this recommendation to benefit from "grandfather rights", the burden of proof will be on that person to demonstrate when the period of residence as a lodger commenced.

Domestic Employees in Part A Private Dwellings

- 3.86 There are people living in Part A Open Market accommodation because they are employed on a full-time basis within that household (such as live-in nannies, carers or other domestic staff). As at January 2015, there were approximately 50 such employees.
- 3.87 Although not addressed explicitly in earlier reports, given that the new regime is concerned primarily with population management, as opposed to regulating the occupation of properties, it follows that it will be necessary for persons living in such circumstances to obtain a Permit, just as they are required to hold a Right to Work document at the present time.
- 3.88 Therefore it is recommended that an Open Market (Part A) Employment Permit is created. When the new regime commences, such residents will need to apply for this Permit on the expiry of their existing Right to Work documents. Permits

will be granted provided that the applicant is employed by the owner or principal tenant of the dwelling in question on a full-time basis and continues to be accommodated within the dwelling.

- 3.89 Given that it is now proposed to limit the residence of live-in employees to 5 years, it is recommended that the same principles as set out in paragraphs 3.83 and 3.84 should be applied to live-in staff in Part A Open Market dwellings. In other words, those who have not yet completed 5 years' residence will need to take a recognised break in residence when the 5-year point is reached, whilst those who have already exceeded 5 years' residence will be allowed to continue living and working in the property indefinitely.

Part B – Hotels and Guesthouses

- 3.90 In 2013 the States resolved that genuine tourists would not have to obtain a Permit to be resident in a Part B property, subject to a limit of such residence of 90 days in a 12-month period.
- 3.91 The Part B residents most likely to be affected by the transition to the new regime are, therefore, live-in staff, of whom there were approximately 600 as at January 2015.
- 3.92 In 2013 the States agreed that such live-in staff could reside in Part B properties only for a maximum period of five years after which they would have to take a recognised break in residence before being able to apply to return to the Island. Currently there is no restriction on the length of residence of live-in employees, so this will represent a change for some people in this group.
- 3.93 When the new regime commences, some live-in staff will not yet have completed 5 years' residence in Guernsey and they will be required to break residence when they reach the 5-year limit.
- 3.94 However, there will also be live-in staff who will have already exceeded 5 years' residence at the start of the new regime and their circumstances must be considered.
- 3.95 As with residents in States-owned accommodation, such persons commenced residence in the establishments concerned on the understanding that such residence could continue unhindered provided that their circumstances did not change.
- 3.96 Consequently, in recognition of the expectations of both employers and employees, which may have been built up over a number of years, it is recommended that "grandfather rights" should be conferred on anyone already resident in Part B staff accommodation provided that such a person:

- a) had already been continuously resident in the Island for 5 or more years at the commencement of the new regime; and
- b) was at that time already in established employment as a full-time live-in employee in a Part B property.

3.97 The Policy Council also recommends that such a concession would apply only whilst an individual remains employed full-time in the relevant Part B property. Therefore, if such a person wished to take up a post with a new employer or live elsewhere, the “grandfather right” would be lost and any request to change employer/accommodation would be considered on its merits in light of the policies then prevailing.

Part C – Nursing and Residential Homes

3.98 As is the case with Part B properties, there are staff who live in Part C properties in accommodation provided at that property. As at January 2015 there were only 2 members of staff holding Right to Work documents on the basis that they were living and working in a property inscribed on Part C of the Housing Register.

3.99 In 2013 the States also agreed that such live-in staff could reside in Part C properties only for a maximum period of 5 years, after which they would have to take a break in residence before being able to apply to return to the Island. Currently, there is no restriction on the length of residence of live-in employees, so this will represent a change for some people in this group.

3.100 The Policy Council recommends that the same principles discussed above in relation to staff who live in Part B properties should apply to those who live in Part C properties. Clearly this will affect only an extremely small number of people.

3.101 In 2013, the States also resolved that an individual who wished to live in a Part C property in order to benefit from the care provided in that establishment would have to obtain a Permit (which would not be time limited) unless that person was a Qualified or Permanent Resident.

3.102 Given that the majority of such residents are likely to be older people and possibly in poor health, the Policy Council recommends that any individual who is already resident in a Part C property and who is not a Qualified or Permanent Resident when the new regime commences will not be required to obtain a Part C Residence Permit. The requirement to obtain such a Permit will therefore apply only for those taking up residence in a Part C property after the new regime comes into effect.

Part D – Lodging Houses

3.103 In the case of properties that are currently on Part D of the Open Market Register, all occupants other than the owner and his immediate family will

require housing licences if they are not Qualified Residents. However, it is not possible to say here what will happen to each resident because their licences will have been issued for a variety of reasons and, as such, there will be different implications for different individuals. For example, a non-employment licence holder who happens to have chosen to live in Part D accommodation is unlikely to be restricted by the 5-year cap that will apply to occupation of such properties in the future. Conversely, a short-term housing licence holder will potentially be restricted in terms of future residence.

- 3.104 Consequently, it is recommended that, regardless of residence history, any existing occupants should be permitted to remain in their accommodation until such time as their current document expires after which their circumstances will be assessed in accordance with the provisions and policies of the new regime.
- 3.105 The States have also resolved that, upon the introduction of the new regime, Part A dwellings that are occupied by groups of unrelated adults will, provided they were already in multiple occupation on 10th May 2013:
- a) transfer to Part D of the Housing Register;
 - b) be able to be occupied by persons who would not otherwise be entitled to live in Local Market accommodation; and
 - c) for new occupants, have a 5-year residency limit placed upon their occupation (unless the occupier would otherwise be permitted to reside in Local Market accommodation for a longer period).
- 3.106 There are currently approximately 150 Part A properties being occupied on this basis, and, as at January 2015, there were about 1,000 people living in properties inscribed on Part A of the Register as part of a group of largely unrelated adults. It should, however, be noted that, of the 150 properties in question, not all were in multiple occupation on 10th May 2013, meaning that they are not automatically eligible to move to Part D.
- 3.107 Individuals who, upon the introduction of the new regime, are living in a Part D property that was formerly inscribed in Part A of the Register and has been transferred to Part D as a consequence of the introduction of the new Law, will fall into two groups, namely:
- a) those who have lived in the Island (albeit not necessarily in Part A accommodation throughout) for a continuous period of more than 5 years; and
 - b) those who have lived in the Island (albeit not necessarily in Part A accommodation throughout) for a continuous period of less than 5 years.

Those with more than 5 years' residence

- 3.108 For this group, the Policy Council recommends the same approach recommended above for Part B and C employees in that “grandfather rights” should be conferred on anyone with a minimum of 5 years’ residence on the Island (however achieved) and resident in this type of accommodation when the new regime commences, provided that such a resident:
- a) had already exceeded 5 continuous years’ residence in the Island; and
 - b) was already in established residence in a Part A dwelling being occupied by unrelated adults on that date.

Those with less than 5 years' residence

- 3.109 For the second group, the Policy Council recommends that persons who have not yet lived in Guernsey for 5 years when the new regime commences will be permitted to remain in the relevant Part D property until such time as they have completed 5 years’ residence, at which time they will have to take a recognised break in residence.

Boat Dwellers

- 3.110 A small number of individuals choose a boat as their residence and, under the current Housing Control regime, if they undertake work, are issued with a Temporary Exemption Certificate (TEC). Individuals who do not work do not require any documents.
- 3.111 As people are currently entitled to live on a boat (they only do so at Beaucette Marina at the present time) for an indefinite period and do not need to contact the Housing Department unless a Right to Work document is required, it is not possible to say with certainty how many persons are currently living aboard boats who would not otherwise be entitled to live in Local Market accommodation. As at January 2015, there were 40 people holding Right to Work documents issued specifically on the basis that they were living in such circumstances.
- 3.112 In the future, the Population Management regime will be interested in population numbers rather than the occupation of dwellings and it therefore follows that the Population Management Office will have an interest in all boat dwellers.
- 3.113 The Policy Council believes that when the new regime comes into effect, there will be no need for a special category of residence Permit for boat dwellers. It therefore considers that the option to live aboard a vessel would simply become one that was available to anyone who is entitled to hold a Permit, provided that all of the conditions of such a Permit could be satisfied. This will mean that some will have to take a recognised break in residence when a certain time limit

is reached, in accordance with the Law in relation to the type of Permit they hold.

- 3.114 However, it is recognised that there are individuals who are already living aboard boats who commenced such residence on the understanding that it could continue indefinitely. The Policy Council recommends that such persons should be permitted to continue living aboard the vessel indefinitely provided they have been in continuous residence on the vessel in Guernsey for a period of at least 6 months when the new regime comes into operation. As with other groups who have been granted concessions, such rights would endure until such time as the individuals' circumstances change, at which time any application to gain access to Local Market accommodation will be assessed in light of the policies that prevail at that time.

Preparing for Transition

- 3.115 It is inevitable that as the introduction of the new Law draws closer there will be an increase in the number of people seeking information about if/how their situations will change once the new regime has commenced.
- 3.116 At the same time, there will be a need to continue “business as usual” in respect of the operation and administration of the Housing Control Law. In anticipation of increased workload at this time, the intention is, ahead of the commencement of the new Law, to appoint a Statutory Official who will be responsible for running the Population Management Office.
- 3.117 Details of this post have been included in a separate policy letter but, in short, the postholder will be responsible for administering the new Law in accordance with States' strategic objectives and policies set out by the political body responsible for Population – currently envisaged to be the Policy Council or its equivalent post-implementation of the States Review Committee's recommendations.
- 3.118 The early appointment of this official will help to separate Housing Control “business as usual” from preparation for the new regime. It will also have the important advantage of enabling cases that arise close to the commencement date of the new Law to be considered, so far as is possible, in light of the policies and procedures that will apply in the future, thereby enabling informed but pragmatic decisions to be made.

Summary

- 3.119 Many different situations have been covered in this section of the policy letter but, in summary, the key points are as follows:

- All existing documents will remain valid when the new regime is introduced so long as all the conditions attached to the validity of that document continue to be met.
- Anyone who has a document with an expiry date will need to take action when that expiry date is reached, or sooner if any of the other conditions attached to the validity of that document cease to be met.
- The majority of cases will be very straightforward.
- Some cases will be less straightforward but these are very much in the minority.
- There will be a small number of people with no current expectation of being able to access or remain in Local Market accommodation who may find themselves able to remain in Local Market accommodation indefinitely.
- Any short-term population increase, which is likely to be negligible, will be more than offset by the fact that the new regime allows more control in the future over the length of time people can stay in Guernsey.

4.0 Advisory Panel

4.1 In 2013 the States resolved:

“To agree to the establishment of an Advisory Panel to provide independent advice to the Policy Council in relation to population management policies.”

4.2 The following sections set out the Policy Council’s proposals and recommendations regarding the establishment of such a Panel. As explained below, it does not recommend the appointment of actual members of the Panel at this time, and the purpose of this section of the report is to ask the States to agree a number of principles regarding its Constitution, Mandate and other related matters.

Context

4.3 The main objective of the population management proposals was to put in place a system that provides a flexible mechanism that will enable the States proactively to support the Island’s strategic aims.

4.4 The 2013 States Report also pointed out that if public services and a vibrant economy are to be maintained, it would be necessary to identify and address any skills, experience or manpower shortages in relevant sectors of the economy.

4.5 The Policy Council therefore considers that the primary function of the Advisory Panel should be to provide independent advice on labour and skills shortages in

particular sectors of the economy, i.e. those (predominantly private) sectors where employment Permits should be granted, and the duration of such Permits. (It is worth noting that that this proposal has been warmly welcomed by all sectors during consultations.)

- 4.6 For the avoidance of doubt, the Panel will **not** be involved in:
- a) the day to day administration of the population management regime;
 - b) the determination of individual Permit applications;
 - c) formulating non-employment-related population management policies;
- or
- d) formulating the States Population Policy.
- 4.7 It is intended that the role of the members of the Panel will be to provide advice, based on their knowledge and experience, to help inform the formulation of policies in relation to employment-related Permits.

Constitution

- 4.8 Given that the Panel has only an advisory role, the Policy Council does not propose that it would have any statutory functions. Rather, it is therefore recommended that the Panel is constituted by Resolution of the States (and for the avoidance of doubt, it would not be a Committee or Sub-Committee of the States).
- 4.9 The Panel has to provide independent advice and the Policy Council believes that in order to ensure that it can add value to the policy formulation process, the membership should consist of private individuals who have current, detailed working knowledge of particular economic sectors (such as, for example, tourism and construction). The Policy Council therefore considers that the Panel membership should consist entirely of individuals from outside of the States.
- 4.10 Clearly, if membership of the Panel included a representative from every economic sector it would be too unwieldy to function effectively. The Policy Council therefore recommends that the Panel should consist of a Chairman and six other members and that its Constitution should be as follows:
- a) a Chairman and six ordinary members, none of whom shall be sitting States Members;
 - b) the Chairman and members will be appointed by the States on the recommendation of the Policy Council (this would not preclude nominations in the Assembly);

- c) the terms of office of all Members will be four years but will be staggered so that three are replaced every two years, which means that, of the original members, two will have to be appointed for only two years;
 - d) the quorum at any meeting will be four; and
 - e) the Chairman will have an original vote, but not a casting vote.
- 4.11 The Policy Council also recommends that the Panel should be able elect a vice-Chairman from its members and co-opt other members on a short-term, non-voting basis if advice is needed in relation to an economic sector that was not represented by a standing member.

Mandate

- 4.12 The 2013 States Report included the following statements regarding employment Permits:

“Guernsey does not have all of the skills that it needs within the existing population. Incoming workers have been, and still are, filling skills shortages in the Island.

Long Term Employment Permits will be issued for a period of 8 years to address persistent and enduring skills shortages where it is unlikely that those skills will be easily sourced, either in the Island or globally, in the foreseeable future or where continuity in the post in the longer term is in the Island’s interest.

Medium Term Employment Permits will be issued for a period of up to 5 years in circumstances where:

- *a post requires specific skills which are not available in the Island, but where that skills shortage is likely to be able to be met in the foreseeable future; or*
- *the skills required are held by Qualified Residents and Residence Permit holders, but the number of people resident in the Island with those skills is insufficient to fill the total number of posts requiring a similar or identical skill set.*

Short Term Employment Permits will be issued for a period of up to 1 year to fill posts where there is not a need for a high level of skill, but where there is a need for additional manpower over and above that which can be sourced from within the Island.”

4.13 On the basis of these statements, the Policy Council recommends that the primary purpose of the Panel should be:

1. To provide the Policy Council with regular information on those sectors of the economy in which:
 - a) there are persistent shortages of skilled workers, and whether those shortages are limited to Guernsey or are more wide-spread;
 - b) there are Island-based workers with appropriate skills, but not in sufficient numbers to meet the demand for such skills in the relevant sectors; and
 - c) there are shortages of semi-skilled or unskilled workers.

4.14 The 2013 States Report also included the following statements:

“The proposed structure for the new population management regime includes the creation of an Advisory Panel to assist and advise the Policy Council in respect of the new regime. It is envisaged that the Panel would provide advice and evidence-based recommendations to the Policy Council where it believes policies need to be changed. The Policy Council could also ask the Advisory Panel to test any new policies or proposed changes to the regime. The Advisory Panel will have close links with the Skills Guernsey group.

It is proposed that members of the Advisory Panel, which might include representatives of interest groups, would be required to draw on their personal experience to provide general advice and on their professional experience to provide regular monitoring of the Islands economy and labour market.”

4.15 In order to fulfil the requirements to provide “advice and evidence-based recommendations” and “general advice” and “regular monitoring”, the Policy Council further recommends that the Panel should be required:

2. To provide independent advice and evidence-based recommendations to the Policy Council on matters that are relevant to employment-related population management policies.
3. To provide a monitoring report to the Policy Council every six months.
4. At the request of the Policy Council, to review and comment on any existing employment-related population management policies or any such policies that are under development.

Administrative Support

- 4.16 The Policy Council considers that administrative support for the panel should be provided by the office of the (future) Population Management Office.

Appointment of Panel Members

- 4.17 The 2013 States Report states that Panel members would be appointed by the States on the recommendation of the Policy Council.
- 4.18 It is currently anticipated that the new population management legislation will come into effect in 2017. The Policy Council does not, therefore, propose to nominate members of the Panel at this time. Rather it anticipates that it would do so around the first quarter of 2016 so that the Panel can provide advice on the development of employment-related population policies at an early stage, ready for the implementation of the new regime.

Remuneration

- 4.19 The Policy Council considers that Panel members would be able to claim the standard non-States member half-day allowance.

5.0 Resource Implications

- 5.1 In June 2015, the Policy Council advised the States on the appointment of an Implementation Project Manager who is responsible, inter alia, for the preparation of a business case for the resource requirements of a new Population Management Office.
- 5.2 The resource requirements for the administrative and other resources required to transition from the existing Housing Control regime to the new Population Management regime and to support the Advisory Panel will be included in that business case and it is anticipated that this will be submitted to the States early in 2016.

6.0 Consultation

- 6.1 The Law Officers' Chambers have been consulted on the contents of this Policy Letter.
- 6.2 The Commerce and Employment Department and relevant businesses and business organisations have been consulted on the proposed transitional arrangements set out in section 3.

7.0 Principles of Good Governance

7.1 The Policy Council believes that it has fully complied with the six principles of good governance in the public services in the preparation of this Report (set out in Billet d'État IV, 2011 and approved by the States).

8.0 Recommendations

8.1 The Policy Council recommends the States:

a) to agree that:

Open Market

- i) properties inscribed in Part A of the Open Market Housing Register should in future be defined by reference to the occupiers permitted in such properties (paragraph 2.9);
- ii) only those individuals described in paragraphs 2.13 to 2.15 of this Policy Letter will be able to occupy Part A dwellings without express permission and without jeopardising the inscription of the property in question;

Transition

- iii) all documents issued under the Housing Control/Right to Work Law will remain valid until their expiry dates so long as all the conditions attached to the validity of such documents continue to be met (paragraph 3.10);
- iv) any person who is ordinarily resident in the Island at the commencement of the new Law ("Commencement") and who has completed, or who completes thereafter, 8 consecutive years' lawful residence in Local Market accommodation, should be granted Established Resident status (paragraph 3.15);
- v) any person who is ordinarily resident in the Island at Commencement and who has completed, or who completes thereafter, 14 consecutive years' lawful residence in Local Market accommodation, should be granted Permanent Resident status (paragraph 3.16);
- vi) any person who is a Qualified Resident at Commencement will be granted Permanent Resident status (paragraph 3.19);
- vii) holders of Status Declarations need not apply for Permanent Resident Permits on Commencement (paragraph 3.20);

- viii) Temporary Resident Permits should be renamed Family Member Permits (paragraph 3.29);
- ix) on Commencement a person who is ordinarily resident as the spouse/partner of a person who is or becomes a Qualified or Permanent Resident, should be granted Permanent Resident status after a period of 10 consecutive years' residence with that person in Guernsey (paragraph 3.31);
- x) any period of residence under a Short-Term Housing Licence already started at Commencement should be permitted to continue until the expiry of that licence so long as all the conditions attached to the validity of that document continue to be met (paragraphs 3.34 and 3.47);
- xi) any period of residence under a Short-Term Housing Licence already started at Commencement cannot exceed an aggregate period of 5 years (paragraph 3.39 and 3.47);
- xii) anyone resident under a Short-Term Housing Licence on Commencement, who has already completed 5 years' residence in Guernsey will not be granted a Short-Term Employment Permit in future for any period longer than 12 months, and that a recognised break in residence must precede the grant of any subsequent Short-Term Employment Permit (paragraphs 3.42, 3.43 and 3.47);
- xiii) the concession described in xii above will cease to apply to anyone benefitting from it if that person is absent from the Island for a period of 3 years or more (paragraph 3.45);
- xiv) any residents in States-owned accommodation on Commencement should be permitted to remain in their current accommodation until their circumstances change (paragraph 3.55);
- xv) the provisions in the new Law that enable those born in Guernsey with Guernsey ancestry (a parent and grandparent in the same ancestral line) to become Permanent Residents at birth will be applied from Commencement and will not be applicable to anyone born before that date (paragraph 3.71);
- xvi) any period of ordinary residence in Guernsey prior to Commencement will not be counted towards qualifying residence under the new Law unless the person in question is ordinarily resident in Guernsey at Commencement (paragraph 3.75);
- xvii) a person's periods of ordinary residence in Guernsey prior to Commencement can continue to count towards qualifying residence under the Housing Control Law, regardless of whether that person is

ordinarily resident in Guernsey at Commencement, only where immediately prior to Commencement he had the right under the Housing Control Law to aggregate previous periods of ordinary residence with future ordinary residence for the purpose of obtaining residential qualifications (paragraph 3.75);

- xviii) lodgers in Part A Open Market accommodation on Commencement who have not yet lived in Guernsey for 5 years will be permitted to stay in their current accommodation until the 5-year threshold is reached, at which point they will need to take a recognised break in residence (paragraph 3.83);
- xix) lodgers in Part A Open Market accommodation on the date of publication of the Billet d'Etat containing this Policy Letter who have lived in Guernsey for more than 5 years will be permitted to stay indefinitely provided that there is no change to the status of the property and it remains on Part A of the Open Market Housing Register (paragraphs 3.84 and 3.85);
- xx) live-in staff in a dwelling inscribed on Part A of the Open Market Housing Register should be able to apply for the grant of Open Market (Part A) Employment Permit, provided that they are employed on a full-time basis and accommodated in the dwelling at which they are employed (paragraph 3.88);
- xxi) live-in staff in a dwelling inscribed on Part A of the Open Market Housing Register on the date of publication of the Billet d'Etat containing this Policy Letter who have lived in Guernsey for more than 5 years will be permitted to stay indefinitely provided that there is no change to their status or the status of the property and it remains on Part A of the Open Market Housing Register (paragraphs 3.89);
- xxii) persons living and working in a hotel inscribed on Part B of the Open Market Housing Register upon Commencement, who have been resident in Guernsey for a minimum of 5 consecutive years, will not be subject to a cap on the length of their residence for so long as their employment and residential circumstances do not change in any material way (paragraphs 3.96 and 3.97);
- xxiii) persons living and working in a nursing or residential home inscribed on Part C of the Open Market Housing Register upon Commencement, who have been resident in Guernsey for a minimum of 5 consecutive years, will not be subject to a cap on the length of their residence for so long as their employment and residential circumstances do not change in any material way (paragraph 3.100);

- xxiv) any person who is resident in a Part C property on Commencement and who is not a Qualified or Permanent Resident will not be required to obtain a Part C Residence Permit (paragraph 3.102);
- xxv) any person resident in a property inscribed in Part D of the Open Market Housing Register upon Commencement will, regardless of residence history, be permitted to remain in that accommodation until such time as the document held by such a person expires (paragraph 3.104);
- xxvi) any person resident in a property inscribed Part D of the Open Market Housing Register upon Commencement that was inscribed in Part A of the Register immediately prior to Commencement will, if his period of residence exceeds 5 years, be permitted to remain in that accommodation until such time as there is a material change in circumstances (paragraph 3.108);
- xxvii) any person resident in a property inscribed in Part D of the Open Market Housing Register upon Commencement that was inscribed in Part A of the Register immediately prior to Commencement will, if his period of residence is less than 5 years, be permitted to remain in that accommodation until such time as he has completed 5 years' residence, at which time he will have to take a recognised break in residence (paragraph 3.109);
- xxviii) persons living aboard a vessel will, provided they have lived in Guernsey in such circumstances for at least 6 months upon Commencement, be issued with Permits for as long as their circumstances do not change in any material way (paragraph 3.114);

Advisory Panel

- xxix) a Population Advisory Panel should be established with the following constitution:

A Chairman and six ordinary members, none of whom shall be sitting States Members, who shall be elected by the States on the recommendation of the Policy Council, with power to elect a vice-Chairman from its membership and to co-opt other members on a non-voting, short-term basis.

The Chairman and members shall serve a four year term of office.

The quorum at any meeting of the Panel will be four.

The Chairman will have an original vote, but not a casting vote (paragraphs 4.8, 4.10 and 4.11); and

xxx) the mandate of the Panel shall be:

To provide the Policy Council with regular information on those sectors of the economy in which:

- a) there are persistent shortages of labour with skills required by the relevant sectors,
- b) some labour with appropriate skills exist, but not in sufficient numbers to meet the demand for such skills in the relevant sectors, and
- c) there are shortages of labour that do not require particular skills.

To provide independent advice and evidence-based recommendations to the Policy Council on matters that are relevant to employment-related population management policies.

To provide a monitoring report to the Policy Council every six months.

At the request of the Policy Council, to review and comment on any existing employment-related population management policies or any such policies that are under development (paragraphs 4.13 and 4.15); and

- b) to direct the preparation of such legislation that may be necessary so as to give effect to the above decisions, and of any necessary consequential, supplementary and transitional provisions not specified above, including, but not limited to, amendments to other legislation.

J P Le Tocq
Chief Minister

1st June 2015

A H Langlois
Deputy Chief Minister

G A St Pier
Y Burford
D B Jones

P L Gillson
K A Stewart
M G O'Hara

R W Sillars
P A Luxon
S J Ogier

Appendix 1**Glossary of Terms****Terms pertaining to the Housing Control system (current)**

Housing licence	A document issued to allow someone without residential qualifications to live in Local Market property in Guernsey.
Qualified Resident	A person who has satisfied the conditions set out in the Housing Control Law to gain the permanent right to occupy Local Market accommodation in Guernsey.
Residential Qualification	The permanent right to occupy Local Market accommodation in Guernsey.
Right to Work document	A document that confirms the holder is able lawfully to work in Guernsey.
Short-Term Housing Licence	A type of housing licence issued to allow someone to undertake non-essential employment in Guernsey when the post in question cannot be filled locally. Usually issued for periods of 9 months, with a mandatory 3-month break in residence between licences.

Terms pertaining to the Population Management Regime (future)

Birthright	A term coined to describe the residential qualifications conferred at birth to those meeting specified criteria under the new Law.
Milestone	The point in time at which a person has lived in Guernsey under specified circumstances for long enough to become an Established or Permanent Resident.
Established Resident	A person who, under the new regime, has completed 8 consecutive years' residence in Guernsey and has the right to occupy Local Market accommodation with no restrictions. This right will be lost following a period of absence from the Island – i.e. it is not a permanent right.
Open Market (Part A) Employment Permit	A document issued to full-time live-in staff in private Open Market houses.
Permanent Resident	A person who, under the new regime, has completed 14 consecutive years' residence in Guernsey and has the permanent right to occupy Local Market accommodation in Guernsey.

Population Management Regime	The future system of managing population under the new Population Management Law.
Recognised break in residence	Time spent living away from Guernsey that is at least equal to the period of continuous residence in Guernsey immediately before the break.
Short-Term Employment Permit	A document issued to enable someone to take up non-essential employment that enables the holder to live in lodgings or shared accommodation. The holder is not permitted to accommodate any other person.

Common terms (current and future)

Continuous lawful residence	Living in Guernsey in accordance with relevant laws, without leaving the Island for extended periods or setting up home elsewhere.
Open Market Housing Register	The record of all Open Market properties in Guernsey.
Point of transition	The day on which the new Law comes into force and the new regime commences.
Qualification period	The time set out in the Law during which a person has to live in Guernsey, in prescribed circumstances, in order to attain the permanent right to occupy Local Market accommodation.

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS
PART 1 LOCAL MARKET RESIDENTS

Type of document held	Duration	Continuously resident how long?*	Established Resident?*	Permanent Resident?*	Action needed on introduction of new regime
Status Declaration	Permanent	N/A	N/A	Yes	<i>None.</i>
Essential Employment related Licence	≤ 7 years	≤ 7 years	No	No	<i>None. Licence will remain valid until its expiry date, when holder must vacate Local Market accommodation.</i>
Essential employment related Licence	≥ 8 years	≤ 7 years	No	No	<i>None. Licence will remain valid until its expiry date but when 8-year milestone is reached, holder can apply for Established Resident Permit if they want to change employment or accommodation.</i>
Essential employment-related Licence	≥ 8 years	≥ 8 years	Yes	After 14 years' residence	<i>None. Licence will remain valid until its expiry date but holder can apply for Established Resident/ Permanent Residence Permit if they wish to change employment or accommodation.</i>
Short-term employment-related Licence	≤ 3 years	< 5 years	No	No	<i>None. Licence will remain valid until its expiry date, when holder must vacate Local Market accommodation. Contact Housing Control/Population Management Office for further advice if intending to return to Guernsey after break in residence.</i>

* Only continuous residence in Local Market accommodation leads to Established or Permanent Resident status

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS

Type of document held	Duration	Continuously resident how long?*	Established Resident?*	Permanent Resident?*	Action needed on introduction of new regime
Short-term Employment-related Licence	≤ 3 years	≥ 5 years	No	No	<i>Contact Housing Control/Population Management Office for advice.</i>
Non-Employment Related Licence	Variable but renewable until individual attains residential qualification.	≥ 8 years	Yes	After 14 year's residence	<i>None. Licence will remain valid until its expiry date when holder can apply for Established/Permanent Resident Permit as appropriate.</i>
Non-Employment Related Licence	Variable but renewable until individual attains residential qualification.	< 8 years	No	No	<i>None. Licence will remain valid until its expiry date when application for renewal should be made in the usual way.</i>
Licence issued to enable residence as the householder's partner	Variable but renewable if circumstances remain the same.	≥ 8 years	Yes	After 14 years' residence	<i>None. Licence will remain valid until its expiry date when holder can apply for Established Resident/Permanent Resident Permit as appropriate.</i>
Declaration of Lawful Residence as Member of Household	Varies	< 8 years	No	No	<i>None. Document will remain valid until its expiry date, and future situation will depend on circumstances of householder.</i>

* Only continuous residence in Local Market accommodation leads to Established or Permanent Resident status

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS

Type of document held	Duration	Continuously resident how long?*	Established Resident?*	Permanent Resident?*	Action needed on introduction of new regime
Declaration of Lawful Residence as Member of Household	Varies	≥ 8 years	Yes	After 14 years' residence	<i>None. Document will remain valid until its expiry date, when holder can apply for Established Resident/Permanent Resident Permit as appropriate but will have no automatic right to live independently of householder until 14 years' residence has been completed.</i>
Declaration of Lawful Residence as States of Guernsey employee in staff accommodation	Variable but renewable if circumstances remain the same	< 5 years	No	No	<i>None. Document will remain valid until its expiry date. When 5 years' residence is reached, a recognised break in residence must be taken.</i>
Declaration of Lawful Residence as States of Guernsey employee in staff accommodation	Variable but renewable if circumstances remain the same	≥ 5 years	No	No	<i>None. Document will remain valid until its expiry date and will be renewable thereafter under the new regime provided all circumstances remain the same.</i>

* Only continuous residence in Local Market accommodation leads to Established or Permanent Resident status

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS

PART 2 OPEN MARKET RESIDENTS

Type of document held	Duration	Continuously resident how long? **	Action needed at transition
Declaration of Lawful Residence – Part A, B, C or D owner/principal tenant	N/A	N/A	<i>None. Document will remain valid until expiry date, at which point application will need to be made for a new document under the new regime. If circumstances remain the same, documents will be renewed indefinitely.</i>
Declaration of Lawful Residence - Part A lodger	N/A	< 5 years	<i>None. Document will remain valid until its expiry date and new documents can be issued under the new regime until 5 years' residence is completed at which time a recognised break in residence will be necessary.</i>
Declaration of Lawful Residence – Part A lodger	N/A	≥ 5 years	<i>None. Document will remain valid until expiry date, at which point application will need to be made for a new document under the new regime. If circumstances remain the same, documents will be renewed indefinitely.</i>
Declaration of Lawful residence – Part A as party to a lease with several unrelated adults	N/A	< 5 years	<i>None. Document will remain valid until its expiry date. Property may transfer to Part D of the Housing Register if eligible and new documents can be issued under the new regime until 5 years' residence is completed at which time a recognised break in residence will be necessary.</i>
Declaration of Lawful residence – Part A as party to a lease with several unrelated adults	N/A	≥ 5 years	<i>None. Document will remain valid until its expiry date and will be renewable thereafter under the new regime provided all circumstances remain the same and the property is transferred to Part D of the Register.</i>

**Continuous residence includes residence in Local and Open Market accommodation. Residence in Open Market accommodation does not generally count towards residential qualifications

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS

Type of document held	Duration	Continuously resident how long?***	Action needed at transition
Declaration of Lawful Residence as live-in member of staff in a Part A family home	N/A	< 5 years	<i>None. Document will remain valid until its expiry date and new documents can be issued under the new regime until 5 years' residence is completed at which time a recognised break in residence will be necessary.</i>
Declaration of Lawful Residence as live-in member of staff in a Part A family home	N/A	≥ 5 years	<i>None. Document will remain valid until its expiry date. Renewable indefinitely under new regime provided circumstances do not change.</i>
Declaration of Lawful Residence as live-in member of staff in a Part B hotel	N/A	< 5 years	<i>None. Document will remain valid until its expiry date. When 5 years' residence is reached, a recognised break in residence must be taken.</i>
Declaration of Lawful Residence as live-in member of staff in a Part B hotel	N/A	≥ 5 years	<i>None. Document will remain valid until its expiry date and will be renewable thereafter under the new regime provided all circumstances remain the same.</i>
Declaration of Lawful Residence as live-in member of staff in a Part C nursing home	N/A	≥ 5 years	<i>None. Document will remain valid until its expiry date and will be renewable thereafter under the new regime provided all circumstances remain the same.</i>
Declaration of Lawful Residence as live-in member of staff in a Part C nursing home	N/A	< 5 years	<i>None. Document will remain valid until its expiry date. When 5 years' residence is reached, a recognised break in residence must be taken.</i>
Housing Licence to occupy Part D property – lodging house	See relevant section on housing licences		

***Continuous residence includes residence in Local and Open Market accommodation. Residence in Open Market accommodation does not generally count towards residential qualifications

APPENDIX 2 SUMMARY OF TRANSITION ARRANGEMENTS
PART 3 OTHERS

Type of document held	Duration	Continuously resident how long?*	Action needed at transition
Temporary Exemption Certificate - Boat Dweller	N/A	N/A	<i>None. Document will remain valid to expiry date, at which point further documents can be issued under the new regime indefinitely as long as circumstances do not change.</i>

(N.B. The Policy Council is intending to submit a business case detailing the resource requirements for the administrative and other resources required to transition from the existing Housing Control regime to the new Population Management regime and to support the Advisory Panel to the States early in 2016.

The Treasury and Resources Department reiterates the following two observations contained in its comment on the Policy Council's June 2015 States Report entitled "Population Management Regime – Statutory Official and Appeal":

- **The Policy Council's aim and intention is that the total costs of running the new Population Management regime will be no more than the current costs of administering the Housing Control Law.**
- **There may be transitional costs associated with moving from the existing Housing Control regime and that requests for funding any requirements will be included within future States Reports submitted by the Policy Council.)**

The States are asked to decide:-

VI.- Whether, after consideration of the Policy Letter dated 1st June , 2015, of the Policy Council, they are of the opinion:-

1. To agree that:
 - (a) properties inscribed in Part A of the Open Market Housing Register should in future be defined by reference to the occupiers permitted in such properties;
 - (b) only those individuals described in paragraphs 2.11 to 2.24 of that Policy Letter will be able to occupy Part A dwellings without express permission and without jeopardising the inscription of the property in question;
 - (c) all documents issued under the Housing Control/Right to Work Law will remain valid until their expiry dates so long as all the conditions attached to the validity of such documents continue to be met;
 - (d) any person who is ordinarily resident in the Island at the commencement of the new Law and who has completed, or who completes thereafter, 8 consecutive years' lawful residence in Local Market accommodation, should be granted Established Resident status;
 - (e) any person who is ordinarily resident in the Island at commencement of the new Law and who has completed, or who completes thereafter, 14 consecutive years' lawful residence in Local Market accommodation, should be granted Permanent Resident status;

- (f) any person who is a Qualified Resident at commencement of the new Law will be granted Permanent Resident status;
- (g) holders of Status Declarations need not apply for Permanent Resident Permits on commencement of the new Law;
- (h) Temporary Resident Permits should be renamed Family Member Permits;
- (i) on commencement of the new Law a person who is ordinarily resident as the spouse/partner of a person who is or becomes a Qualified or Permanent Resident, should be granted Permanent Resident status after a period of 10 consecutive years' residence with that person in Guernsey;
- (j) any period of residence under a Short-Term Housing Licence already started at commencement of the new Law should be permitted to continue until the expiry of that licence so long as all the conditions attached to the validity of that document continue to be met;
- (k) any period of residence under a Short-Term Housing Licence already started at commencement of the new Law cannot exceed an aggregate period of 5 years;
- (l) anyone resident under a Short-Term Housing Licence on commencement of the new Law, who has already completed 5 years' residence in Guernsey will not be granted a Short-Term Employment Permit in future for any period longer than 12 months, and that a recognised break in residence must precede the grant of any subsequent Short-Term Employment Permit;
- (m) the concession described in proposition (l) above will cease to apply to anyone benefitting from it if that person is absent from the Island for a period of 3 years or more;
- (n) any residents in States-owned accommodation on commencement of the new Law should be permitted to remain in their current accommodation until their circumstances change;
- (o) the provisions in the new Law that enable those born in Guernsey with Guernsey ancestry (a parent and grandparent in the same ancestral line) to become Permanent Residents at birth will be applied from commencement of the new Law and will not be applicable to anyone born before that date;
- (p) any period of ordinary residence in Guernsey prior to commencement of the new Law will not be counted towards qualifying residence under the new Law unless the person in question is ordinarily resident in Guernsey at commencement of the new Law;

- (q) a person's periods of ordinary residence in Guernsey prior to commencement of the new Law can continue to count towards qualifying residence under the Housing Control Law, regardless of whether that person is ordinarily resident in Guernsey at commencement of the new Law, only where immediately prior to commencement of the new Law he had the right under the Housing Control Law to aggregate previous periods of ordinary residence with future ordinary residence for the purpose of obtaining residential qualifications;
- (r) lodgers in Part A Open Market accommodation on commencement of the new Law who have not yet lived in Guernsey for 5 years will be permitted to stay in their current accommodation until the 5-year threshold is reached, at which point they will need to take a recognised break in residence;
- (s) lodgers in Part A Open Market accommodation on the 19th June, 2015, who have lived in Guernsey for more than 5 years will be permitted to stay indefinitely provided that there is no change to the status of the property and it remains on Part A of the Open Market Housing Register;
- (t) live-in staff in a dwelling inscribed on Part A of the Open Market Housing Register should be able to apply for the grant of Open Market (Part A) Employment Permit, provided that they are employed on a full-time basis and accommodated in the dwelling at which they are employed;
- (u) live-in staff in a dwelling inscribed on Part A of the Open Market Housing Register on the 19th June, 2015, who have lived in Guernsey for more than 5 years will be permitted to stay indefinitely provided that there is no change to their status or the status of the property and it remains on Part A of the Open Market Housing Register;
- (v) persons living and working in a hotel inscribed on Part B of the Open Market Housing Register upon commencement of the new law, who have been resident in Guernsey for a minimum of 5 consecutive years, will not be subject to a cap on the length of their residence for so long as their employment and residential circumstances do not change in any material way;
- (w) persons living and working in a nursing or residential home inscribed on Part C of the Open Market Housing Register upon commencement of the new Law, who have been resident in Guernsey for a minimum of 5 consecutive years, will not be subject to a cap on the length of their residence for so long as their employment and residential circumstances do not change in any material way;
- (x) any person who is resident in a Part C property on commencement of the new Law and who is not a Qualified or Permanent Resident will not be required to obtain a Part C Residence Permit;

- (y) any person resident in a property inscribed in Part D of the Open Market Housing Register upon commencement of the new Law will, regardless of residence history, be permitted to remain in that accommodation until such time as the document held by such a person expires;
- (z) any person resident in a property inscribed Part D of the Open Market Housing Register upon commencement of the new Law that was inscribed in Part A of the Register immediately prior to Commencement will, if his period of residence exceeds 5 years, be permitted to remain in that accommodation until such time as there is a material change in circumstances;
- (aa) any person resident in a property inscribed in Part D of the Open Market Housing Register upon commencement of the new Law that was inscribed in Part A of the Register immediately prior to commencement of the new Law will, if his period of residence is less than 5 years, be permitted to remain in that accommodation until such time as he has completed 5 years' residence, at which time he will have to take a recognised break in residence;
- (ab) persons living aboard a vessel will, provided they have lived in Guernsey in such circumstances for at least 6 months upon commencement of the new Law, be issued with Permits for as long as their circumstances do not change in any material way;
- (ac) a Population Advisory Panel should be established with the following constitution:

A Chairman and six ordinary members, none of whom shall be sitting States Members, who shall be elected by the States of Deliberation on the recommendation of the Policy Council, with power to elect a vice-Chairman from its membership and to co-opt other members on a non-voting, short-term basis.

The Chairman and members shall serve a four year term of office, but this will be staggered so that three are replaced every two years, which means that, of the original Members, two will have to be appointed for only two years.

The quorum at any meeting of the Panel will be four.

The Chairman will have an original vote, but not a casting vote;
and

(ad) the mandate of the Population Advisory Panel shall be:

To provide the Policy Council with regular information on those sectors of the economy in which:

- there are persistent shortages of labour with skills required by the relevant sectors,
- some labour with appropriate skills exist, but not in sufficient numbers to meet the demand for such skills in the relevant sectors, and
- there are shortages of labour that do not require particular skills.

To provide independent advice and evidence-based recommendations to the Policy Council on matters that are relevant to employment-related population management policies.

To provide a monitoring report to the Policy Council every six months.

At the request of the Policy Council, to review and comment on any existing employment-related population management policies or any such policies that are under development paragraphs.

2. To direct the preparation of such legislation that may be necessary so as to give effect to the above decisions, and of any necessary consequential, supplementary and transitional provisions not specified above, including, but not limited to, amendments to other legislation.

POLICY COUNCIL

OPEN MARKET HOUSING REGISTER

1. EXECUTIVE SUMMARY

- 1.1 In 2013¹, the States approved proposals for new population management legislation that, principally, will replace the existing controls on the occupation of Local Market housing.
- 1.2 The existing controls are contained in the Housing (Control of Occupation) (Guernsey) Law, 1994 and they will be repealed.
- 1.3 That Law also includes provisions relating to the Housing Register and rather than retain those provisions as a remnant of the 1994 Law, and to better reflect the future separation of population management measures from property-related issues, the Policy Council recommends that the Housing Register provisions are also repealed and similar provisions enacted as separate legislation.
- 1.4 Whilst the majority of the Housing Register provisions of the 1994 Law will be broadly replicated, the Policy Council also recommends a number of amendments that are necessary to reflect decisions made by the States in 2013 in relation to Part A properties in multiple occupation and to improve the administration of the Register.

2. BACKGROUND

- 2.1 Reflecting the division in Guernsey's housing market, the current Housing Control Law ("the 1994 Law") has provisions dealing with two broad subject areas: one that deals with the occupation of Local Market housing; the other with the management and operation of the Open Market Housing Register.
- 2.2 In 2013 the States approved proposals for new population management legislation that, principally, will replace the existing controls on the occupation of Local Market housing.
- 2.3 In addition, the new focus upon population management as opposed to housing management begs the question of how to deal with the property-related issues involved in managing the Open Market Housing Register that are contained in the current Housing Control Law.
- 2.4 Rather than re-enact such provisions in the new Population Management legislation or retain them as a remnant of a Housing Control Law, the Policy Council believes that it would be appropriate and helpful to enact new and

¹ Billet d'Etat No XI

separate legislation concerned with the management and operation of the Open Market Housing Register. In this way, a clear distinction can be drawn between legislation designed to manage population numbers and legislation required to administer the Open Market Housing Register. Unlike the Housing Control Law, which has a limited life-span and is subject to periodic reviews, the intention is that the new Open Market Law should not be time-limited.

- 2.5 For the avoidance of doubt, any proposals regarding who can live in Open Market properties will be contained in the new Population Management Law. The separate legislation that is the subject of this Report will deal with how changes in a property's use or configuration could potentially have an impact upon its Open Market status, and it is via this separate legislation that the inscription of dwellings in the Housing Register will be made and maintained.
- 2.6 In drawing up this latter legislation, the Policy Council recommends that most of the existing arrangements in relation to the Housing Register should be carried forward. However, in addition, there is a requirement for some new provisions: (i) to give effect to various States Resolutions from 2013 in relation to Part D properties; and (ii) to address issues that the Policy Council believes will improve the arrangements for the management of the Housing Register.
- 2.7 There is only one area where there is potentially a degree of cross-over between Population Management legislation and Housing Register legislation and that is when the type of occupants in a property on Part A of the Register is such that its eligibility for inscription in that Part of the Register is jeopardised.
- 2.8 The Policy Council also considers that once the legislation is separated as outlined above and a Population Management Office created, it is not necessarily logical for the Population Management Office – which will be dealing with Population Management issues rather than bricks and mortar – to be the body responsible for administering the Open Market Law. Equally, it makes little sense for the Housing Department, which will no longer have responsibility for Housing Control, to administer it.
- 2.9 However, conscious of the impending report from the States Review Committee, which will propose that the States as an organisation will look different in future, the Policy Council considers that this is an inopportune time to determine where the administration of the Open Market Law should sit in the future. Rather it considers that this matter should be revisited at a later date when the organisational structure and associated responsibilities are clear. Consequently, references in this Report to responsibility for the future administration of the Law are couched in non-specific terms.

3. THE OPEN MARKET HOUSING REGISTER

Structure of the Register

- 3.1 Open Market properties comprise only 5.9%² of Guernsey's housing stock, and, compared with Local Market properties, there are fewer restrictions regarding their occupation.
- 3.2 The Open Market Housing Register currently comprises four different Parts – A, B, C and D. In general terms, the distinction between each Part is as follows:
- Part A – private dwellings (1,597 properties)
 - Part B – hotels and guest houses (57 properties)
 - Part C – nursing and residential homes (10 properties)
 - Part D – lodging houses (26 properties)
- 3.3 The Policy Council proposes that the Housing Register should continue to consist of these four Parts, albeit, as explained below, changes are proposed to the operation of Parts A and D, in line with previous States' decisions.

Part A

- 3.4 It is proposed that this Part of the Register should continue to comprise private family dwellings. The 1994 Law provides no specific definition of a Part A dwelling. Instead, it defines the circumstances in which an Open Market dwelling will be inscribed on Parts B, C and D of the Housing Register, thus making Part A the default for all Open Market dwellings not meeting the criteria for inscription in one of the other three Parts of the Register. Given the history of the Open Market Housing Register, the absence of a Part A definition is logical as, when the Register was initially created, there was only one Part, with Parts B, C and D added at later dates.
- 3.5 Operationally, when describing the four Parts of the Housing Register, Part A dwellings are generally referred to as “private family homes”, but this loose term lends itself to wide interpretation, especially when people are sharing communal facilities and spaces within the dwelling, and thus living together in a “family-like” way.
- 3.6 A separate States Report, submitted for consideration at the same States meeting as this one, deals with the Policy Council's proposals for a new definition of a Part A property. This Report assumes that those proposals have been accepted by the States. The rejection of – or any amendments to – those proposals may have a consequential effect on the recommendations set out herein.

² Guernsey Annual Housing Stock Bulletin 2014

Part B

- 3.7 This Part of the Register would continue to consist of visitor accommodation, other than self-catering accommodation, in respect of which a boarding permit is in force.

Part C

- 3.8 This part of the Register would continue to consist of nursing and residential homes that are registered under the Nursing Homes and Residential Homes (Guernsey) Law, 1976. (NB not all such nursing and residential homes are Part C properties; this only applies to homes that were previously used as Open Market dwellings.)

Part D

- 3.9 In accordance with the 2013 Resolutions of the States, this Part of the Register will comprise all Open Market properties used as Houses in Multiple Occupation. The means by which properties will be inscribed in a revised Part D is discussed below.
- 3.10 As well as redefining Part D of the Register, the States also agreed in 2013 that a cap should be placed on the number of properties that could be inscribed on Part D at any given time, as follows:

“25. To agree:

(a) that the number of properties that can be inscribed in the Register in the newly-defined Part D of the Open Market will be capped and that the level of that cap should be decided by the States, having regard to the size and make-up of the Island’s population at any given point in time.

(b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report [10th May 2013].

(c) that, having regard to a particular property’s established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.

(d) To agree that any redefined Part D property may, at the owner’s request, be returned to Part A for occupation as a family home.”

- 3.11 There are currently 26 lodging houses in Part D of the Register and on 10th May 2013 there were 146 Part A dwellings known to be in multiple occupation. This means that, after the implementation of the new regime, the maximum number of properties that could be inscribed in Part D is 172 – i.e. the 26 dwellings already inscribed in Part D of the current Housing Register plus the 146 Part A dwellings that, because of their established use on 10th May 2013, should transfer.
- 3.12 However during the period between 10th May 2013 and the commencement of the new Law it is likely that some of the Part A properties in multiple occupation will revert to family homes (as indeed some already have), it would not be appropriate simply to transfer all 146 dwellings to Part D of the Register without reference to their owners; hence the couching of the above 2013 Resolution in terms of the owners having the *option* to transfer.
- 3.13 However, the Policy Council considers that it needs to be made clear that if any **of the 146 properties referred to above have remained in (or returned to) multiple occupation** there will be no option but for them to be transferred to Part D of the Register upon the commencement of the new Law.
- 3.14 The owner of a Part A property that was in multiple occupation on 10th May 2013 and which had subsequently been returned to use as a family home would have the option to retain the Part A inscription or to transfer the inscription to Part D.
- 3.15 The above Resolution sets a limit on the number of properties that can be on Part D of the Register, which means that the States should have the power to vary the cap as circumstances dictate. Logically, this should include a power both to decrease and to increase the cap, in either case taking account of population management policies in place at the time.
- 3.16 The Policy Council envisages that this would work by the States agreeing the extent to which the current cap can be varied and broad direction being given to whichever body has future responsibility for managing the Housing Register. For example, the policy might state that Part D of the Register needs to decrease by 50 properties, and may also set parameters concerning the type of property that should be encouraged/enabled to be removed from this Part of the Register.
- 3.17 To give effect to this Resolution, the Policy Council recommends that the States be given the power to set the cap on the number of properties in Part D by Ordinance. It is further recommended that any other conditions considered necessary, in line with the policy in question, should also be set out in any Ordinance.
- 3.18 Subsequent to States approval of the policy and an Ordinance, it would be an administrative function of the responsible body to ensure that the direction of the States is carried out.

Additional Sanction

- 3.19 At present, the only means available under the provisions of the 1994 Law to bring unlawful occupation of any property – i.e. Local Market or Open Market - to an end (after all other attempts to bring about compliance have failed) is that the Housing Department can apply to the Court for an Order, temporarily vesting possession of the dwelling in the Housing Department.
- 3.20 Once possession has been vested in the Department, it can evict the occupants, thereby regularising the situation. This is a measure of last resort and a somewhat draconian solution.
- 3.21 As the result of the 2013 decisions of the States in relation to Part A properties in multiple occupation by unrelated adults, it also follows that if a Part A property is found to be in multiple occupation but cannot be transferred to Part D because that Part of the Register has reached its “cap”, in order to comply with the Law the owner will need to ensure that the multiple occupation ceases. Consequently, it will be necessary to have the ability in Law to bring some form of sanction to bear on the owner in order to ensure compliance.
- 3.22 In order to avoid having to use the, arguably heavy-handed, methods described above, the Policy Council recommends that an additional sanction should be included in the new legislation which would enable the responsible department to issue a compliance notice on the owner of an Open Market property where it had reasonable grounds to believe that the property was being used for a purpose other than that which is allowed for the relevant Part of the Register (for example a family home being used as a home for the multiple occupation of unrelated adults).
- 3.23 Such a notice would set out the nature of the unlawful use, the measures that would have to be taken to rectify the situation and the timescale in which those measures would have to be carried out.
- 3.24 Failure to comply with a notice would result in either the suspension or deletion of the inscription of the property from the Open Market Register. In the case of suspension, an inscription could be reinstated once the use of the relevant property was regularised.
- 3.25 The Policy Council also recommends that there be a right of appeal in respect of the use of these powers.
- 3.26 It must be stressed that the Policy Council regards these additional measures as very much a last resort and would hope that they would be little, or indeed never, used. However, if there is no ability to apply sanctions in circumstances in which an Open Market dwelling is being used contrary to the purpose required by its inscription in a particular Part of the Housing Register, then those requirements are effectively useless.

Movement between different Parts of the Register

- 3.27 The 1994 Law (Part IV) effectively deals with the management of the Housing Register in terms of how inscriptions may be affected by certain actions, such as property alterations or demolitions. It also sets out how certain properties may move from one Part of the Register to another in defined circumstances.
- 3.28 Generally speaking, a property can only transfer from one Part of the Register to another if, at one time, it was, or was eligible to be, inscribed in Part A. For example, there are a number of hotels in Part B that, if they cease to be run as hotels, must revert to being Local Market dwellings, as they were added to the Register only because they were being run as hotels.
- 3.29 The Policy Council recommends that the existing arrangements that permit the inscription of a dwelling to be transferred from one Part of the Register to another remain unchanged, save for two additional provisions that are necessary as a consequence of the decisions made by the States in 2013 regarding Part D of the Register, namely that:
- a) a property can only be moved to Part D from another Part of the Register if the number of properties inscribed in Part D is less than the cap approved by the States; and
 - b) a Part A property that is in multiple occupation that is inscribed in Part D of the Register can, at the owner's request, be transferred to Part A provided that it has ceased to be used for such occupation and reverts to use as a family home.

New Inscriptions

- 3.30 The current Housing Register is closed to new inscriptions and other than in specified circumstances which allow properties to be (for example) replaced, combined, divided or transferred between different Parts of the Register, there can be no additions to the Housing Register unless the States (by means of an Ordinance) permits the Housing Department to inscribe a dwelling in Part A or Part B.
- 3.31 "New" inscriptions in Part B are very straightforward and depend only on a property gaining the relevant permissions to operate as a hotel and in practice, such additions are rare. New inscriptions in Part A are generally only permitted if the requirements of the relevant policy (the so-called "MURA Policy") agreed in 2001 (Billet d'Etat III, 2001) are met. The policy is attached for information as Appendix 1 to this Report. It can be seen that one of the requirements for a new inscription is that a property elsewhere in the Island should be deleted from the Register, thus ensuring that the Open Market does not grow.

- 3.32 In the period since the policy was agreed in 2001, the States has agreed 13 requests from the Housing Department to inscribe dwellings on Part A of the Register. In fact, no such requests have been refused and it is therefore recommended, in the interests of streamlining procedures and saving States' time, that in future, under the new Law, additions to the Register should be made by the responsible department under delegated powers, provided that they comply with the requirements of any policies in place at the relevant time. Clearly, if there were reasons to recommend the inscription of a property for reasons not covered by the policies of the day, then the responsible department could seek States' approval by way of a policy letter.

Deletions from the Register

- 3.33 The current arrangements whereby properties are deleted from any Part of the Register include:
- a) at the owner's written request;
 - b) if a dwelling is used wholly for purposes other than human habitation;
- and
- c) if it is transferred to another Part of the Register.

The Policy Council recommends that these arrangements are retained.

- 3.34 In addition, the existing Law includes the following definitions:

"dwelling" means any premises or any part of any premises used or usable for the purposes of human habitation and includes –

(a) a flat, and

(b) any premises in respect of which there is in force a boarding permit,

and

"hotel" means a dwelling, other than a self-catering unit, in respect of which there is in force a boarding permit and which, in the opinion of [the Department], is being used for the business of providing sleeping accommodation for reward to tourists in accordance with the provisions of that permit,

- 3.35 There are certain circumstances when a dwelling could cease to "qualify" for inscription on the Register because, for example, a dwelling was rendered uninhabitable or the owner of a hotel ceased to have a valid boarding permit for the property, and when there was an expectation that it would "re-qualify" within a reasonable amount of time. Examples include:

- a) A dwelling rendered unusable for human habitation because it was undergoing major refurbishment. There would be reasonable expectation that it would be returned to a habitable condition on the completion of that work.
- b) There is a power in the Tourist Law, 1948 to suspend a boarding permit. That power cannot be exercised indefinitely and the suspension must either be withdrawn or a permit revoked. In the former case, a hotel could only spend a short period of time without a boarding permit.

3.36 The Policy Council considers that removal from the Register in such circumstances is clearly time-limited. Therefore, rather than having to go through the process of producing a policy letter in order to get permission for a dwelling to be “reinstated” to the Register, it recommends that there should be provision for an inscription to be maintained, provided that the responsible department is satisfied that the circumstances which would otherwise lead to the deletion of such an inscription are temporary. In order to ensure that inscriptions are not left in “limbo” for protracted periods, it is further recommended that a reasonable time limit be put on the completion of building works, etc.

4. TRANSITIONAL ARRANGEMENTS

4.1 In 2013 the States resolved as follows:

“25(c) that, having regard to a particular property’s established use, only those Part A properties that are in use for the multiple occupation of unrelated adults on the date of publication of this States Report will be given the option to transfer to the newly-defined Part D of the Open Market Housing Register, subject to meeting acceptable accommodation standards.”

4.2 The date of publication of the States Report was 10th May 2013, and on that date there were 26 properties inscribed in Part D of the Register and 146 Part A properties in use for the multiple occupation of unrelated adults.

4.3 The States also resolved that:

“25(b) that from the coming into force of the new regime, the cap will be set at the number of existing Part D Lodging Houses plus the number of Part A properties in established use for the multiple occupation of unrelated adults on the date of publication of this States Report.”

4.4 The Policy Council recommends that prior to the commencement of the new provisions, the responsible department should carry out a census of all Open Market properties to ensure that current inscriptions are accurate and, if necessary, to correct any inaccuracies or anomalies.

Option to Transfer to Part D

- 4.5 As indicated above, the owners of Part A properties that were in use for the multiple occupation of unrelated adults on 10th May 2013, and which have subsequently reverted to use as family homes, will have the option to transfer their property to Part D of the Register (otherwise the property will remain inscribed in Part A).
- 4.6 The Policy Council:
- a) intends that prior to the commencement of the new regime, all of the relevant property owners and their tenants will be contacted and made aware of the States resolutions and the option provided in Resolution 25(c);
 - b) recommends that owners of properties referred to in paragraph 4.5 be given six months from the commencement of the new regime to exercise the option referred to in that paragraph; and
 - c) recommends that if, six months after the commencement of the new Law, any Part A property remains in use for the multiple occupation of unrelated adults, the owner would be required to return the property to use as a Part A family home.

5. RESOURCE IMPLICATIONS

- 5.1 Given that there are few changes proposed to the existing Law, it is not anticipated that the administration of the Open Market Housing Register will have any future resource requirements over and above those which currently exist.

6. CONSULTATION

- 6.1 The Law Officers' Chambers have been consulted on the contents of this Report.

7. PRINCIPLES OF GOOD GOVERNANCE

- 7.1 The Policy Council believes that it has fully complied with the six principles of good governance in the public services in the preparation of this Report (set out in Billet d'État IV, 2011 and approved by the States).

8. RECOMMENDATIONS

8.1 The States are asked:

- a) to agree that that Part IV (the Housing Register) of the Housing (Control of Occupation) (Guernsey) Law, 1994, be repealed and that similar provisions be enacted in separate legislation, subject to the following modification:
 - i) the States should have the power to amend the cap on the number of properties inscribed in Part D of the Register and any conditions for the inscription of a property in that Part of the Register by Ordinance (paragraph 3.17);
 - ii) the department responsible for the administration of the Register should be empowered to issue a Compliance Notice if a property is used contrary to the purpose required by its inscription in the relevant Part of the Register, and that the department should have the power to suspend or delete an inscription from the Register if the owner does not comply with such a Notice (paragraph 3.22);
 - iii) it should only be possible to transfer an inscription to Part D from another Part of the Register if the number of properties inscribed in Part D is less than the cap approved by the States (paragraph 3.29(a));
 - iv) it should be possible for a Part A property in multiple occupation and inscribed in Part D of the Register to be transferred to Part A at the owner's request, provided that it has ceased to be used for such occupation and reverts to use as a family home (paragraph 3.29(b));
 - v) the department responsible for the administration of the Register should have the power to inscribe a property on the Register provided that such an inscription is in accordance with any relevant States policies (paragraph 3.32); and
 - vi) there should be provision for an inscription to be maintained in defined circumstances, provided that the responsible department is satisfied that the circumstances which would otherwise lead to the deletion of such an inscription are temporary (paragraph 3.36);
- b) to endorse the proposal that a census of all Open Market properties is carried out to ensure that inscriptions are accurate (paragraph 4.4);

- c) to agree that:
- i) eligible Part A Open Market properties in multiple occupation (i.e. those that were in multiple occupation on 10th May 2013) at the commencement of the new legislation should be transferred to Part D of the Housing Register (paragraph 3.13);
 - ii) owners of properties referred to in paragraph 4.5 should be given six months from the commencement of the new legislation to exercise the option referred to in that paragraph (paragraph 4.6); and
 - iii) if, six months after the commencement of the new legislation, any Part A property remains in use for the multiple occupation of unrelated adults, the owner should be required to return the property to use as a Part A family home (paragraph 4.6); and
- d) to direct the preparation of such legislation that may be necessary so as to give effect to the above decisions.

J P Le Tocq
Chief Minister

1st June 2015

A H Langlois
Deputy Chief Minister

G A St Pier
Y. Burford
D B Jones

P L Gillson
K A Stewart
M G O'Hara

R W Sillars
P A Luxon
S J Ogier

Appendix 1

BILLET D'ETAT III 28th February 2001

EXTRACT FROM POLICY LETTER ENTITLED "HOUSING CONTROL LAW - REVIEW OF THE OPEN MARKET"

Section headed **INCLUSION OF OPEN MARKET ACCOMMODATION IN PRESTIGIOUS OR IMPORTANT DEVELOPMENTS** extracted from page 191.

1. The policy would not apply to small one-off sites or single dwellings.
2. It can apply to sites:
 - which are part of a Mixed Use Redevelopment Area (MURA) and where the overall number of new dwellings in the MURA is likely to be in excess of 100; and/or
 - where there are other strategic issues.
3. In return for each dwelling to be inscribed, one existing dwelling must be deleted from Part A of the Housing Register.
4. Neither the dwelling to be deleted nor that to be inscribed will have to meet any specific size or rateable value criteria. It will simply be a numerical exchange, albeit that the Authority will have to approve the specific dwelling which is to be inscribed or deleted.
5. The dwelling to be deleted must be unoccupied, or occupied by an *unrestricted* qualified resident, at the time of the application to delete the inscription. The fact that the dwelling is the subject of an application for the deletion of the inscription from the Housing Register under this policy would not be regarded as a reason which, of itself, would justify the grant of a housing licence to an occupier or former occupier.
6. The number of dwellings which can be inscribed on a one to one exchange basis will be limited to one third of the total number of dwellings in the development or a maximum of eight dwellings whichever is the lesser.

Note 1: for the purposes of the above policy statement the words "*site*" in number 2 and "*development*" in number 6, mean that an owner will only be eligible for one such concession in respect of parcels of adjacent land in his ownership in the MURA. The owner would not be able to increase the number of dwellings beyond the eight or one-third mentioned in number 6 by phasing the site development or by transferring land to an associate company.

Note 2: the above policy statement was approved by the States subject to the insertion of the word "*unrestricted*" shown in italics in number 5.

(N.B. Whilst there are no direct resource or financial implications arising from this Policy Letter, the Treasury and Resources Department takes this opportunity to reiterate its support for consideration to be given to measured expansion of the Open Market which has the potential to give rise to significant fiscal and economic benefits. Therefore, if the proposals are approved, Members are of the view that preparation of the resulting legislation should be expedited in order to further enhance the States' commitment to the Open Market.)

The States are asked to decide:-

VII.- Whether, after consideration of the Policy Letter dated 1st June , 2015, of the Policy Council, they are of the opinion:-

1. To agree that that Part IV (the Housing Register) of the Housing (Control of Occupation) (Guernsey) Law, 1994, be repealed and that similar provisions be enacted in separate legislation, subject to the following modification:
 - (a) the States of Deliberation should have the power to amend the cap on the number of properties inscribed in Part D of the Housing Register and any conditions for the inscription of a property in that Part of the Housing Register by Ordinance;
 - (b) the department responsible for the administration of the Housing Register should be empowered to issue a Compliance Notice if a property is used contrary to the purpose required by its inscription in the relevant Part of the Housing Register, and that the department should have the power to suspend or delete an inscription from the Housing Register if the owner does not comply with such a Notice;
 - (c) it should only be possible to transfer an inscription to Part D from another Part of the Housing Register if the number of properties inscribed in Part D is less than the cap approved by the States of Deliberation;
 - (d) it should be possible for a Part A property in multiple occupation and inscribed in Part D of the Housing Register to be transferred to Part A at the owner's request, provided that it has ceased to be used for such occupation and reverts to use as a family home;
 - (e) the department responsible for the administration of the Housing Register should have the power to inscribe a property on the Housing Register provided that such an inscription is in accordance with any relevant States policies; and

- (f) there should be provision for an inscription to be maintained in defined circumstances, provided that the responsible department is satisfied that the circumstances which would otherwise lead to the deletion of such an inscription are temporary.
- 2. To endorse the proposal that a census of all Open Market properties is carried out to ensure that inscriptions are accurate.
- 3. To agree that:
 - (a) eligible Part A Open Market properties in multiple occupation (i.e. those that were in multiple occupation on 10th May 2013) at the commencement of the new legislation should be transferred to Part D of the Housing Register;
 - (b) owners of properties referred to in paragraph 4.5 of that Policy Letter should be given six months from the commencement of the new legislation to exercise the option referred to in that paragraph; and
 - (c) if, six months after the commencement of the new legislation, any Part A property remains in use for the multiple occupation of unrelated adults, the owner should be required to return the property to use as a Part A family home.
- 4. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

POLICY COUNCIL

MATERNITY LEAVE, MATERNITY SUPPORT LEAVE AND ADOPTION LEAVE

1. Executive summary

- 1.1. In February 2012 the States approved a Report by the Policy Council ("the 2012 Report") (Billet d'État IV, February 2012 Volume 1) that recommended the introduction of statutory maternity and adoption leave, and made recommendations in relation to Social Security Department benefits for expectant mothers and parents ("parental benefits"). (See Appendix 1 for resolutions from 2012.) It will not now be possible to introduce those approved benefits until 1st January 2017 at the earliest. This Policy Letter recommends that the States approve the introduction of the statutory maternity leave provisions before those benefits are available, rather than delay their introduction until 2017.
- 1.2. This Policy Letter also identifies the need for the legislation relating to statutory maternity and adoption leave to include some consequential and supplementary provisions not expressly identified in the 2012 Report.
- 1.3. If accepted, the provisions outlined in this Policy Letter will also help demonstrate better compliance with the United Nations Convention on the Elimination of all forms of Discrimination against Women, which the States have previously prioritised for extension.

2. Background

- 2.1. Following consideration of the 2012 Report, the States agreed to the introduction of statutory maternity leave including 2 weeks compulsory leave, 12 weeks basic statutory leave and an enhanced period of 26 weeks statutory maternity leave for employees who had worked for their employer for more than 15 months. It agreed other provisions for statutory maternity leave, maternity support leave and adoption leave. At the same time it agreed proposals for the Social Security Department to report back to the States with proposals for parental benefit changes at the same time it reports back on the funding of other benefits.

3. Parental benefits

- 3.1. Parental benefits were covered in sections 5.2.33 to 5.2.36 of the Treasury and Resources & Social Security Departments' (the Joint Board) report titled Planning a Sustainable Future – The Personal Tax, Pensions and Benefits Review (PTBR) (Billet d'État IV, March 2015). In it the Joint Board noted that the Parental Benefits project had not yet reached the implementation stage and final proposals were not expected to be brought to the States until 2017.

- 3.2. That report was amended by Deputy Burford with the States resolving:

“16. To direct the Social Security Department to bring into effect as soon as possible the various parental benefits as described in resolutions VI.10a to 10d of Billet d’État IV 2012, either by the levying of an additional 0.1% on employee social security contributions and an additional 0.1% on employer social security contributions, or by any other means deemed desirable and appropriate by the Department, in order to achieve the objective of implementation of the said resolutions, independent of other pension and benefit considerations, and to report to the States on the progress that has been made towards such implementation, including timescales, in their 2015 annual uprating report.”

- 3.3. The Social Security Department will have to return to the States for direction to prepare legislation for the changes approved by the States to date. In the Social Security Department’s internal project plan, there are several issues, consequential to the main changes agreed, that might also need a decision of the States.
- 3.4. The Joint Board’s report reflected the position reported to the States in October 2014 by the Social Security Department (Billet d’Etat XXI, October 2014) which stated in its uprating report:

“87. The enhanced package of parental benefits will cost in the order of an additional £1.9m per annum (2012 levels) and require an increase in social insurance contributions of up to 0.2%. Funding is being considered in the wider context of the PTBR and the Department expects to bring forward specific proposals regarding how the new package of benefits will be funded during 2015.

88. In view of the relatively long lead-in period for the implementation of new benefits due to the need to amend primary and secondary legislation and make system (IT) changes, the Department has recently commenced work on this project in advance of a States’ decision regarding funding. Due to the high level of complexity of individual workstreams, the earliest practical date for implementation of the new benefits is estimated to be January 2017.”

4. The introduction of statutory leave before parental benefits

- 4.1. At the time the 2012 Report was written, it was intended to bring in the benefit changes and the statutory leave changes at the same time. It is now clear that this would delay the introduction of the statutory leave provisions. There is therefore a choice to be made: delay the introduction of statutory maternity and adoption leave until the changes to the parental benefits are introduced, or introduce those statutory leave provisions now, without the parental benefits yet being in place.

- 4.2. Neither option is ideal. The United Nations Convention on the Elimination of all forms of Discrimination against Women requires that maternity leave is introduced with pay or with comparable social benefits without loss of former employment, seniority or social allowances. Comparable benefits for Guernsey would be those provided by the Social Security Department. Maternity allowance is currently paid by the Social Security Department for a maximum 18-week period, subject to meeting the relevant contribution conditions. The new parental benefits approved by the States following consideration of the 2012 Report will be payable for a maximum period of 26 weeks, again subject to meeting the relevant contribution conditions.
- 4.3. The Policy Council is of the view that greater protection would be afforded to women by the introduction of the statutory leave provisions, even in the absence, for a short period, of the parental benefits changes, than by a decision to delay their introduction until those benefit changes are in place.
- 4.4. Consideration was given to whether the enhanced period of statutory maternity leave should initially be limited to 18 weeks, to coincide with the current maximum period of maternity allowance, with that period being extended to the full 26 weeks when the new parental benefits were introduced. The Policy Council considered that, whilst not everyone would be financially able to take advantage of the 26-week statutory maternity leave period until the extended period of benefit was available, the full 26-week period of statutory maternity leave would provide additional flexibility for women who could afford to take longer leave but were currently unable to do so.
- 4.5. The Policy Council has therefore decided to bring this Policy Letter forward, ahead of the decisions to be taken on the benefits and funding, to ask the States to approve the introduction of the statutory leave provisions without further delay.
- 4.6. Work undertaken since the 2012 Report has shown that the legislation will need to contain some necessary consequential and supplementary provisions not expressly recommended in that report. These include, but are not limited to, appropriate and proportionate mechanisms for enforcing the new rights consistent with those in existing employment legislation and which may necessitate some minor amendments to that legislation.

5. Consultation

- 5.1. A wide public consultation was undertaken before the 2012 Report was drafted, the results of which were contained in that report. Whilst no changes are proposed in this Policy Letter to the Maternity Allowance, the Social Security Department has been kept informed of the desire to bring the maternity and adoption leave in ahead of the benefit changes.
- 5.2. The Commerce and Employment Department has been involved in the development of these proposals and its letter of comment is attached as Appendix 2 of this Policy Letter.

- 5.3. The Legal Aid Administrator has been consulted, and has commented that while the introduction of statutory maternity leave, maternity support leave and adoption leave may lead to an increase on the call for legal aid, she would not anticipate any resulting increase in the legal aid budget being significant.
- 5.4. Employer organisations and unions have been notified of the proposed changes to the introduction of legislation as outlined in this Policy Letter, and the Chamber of Commerce's response is set out at Appendix 3.
- 5.5. The Policy Council is grateful to the Chamber for its comments, and would like to take this opportunity to address them briefly here. So far as transitional arrangements are concerned, the Policy Council agrees that these will be important, and in broad terms it is currently intended that the provisions should not apply in respect of women whose period of maternity or adoption leave has started before the legislation comes into force: hence the employee in the example at paragraph (c) of the letter would not be able to benefit from the new rights.
- 5.6. The Policy Council also agrees that employers should have sufficient time to prepare before the provisions come into force; equally, it wants to ensure that employees have the benefit of these statutory protections as soon as possible, and both of these considerations will be reflected in the relevant provisions.
- 5.7. Finally, with respect to the concern expressed in paragraph (e) of the letter, it is not intended that the legislation should create the possibility of a third substantive award in addition to unfair dismissal and sex discrimination, but rather that enforcement of the statutory rights created should broadly fit within the existing statutory framework.
- 5.8. The Law Officers have been consulted in the course of the preparation of this Policy Letter.

6. Financial Implications

- 6.1. The proposals relate only to statutory leave and not to pay or benefits whilst on leave. Nevertheless an employer, including the States, may require additional cover to be provided during any absence.
- 6.2. The States, as an employer, already provides maternity, adoption and maternity support leave for all groups of employees. Therefore, for the States, the proposals contained in this Policy Letter will not have any direct financial consequence other than possibly a small amount of Legal Aid case work.

7. Recommendations

- 7.1. The Policy Council recommends the States approve –
 - i) the introduction of previously agreed statutory maternity leave, maternity support leave and adoption leave, referred to in Appendix 1, and other consequential matters, before the introduction of the previously agreed changes to parental benefits; and

- ii) the inclusion in legislation of consequential and supplementary provisions of the type referred to in paragraph 4.6 of this Policy Letter.

J P Le Tocq
Chief Minister

1st June 2015

A H Langlois
Deputy Chief Minister

Y Burford
P L Gillson
S J Ogier

R W Sillars
M G O'Hara
K A Stewart

P A Luxon
D B Jones
G A St Pier

Appendix 1

Resolutions of the States in 2012 (Billet d'État IV, February 2012 Volume 1)

After consideration of the Report dated 7th December 2011, of the Policy Council the States resolved as follows:-

1. To agree the introduction of 2 weeks compulsory statutory maternity leave.
2. To agree the introduction of 12 weeks basic statutory maternity leave.
3. To agree the introduction of an enhanced period of 26 weeks statutory maternity leave for employees who have been continuously employed by their current employer, including an associate employer, for at least fifteen consecutive months prior to their due date.
4. To agree the introduction of statutory time off to attend ante-natal appointments.
5. To agree that an employee who elects to work for his or her employer for up to 10 days whilst on maternity leave, except during the period of compulsory maternity leave, should remain entitled to maternity leave and benefits.
6. To agree that women intending to take statutory maternity leave should give their employer at least 3 months written notice of their birth due date and when they would like their maternity leave to start, this notice period to be subject to the following conditions:
 - a) where possible, women should also say when they expect to return to work;
 - b) both the maternity leave start date and the return to work date could be changed as long as this was discussed and agreed between the woman and her employer and provided one month's notice of the return to work date was given. These dates could also be changed where either the mother or baby was ill or the baby was delivered prematurely and employers would be expected to be flexible in these circumstances;
 - c) an employer would be allowed to require an employee on pregnancy related sick leave to start their maternity leave 6 weeks prior to their due date (in line with current Social Security Department policy on sickness benefit and maternity allowance);
 - d) it would be the employer's responsibility to confirm the maternity leave and agreed return to work date. This should be done within two weeks of receiving the initial request and within two weeks after being notified of the birth or when a change to the return to work date was requested.

7. To agree the introduction of a 2 week period of statutory maternity support leave for the partner of an expectant woman provided the person taking the leave has worked for his or her current employer for at least fifteen consecutive months.

8. To agree the introduction of similar statutory leave provisions for parents who adopt children as would be available for parents of a new born, that is:

a) statutory leave be available as provided to parents of newborn children, dependant on whether qualifying periods had been met; and

b) a period of two weeks mandatory leave in order to encourage bonding between the parent and the adopted child, immediately after adoption.

9. To direct that such legislation as may be necessary to give effect to the foregoing shall be prepared.

10. To direct the Social Security Department to report back to the States, at the same time it reports on the funding of other benefits, with proposals for funding and requesting the preparation of the necessary legislation to provide for:

a) Changes to the maternity grant to make it available to all new mothers.

b) Changes to maternity allowance to split it into a maternal health allowance and a new born care allowance with the rate of both being £180 per week (2011 rate) and the conditions as set out in paragraphs 7.10 to 7.25.

c) A new adoption grant at same rate as a maternity grant in the case of adoption for a child under 18.

d) A new benefit of parental allowance of £180 per week (2011 rate) which can be claimed by either parent immediately following the adoption of a child under 18 years of age.

11. To direct the Treasury and Resources Department to report back to the States, at the same time as the Social Security Department reports back on proposition 10 above, with proposals to fund any consequential expenditure incurred by the States as an employer or in the grant from General Revenue.

Appendix 2

Letter of Comment from the Commerce and Employment Department

11 May 2015



Authorised Use only

Dear Deputy Le Tocq

States Report (Maternity and Adoption Statutory Leave)

Thank you for providing the opportunity to consider the draft States Report on this topic and to discuss its contents at a recent Board meeting.

Members were fully supportive of the intentions of the States Report and the principles set out in the draft Ordinance.

The Department's Employment Relations Section does not anticipate a large number of cases coming forward as a result of this legislation and doesn't foresee resource implications as a result of this Ordinance. The Employment and Discrimination Tribunal will be ready (trained) to hear cases upon commencement.

Members are concerned to ensure that awareness is raised in a timely and appropriate manner with Island businesses, to ensure the impact of the implementation of the Ordinance is minimised and staff and employees are well informed of the changes prior to the coming into force of the legislation. With that in mind, the Department's Employment Relations Team is preparing to run seminars during the autumn 2015 to deliver clear practical guidance on working with the provisions laid down in the Ordinance.

My Board would be grateful for your assurance that resources from the Policy Council Communications Team will also be available to support this initiative, to be instrumental in ensuring appropriate information is produced and circulated should the States approve the recommendations in the Report.

Yours sincerely

Kevin A Stewart

Minister

Appendix 3

Chamber of Commerce Response to Consultation dated 7th May 2015

Maternity and Adoption Statutory Leave

I refer to correspondence from the Chief Minister on the above subject inviting comments.

I would ask that the following considerations be borne in mind:

- a) Currently, there is no requirement under Guernsey law that employers should offer maternity or adoption leave. As such, many employers do not have maternity or adoption policies in place. Where employers do have such policies, the terms of those policies are a matter for the employer's discretion. The introduction of the statutory provisions will require those employers who do not have policies in place to adopt a new policy and for those employers who do have policies to revisit their policies to ensure that (as a minimum) they comply with the new statutory framework. Sufficient time should be allowed for this.
- b) It would be helpful if the Commerce & Employment Department (through the Employment Relations Service) could make a standard form statutory leave policy available to Guernsey employers through the C&E website.
- c) The Chief Minister's letter does not mention transition arrangements. If the new regime is introduced on short notice, this could lead to uncertainty. Employers normally agree the terms that will apply during maternity or adoption leave in advance of the employee going on leave. Agreed terms could well be affected if the new regime is introduced on short notice. For example, an employee who is half way through a maternity leave of 18 weeks when the new regime is introduced could request a further 8 weeks leave (to take her up to the statutory 26 weeks) and point to the new law to support her request. This could cause resourcing problems for her employer who had anticipated (and put cover in place for) only 18 weeks' absence.
- d) Taking into account the need to amend employment terms and conditions and the possible transition issues, we would request that there is a minimum period of nine months from the point at which the legislation is introduced to the commencement date of the legislation.
- e) Where a person is seeking to enforce her rights to statutory maternity leave, she could well have additional claims for sex discrimination and unfair dismissal (e.g. a pregnant employee who requests full statutory maternity leave is dismissed because the employer feels he cannot keep her job open for 26 weeks). In these circumstances, the employee would prospectively have the right to 3 awards. Depending on the size and financial resources of the employer, this could have a material impact of his ability to keep trading. Might consideration

be given to limiting the awards to a maximum number of months' pay where there is an overlap of claims arising from the same action or set of actions?

Should you require any clarification on the above then please do not hesitate to contact me.

Yours faithfully

Tony Rowbotham
President

(N.B. The Treasury and Resources Department notes that the financial implications for General Revenue are limited to a potential small increase in legal aid expenditure. If necessary, this formula led budget will be increased accordingly, funded by a reduction in the Budget Reserve.)

The States are asked to decide:-

VIII.- Whether, after consideration of the Policy Letter dated 1st June , 2015, of the Policy Council, they are of the opinion:-

1. To approve the introduction of previously agreed statutory maternity leave, maternity support leave and adoption leave, referred to in Appendix 1 of that Policy Letter, and other consequential matters, before the introduction of the previously agreed changes to parental benefits.
2. To approve the inclusion in legislation of consequential and supplementary provisions including, but not limited to, appropriate and proportionate mechanisms for enforcing the new rights consistent with those in existing employment legislation and which may necessitate some minor amendments to that legislation.
3. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

POLICY COUNCIL**THE GUERNSEY FINANCIAL SERVICES COMMISSION:
2014 ANNUAL REPORT****Executive Summary**

1. The 2014 annual report and accounts of the Guernsey Financial Services Commission (GFSC) are hereby presented to the States.

Report

2. The Financial Services Commission (Bailiwick of Guernsey) Law, 1987, as amended, requires the GFSC to prepare an annual report and accounts for submission to the States.

Principles of Good Governance

3. This Policy Letter is produced in compliance with the principles of good governance, in particular “performing effectively in clearly defined functions and roles”.

Recommendation

4. The Policy Council recommends the States to note the annual report and accounts of the Guernsey Financial Services Commission for the year ended 31 December 2014.

J P Le Tocq
Chief Minister

1st June 2015

A H Langlois
Deputy Chief Minister

Y Burford
S J Ogier
P L Gillson

M G O'Hara
R W Sillars
K A Stewart

P A Luxon
D B Jones
G A St Pier

2014



Guernsey Financial
Services Commission

ANNUAL REPORT AND FINANCIAL STATEMENTS

For the year ended 31 December 2014



Guernsey Financial Services Commission

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This report, including the financial statements as required by section 18 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended (the Commission Law), is made in pursuance of section 6 of the Commission Law to the States Policy Council and submitted by the Chief Minister for consideration by the States of Guernsey.

Note: Throughout this report the Guernsey Financial Services Commission is referred to as "the Commission". The Chairman and other members are referred to collectively as "the Commissioners".

CHAIRMAN'S STATEMENT

The Commission continued on the path set out by Commissioners in 2013 and widely communicated within the Bailiwick's business community and discussed in depth with the Policy Council.

The main tenets of this policy are to deliver "good regulation" at an affordable price. The Commission's management and staff, together with representatives of the financial services community, worked diligently in 2014 at the development of the instruments that will allow us to deliver our long-term goals. In particular, a considerable effort has gone into further developing the PRISM capability (Probability and Risk Impact System). Our ability to assess the impact of risk upon the Bailiwick's businesses and economy will be greatly enhanced by this risk-based approach. The project will allow us to respond proportionately to the many regulatory challenges that have arisen and are likely to arise in the future. The Director General gives a wider explanation in his statement.

The Commission continued to strengthen its regulatory and operational teams through both internal promotion and external recruitment and we now expect a period of relative calm in that area. This does not, however, mean that the outside pressures have in any way diminished. There continues to be a steady stream of new rules and regulations from the UK, EU and the USA, under the watchful eye of the Financial Stability Board, which is the international body that monitors and makes recommendations about the global financial system.

New international regulatory requirements have put considerable pressure on the legal framework covering financial services in the Bailiwick. It has therefore been decided, in cooperation with the relevant stakeholders, to undertake a "Revision of Laws" project aimed at future-proofing the pertinent regulatory laws of the Bailiwick. The project is now well underway with delivery scheduled for Q2 of 2016; it is, however, likely to require considerable drafting and legislative time in 2015.

Separately, the Commission successfully completed its version of AIFMD regulation, which allows Bailiwick-based Funds continued access to the EU Financial Markets.

The Commission also considerably strengthened its capability to enforce its regulations by the introduction of a Panel of Queen's Counsel who preside over cases brought by the Enforcement Division against firms and individuals. They act as senior officers of the Commission under delegated authority and bring considerable expertise to bear on the cases over which they preside.

In my commentary last year, I expressed the hope that, by now, a state of sustained economic growth would be achieved. There has been some success in the UK and the USA, but the Euro Area remains in the unfamiliar territory of deflation with weak or no growth. The European Central Bank (ECB) recently embarked on a substantial programme of Quantitative Easing (QE) to kick start the economies of the Euro Area. The uncertainty surrounding the UK's role within Europe and the precarious position of Greece required the invention of new words and we will all need to be familiar with "Brexit" and "Grexit" covering the possible departures of the UK and Greece for very different reasons. As part of the Sterling zone, the Bailiwick will have to follow the Brexit developments closely.

In a recent speech the Head of the Financial Stability Board warned against complacency with regard to the regulatory environment. This, against a background of the further introduction of new rules and regulations, such as the coming on-stream of Solvency II. A realisation is beginning to develop that the desirable reduction of risk in the financial system, is also reducing the long-term growth expectations of the world's developed countries. There is certainly no complacency in the Commission regarding the importance of "good regulation" for the Bailiwick's economy.

The Commission is staying in close touch with the UK and EU regulatory authorities to ensure that our voice is heard in the right places. A major effort is also made by the Commission and its staff by participating in, and contributing to, the various bodies that cover the financial services regulatory landscape. Our aim, borne of necessity, is to punch above our weight – something in which we usually succeed. During 2014 we also provided support to the Channel Islands Brussels Office (CIBO) through the secondment of a senior member of our staff.

The Commission continues to strive to live within its means. In November 2012 I set out the Commission's funding plans for the period 2013-15 by limiting any increase in regulatory fees to no more than two per cent pa. The Commission delivered on that commitment and is now in discussion with the Policy Council about the future fee framework effective from 2016.

It has been another year in which Commissioners demanded a great deal from the management and staff who have risen to the challenges in delivering major projects alongside the supervisory activities. The preparation for Moneyval was a particularly well-executed activity in a relatively short period of time. I thank them for their dedication and delivery. I cannot promise a slackening of the regulatory pace, but expect that the various projects which are under way will assist in coping with the burden.

Finally, I should like to take this opportunity to express my appreciation to Susie Farnon, who retired as a Commissioner and as our Vice-Chairman on 31 March 2015. She has made an immense contribution as a Commissioner over the past 9 years which my colleagues and I have greatly appreciated. Alex Rodger has been elected as the Commission's new Vice-Chairman.

Cees Schrauwens
Chairman



DIRECTOR GENERAL'S STATEMENT

Activities in 2014

2014 was a year of intense change for the Commission. It was a year which saw the Commission implement PRISM across all supervisory divisions – our revised approach to supervising the firms we have licensed. It provides us with a structured system for focusing our finite supervisory resources on high value forward-looking supervisory activity. Within this there is a strong focus on the business models and governance of the most significant firms in the Bailiwick. It requires our supervisors to challenge, to make judgements and to mitigate unacceptable risks – be they prudential, financial crime or conduct-related. It also facilitates far better qualitative discussions with those we supervise.

PRISM is not, of course, a panacea. The Commission does not seek to run a zero-failure regime – partly because the financial costs to industry of resourcing ourselves to the level required would be too great, but more importantly because the cost, in terms of loss of freedom, would be too high. Were we to set ourselves up to run a zero-failure regime we would unduly constrain innovation, limit growth and seek to act in a risk-adverse fashion which would ultimately be to the detriment of the people of the Bailiwick as the financial sector became a shadow of its former self. Thus, even with PRISM, there will still be firm failures; there will still be consumer mistreatment and there will still be attempts by criminals to misuse the financial system. What PRISM should do though is to help ensure that we anticipate and address more problems before they become crises and that those which arise are, statistically speaking, less frequent and less severe than they would be were we not using a risk-based system of supervision.

The other very significant operational change we implemented in 2014, building on the creation of our Enforcement Division in mid-2013, was the appointment of a panel of Queen's Counsel, under the presidency of Michael Blair QC, to act as Senior Decision Makers when it is necessary for us to take enforcement action against firms and individuals who we do not believe have conducted themselves in a fashion which meets the standards – set out in law – which the Bailiwick requires. Under the previous system, it would have been normal for three Commissioners to meet as a "Commissioners' Decisions Committee" to take

enforcement decisions. This had significant disadvantages in terms of tension between the role of the Commissioners as the governors of the Commission and their role when acting in a quasi-judicial capacity. The new system is at least as cost-effective as the former system; it enables the Commission to demonstrate the impartiality of its quasi-judicial decision-making and it increases the Commission's capacity to handle complex enforcement cases which a lay panel of Commissioners would have found hard to digest, given their necessarily limited time and relative lack of litigation experience. We believe this reform resolves one of the key structural issues at the Commission which led the Commerce and Employment Department to commission its consultation on regulatory reform entitled "A Regulatory Framework for the 21st Century".

With other internal changes we continued to build on the restructuring we executed in the middle of 2013:-

- We found that, in practice, having an innovation team divorced from supervision was not optimal so we merged them to form the Fiduciary Supervision Policy and Innovations Division. This restructuring increased our capacity to deal with innovation with key senior staff at the Commission becoming heavily involved in Bailiwick fora exploring "Fintech" and other innovations in the financial services sector.
- We comprehensively restructured our objective setting and appraisal process so that all staff have objectives clearly tied to the Commission's strategy whilst appraisals are moderated in a manner which clearly rewards collegiate working within the Commission.
- We have restructured our back-office operations to deliver efficiency gains and improve performance. One example of this was the absorption of our data management unit by the Risk Team so that our data-focused analytical staff are co-located under common leadership, able to benefit from cross-pollination of ideas.

In terms of our enforcement activities, we will generally seek to take enforcement action when there has been a material breach of our rules. We hope that the vast majority of financial

services practitioners will welcome our approach as, in addition to serving the public, it serves to ensure that there is a meaningful and credible deterrent for those who would otherwise seek to undercut the competition by playing fast and loose with the law.

During 2014 we concluded one long-running enforcement case whilst continuing to make progress with a number of other complex and long-running cases. A review of our published public notices shows that, where we find inadequate financial crime controls, poor treatment of consumers and poor governance, we will take robust action to ensure that justice is done and that improvements are made. The Commission is evidence-based and when new facts are presented to us, we are perfectly willing to change our minds and discontinue actions but the Commission will not blink or bend when faced with defence tactics based on procedural challenges.

Externally, we, along with other authorities in the Bailiwick, were inspected by Moneyval which is the Council of Europe's inspectorate with responsibility for reviewing countries' defences against money laundering and terrorist financing. Part of our preparations saw us working in partnership with Law Enforcement to host a seminar for money laundering reporting officers on suspicious activity reporting. We also hosted a seminar on tax evasion with external speakers. We received positive feedback from industry on the seminars and, whilst it must remain the responsibility of firms to ensure they comply with the law at all times, we plan to run targeted seminars on an ongoing basis to help industry ensure that it maintains high standards of defence against financial criminals.

The Moneyval inspection proved to be a rather resource-intensive exercise for the Commission and, whilst the results will not be finalised until some point in the second half of 2015 when the assessors' findings are presented to a plenary meeting of Moneyval in Strasbourg, I'm very grateful to those in industry who worked exceptionally hard, often at very short notice, to help prepare the Bailiwick for it.

We also enhanced our engagement with international regulatory standard setters with the Commission's Director of Banking

and Insurance developing his role as Chairman of the Group of International Insurance Centre Supervisors (GIICS) while our General Counsel launched the Group of International Financial Centre Supervisors' (GIFCS) new Trustee and Company Service Provider Standard after more than two years chairing the working group which developed it. We worked alongside the Jersey Financial Services Commission (JFSC) to engage with the European Central Bank, European Banking Authority and European Securities and Markets Authority to build relationships with these increasingly important Euro zone and EU regulators. We also seconded our Deputy Director of Insurance to the Channel Islands Brussels Office throughout the autumn to ensure that the Channel Islands were able to field a financial services expert in key discussions during an important period when a newly elected European Parliament was going up a steep learning curve whilst a new European Commission was being installed in Brussels.

In terms of policy implementation, 2014 saw the launch of the new Guernsey Financial Advice Standards, the development of new insurance capital standards, a new large exposures policy for banks, initial work on revisions to the Anti-Money Laundering and Counter Terrorist Financing Handbook and a consultation on revised standards for Retirement Annuity Trust Schemes.

Before turning to our financial results, I would like particularly to thank Peter Mills, as Chairman of the Guernsey International Business Association (GIBA), for his work with the Commission in 2014. We have different roles and responsibilities and there are policy areas where the Commission and GIBA have quite different perspectives but he has given us his advice tirelessly, on a voluntary basis, and in what I consider to be the best interests of the Bailiwick. On matters such as the piloting of our online questionnaires for directors of firms he has helped ensure a much higher level of industry engagement than would otherwise have been the case.



Director General's Statement *(continued)*

Financial Results

When I became Director General, there was a clear concern in the Bailiwick about the growth in the Commission's cost base and hence, the Commissioners and I embarked upon a quite far reaching change programme. We had committed to raise average fees by no more than 2 per cent per annum for three years and in our consultation paper on the level of fees for 2015, issued in August 2014, we formally honoured that commitment and will have raised average fees by no more than 2 per cent in each of 2013, 2014 and 2015. Honouring that commitment inevitably had its costs, particularly for our longer-serving members of staff. There was no general pay rise for staff in 2014 which also saw the closure, for Commission staff, of the States Public Sector Pension Scheme, a defined benefits scheme.

We also saw a number of resignations during 2014 and whilst the Commission is delighted that the financial services industry is confident enough to be expanding and that it regards our staff highly enough to wish to recruit them, we need to ensure – in terms of securing value for the public purse – that we continue to have an employment package attractive enough to retain staff with key skill sets as replacing them is expensive in terms of time, money and loss of capability. In this context, it is noteworthy that the European market for regulators is unusually competitive at present with the European Central Bank creating well-paid regulatory positions on a heretofore unseen scale with both the British and Irish regulators experiencing noteworthy levels of voluntary resignations. Given global regulatory pressures I would not expect this demand for regulatory talent to decline in the near future.

At the end of last year we had negative net assets. Thanks to an unusually benign result this year we now have positive net assets following an operating surplus of £1,665,247 in 2014 including a one off gain as a result of closing the pension scheme of £497,000. This result has come about because of:-

- Fee income running ahead of our moderately prudent budgetary expectations. We think this is very positive as it shows that the Bailiwick's financial services sector is relatively healthy both in

terms of the number of firms which remain authorised and the number of new applications (which account for a large proportion of our increased income). There is a lot of cyclical variation in the number of applications and we do not believe we can rely on this level of application income recurring in 2015.

- Running our Sentinel technology development programme more slowly than originally planned. This programme includes electronic personal questionnaires, on-line returns and PRISM. Due to resource constraints we slowed down implementation of parts of it this year. As those involved in project management will appreciate, there is generally a trade-off between time, quality and cost – it is often necessary to make choices between them when delivering a project. We chose to preserve quality and save money this year rather than seeking to hire expensive contractors to complete everything in 2014 with a likely adverse impact on quality (Part II of PRISM, has been postponed until 2015 along with online returns implementation). We expect Sentinel to run to budget in 2015 so this one-off gain will not recur – the capital expenditure and associated depreciation is delayed rather than avoided.
- Closure of the defined benefit pension scheme to future service accrual. As well as the one-off gain, closing the pension scheme makes a marked difference to month-on-month operating costs as we no longer have to put aside funds as extra entitlements to the final salary pension are earned. Closing the scheme was unfortunate as our staff no longer have the prospect of a guaranteed retirement income but the Commission does not believe it could afford to sustain a final salary scheme with the associated costs and ever-increasing liabilities.
- Enforcement fines. We never budget for enforcement fines because they are set on the basis of what penalty is appropriate for a particular regulatory failure, without regard to raising income for the Commission. In contested cases, they are set independently by a QC who is quite properly unconscious of the Commission's budget. The fines in 2014 did not come close to paying for the costs of our enforcement operations nor is it an objective that they should as that might give the enforcement

team inappropriate incentives to take action against wealthy firms and individuals for minor breaches of regulations rather than pursuing serious malefactors who are unlikely to ever be in a position to pay a fine, where one is adjudged appropriate. Our fine income means that we are able to charge law-abiding firms less in fees than would be the case if we did not have the fine income. As the costs of enforcement actions fluctuate from year to year, so will fine income (although the two are not necessarily positively correlated, hence the need for the Commission to have reserves).

- A sharp focus on staff pay. Both avoiding a general pay rise and some restructuring of staff this year helped to control pay costs. As mentioned above, however, we need to ensure our pay is competitive if we are to retain our high-quality staff thus we do not think further material savings can be made here, rather the converse.
- We have rigorously managed non-staff costs – for example negotiating IT support contracts to obtain best value. Whilst the gains here are real, they are very difficult to repeat although they will recur to the extent a multi-year contract is involved. Once a contract has been negotiated or renegotiated one cannot expect further gains to recur from renegotiation within a short space of time unless there is some material change in the service required.

In summary, we have had a good outturn this year which puts us on a stronger financial footing than the place in which we found ourselves last year caused by increases in our pension liabilities in 2013. We think an operating surplus on the same scale in 2015 is highly improbable as it was generated, to a considerable extent, by factors which may prove to be one-off, albeit a number of them came about as a result of determined management action. I do not wish to anticipate the contents of the 2015 fees consultation paper but we remain committed to strong financial controls and cost conscious management so as to ensure that, despite our ever increasing workload, we only require modest increases in average licence fees going forward.

2015 Objectives

In 2014, having examined our statutory duties, we sought to encapsulate them for our staff in the mission statement, “Confidence in the Bailiwick: securing good regulatory outcomes with integrity, proportionality and professional excellence.” Underneath this mission statement we will work in 2015 to deliver six high-level objectives:-

- Executing high quality risk-based prudential, financial crime and conduct supervision and authorisation processes. This includes carrying out day-to-day supervision following the principles of risk-based supervision, delivering online submissions and Part II of PRISM (which consists of fully automated scrutiny of on-line returns using equations to evaluate changes and potential warning signals). It also includes our work to support innovative authorisation applications as well as meeting our service standards when processing applications;
- Delivering high-quality regulatory policy. This includes a significant project where we are working in partnership with industry and the States to revise the regulatory laws to ensure they meet current international requirements and the Bailiwick’s needs. Separately, we are continuing with our project to revise the AML/CFT handbooks – again, in conjunction with industry and the States. The demands of the Moneyval inspection may well prevent this project being completed in 2015;
- Delivering targeted risk-based enforcement. We will seek to ensure that our enforcement activity covers key areas of risk where we discover unacceptable practices;
- Protecting and enhancing the Bailiwick’s reputation and influence. This involves both our international engagement working alongside CIBO, the States and the JFSC in a European context and UK context as well as with international regulatory organisations such as the International Organisation of Securities Commissions, the International Association of Insurance Supervisors, GIICS and GIFCS;
- Managing finite resources effectively. This is primarily concerned with good-quality financial management and with the production of high-quality management information to help us take well-informed regulatory and management decisions; and
- Developing staff. This is concerned with recruiting, developing and retaining our staff and ensuring they are well managed.



Director General's Statement *(continued)*

Challenges in 2015

International Context

The weight of international standards and EU law where some degree of equivalence is helpful to the Bailiwick continues to grow. We need to run faster just to keep up with understanding the new developments and then work in partnership with the States and industry to identify what proportionate implementation for the Bailiwick should look like. In 2014, we recruited a senior international policy advisor to grow our capacity in this area but the pace of international change is relentless, as implementation of the standards agreed in the wake of the 2008 financial crisis accelerates. We will continue to work closely with the JFSC and CIBO to share the burden of this work which is often conducted on an international regulatory authority to regulator basis rather than a government to government basis. Even good-quality joint working does not prevent it consuming very large quantities of senior staff time.

Strangely, in the wake of the financial crisis, we appear to have arrived at a situation where we have come closer to having more binding international law in the sphere of financial services regulation than in almost any other area of public policy. Whereas democratic decision-making and diversity are watchwords in many policy areas such as taxation, criminal law, education and even environmental regulation, the Financial Stability Board – sponsored by the great powers – now oversees a regime of international regulation where non-compliance is anything but a cost-free option. I make no judgement here as to whether this is a good or a bad thing for global society but it is certainly an existential reality for the Bailiwick.

We will also, in 2015, need to work with the States and CIBO to understand the results of the UK's General Election and what it, and the consequent possible referendum on British independence from the EU, could mean for the Bailiwick's financial services sector.

National Risk Assessment

The 2012 Financial Action Task Force standard relating to money laundering and terrorist financing requires the Bailiwick to undertake a National Risk Assessment. Working with the States, Law Officers of the Crown and Law Enforcement, we will plan to start this quite involved exercise in 2015. Whilst we will aim to keep the burdens of it to a minimum, it is likely that we will require support from industry in order to be able to complete it in a high-quality fashion.

Legal Reform

Last year we worked to develop our relationship with States members through a number of workshops and outreach activities. We appreciated many States members supporting this work and hope that the exchange of contexts which took place was mutually beneficial. This year we would like to continue to work with the States and with industry to deliver the Revision of Laws project which covers changing our legislation to ensure we meet a much-changed international environment, updating and clarifying aspects of our legislation. Experience has exposed the need for amendment if our laws are to be clear and easier for industry and the Commission to use properly. We believe this is a project which the Bailiwick needs to complete in a timely manner if we are to maintain our standing as a reputable international financial centre with good-quality laws as well. There is also work to do on the framework within which "Fintech" and other novel financial services businesses can be regulated in a sensible and proportionate manner. Overall, there is considerable ground to cover and growing international expectations that international standards will be fully implemented.

Staff Retention and Development

Regulation never has been and never should be a tick box exercise. International reforms to regulation in recent years as well as post-crisis lesson learning have led us, alongside the rest of the developed world, to implement risk-based supervision requiring judgement. This has meant that expectations as to what our staff must do have grown considerably. We are doing all that we can to recruit and develop home grown talent but the challenge of being able to recruit, train and retain sufficient numbers of highly skilled local staff is a real one. During 2014 we put in place a Graduate Development Programme and we are currently developing plans for a school leaver development programme as well as investing a lot of time and money in developing our current staff. We will continue to do all of this because it is only through our staff that we are able to deliver outcomes which are of value to the Bailiwick.

Conclusion

The Commission changed a great deal through the course of 2014. I hope that our financial and operational results will reassure those who have an interest in our activities that we are seeking to serve the best interests of the Bailiwick whilst maintaining good controls on costs. The Commission has expected a lot of its staff in 2014 and will continue to ask a lot of them for so long as they continue to work for the Commission. I would like to thank them for their patience and endeavours on behalf of the Bailiwick in pursuit of the common good and I would also like to thank all those outside the Commission who have given generously of their time and energy to help us achieve our objectives.

William Mason
Director General



SUMMARY OF 2014 FINANCIAL STATEMENTS

INCOME AND EXPENDITURE ACCOUNT

For the year ended 31 December 2014

	2014	2013
	£000	£000
Income		
Fees receivable	12,755	12,518
Financial penalties imposed	506	160
Interest receivable and similar income	68	94
	13,329	12,772
Expenditure		
Salaries, pension costs, staff recruitment and training	8,772	9,222
Gain on curtailment of pension scheme	(497)	–
Commissioners' fees	214	215
Legal and professional fees	512	639
Premises and equipment, including depreciation	1,511	1,407
Other operating expenses	891	629
Bad debt provision expense	200	–
Other finance costs	61	135
	11,664	12,247
Surplus for the year	1,665	525

BALANCE SHEET

As at 31 December 2014

	2014	2013
	£000	£000
Fixed assets		
Tangible assets	3,327	2,942
Current assets		
Debtors and prepayments	676	469
Short-term investments	7,140	7,474
Cash at bank and in hand	1,448	646
	9,264	8,589
Creditors	(2,218)	(2,490)
Net assets before post-retirement liability	10,373	9,041
Post-retirement liability	(9,974)	(9,389)
Net assets/(liabilities)	399	(348)
Reserves	399	(348)



INVESTMENT SUPERVISION AND POLICY

Supervision

In early 2014, the Division was restructured to reflect the new PRISM impact categories relating to supervised firms and products.

The supervised firms were impact rated and were then allocated to one of the three teams: 1) High and Medium Low Impact team; 2) Medium High Impact team and 3) Low impact team. Each of the new teams commenced programmes of engagement tasks as prescribed by the PRISM risk-based supervision model for their respective cohort of supervised firms and products. The latter team also remained responsible for the processing of applications for new business in respect of licence applications, including fast track applications, and authorised funds, together with reviewing the fast track fund applications processed by the Authorisations Unit.

The Division adapted well to the changes arising from the introduction of the PRISM risk-based supervision methodology whilst still drawing on the depth of supervisory experience held by the members of the teams. We have always focused strongly on prudential, conduct of business and corporate governance, but to that we have added several new areas, most notably business model analysis.

During 2014 the main focus of our visits was on high and medium high firms. We found the PRISM approach helped us to focus and strengthen our understanding of a firm's business and to develop a more rounded appreciation of their key risks and issues through qualitative discussions held with the firms.

Policy

The European Union continued to be an area of major focus for us throughout 2014 and in particular the Alternative Investment Fund Managers Directive ("AIFMD") and the Markets in Financial Instruments Directive and the Markets in Financial Instruments Regulation ("MIFID II" and "MIFIR") formed the most significant components of our engagement with the EU Commission and the European Supervisory and Markets Authority ("ESMA").

Since the implementation of the AIFMD in July 2013, the Bailiwick has been operating under the national private placement regimes largely without significant difficulty. Throughout 2014 the Commission provided attestations to the EU competent authorities with the principal aim of ensuring the applications by Bailiwick funds progressed as smoothly as possible. We also continued to have dialogue with our EU counterparts so that they can be assured as to the quality of supervision we apply to Bailiwick funds. To that end, in September, we were able to reach agreement with the competent authority of the Netherlands, the AMF, for them to accept an overarching statement from the Commission for applications, meaning individual attestations would no longer be required.

We also consulted on the guidance for depositaries under Article 36 of AIFMD and the guidance, together with a feedback statement, was published on our website on 17 November 2014.

Notifications under the AIFMD (Marketing) Rules, 2013, were submitted to the Commission on a regular basis and at the last count 205 Guernsey AIFs were being marketed into one or more EEA member states and three licensees, offering depositary services, had been established. We continue to provide links through our rules to the latest ESMA guidance to ensure that all those in our industry making use of our AIFMD MoUs with EU regulators can remain up to date and in compliance with the appropriate requirements.

There remains the potential for passporting under AIFMD to be granted to non-EU AIFMs (third countries) subject to ESMA's findings and no objections. By July 2015, ESMA is required to issue its advice to the European Commission in this area and, on 7 November 2014 as part of that process, ESMA issued a "Call for Evidence" paper to gather input on the key issues that will determine the orientation of their opinion. We responded to ESMA's Call for Evidence and continue to talk, together with our counterparts at the JFSC, to ESMA and the EU Commission about passporting.

Also during 2014, we intensified our work around the jurisdiction's response to MIFID II and continued to work with both government and representatives of local regulated firms which included holding a series of presentations to inform supervised firms of the consequences of MIFID II.

In November we, alongside colleagues from the Channel Islands Brussels Office, met with officials from the EU Commission. The main purpose of the meeting was to discuss the Bailiwick's regime in respect of equivalence under MIFID II. Subsequent to the meeting, we provided the EU Commission with background information on the financial services industry in the jurisdiction, including statistics around the important role the Bailiwick plays in facilitating the flow of global capital into the EU, as well as further details around our proposals for the provision of a concurrent regime. This dialogue remains ongoing and has been extended to include certain of our EU counterparts and ESMA.

During July 2014, the Commission released its second consultation on the proposed revisions to the regulatory regime on the implementation of the new Guernsey Financial Advice Standards ("GFAS"). The implementation of GFAS will raise professional standards, make adviser charging more transparent and reduce potential conflicts of interest. In turn this should contribute to the protection of the public against financial loss because of potential

dishonesty, incompetence or malpractice by persons carrying on finance business. A feedback paper on the consultation was released in November detailing the representations received, the Commission's response to those representations and links to the rules and codes which have been approved by the Commission and came into effect from 1 January 2015 for investment, insurance intermediary and insurance manager licensees.

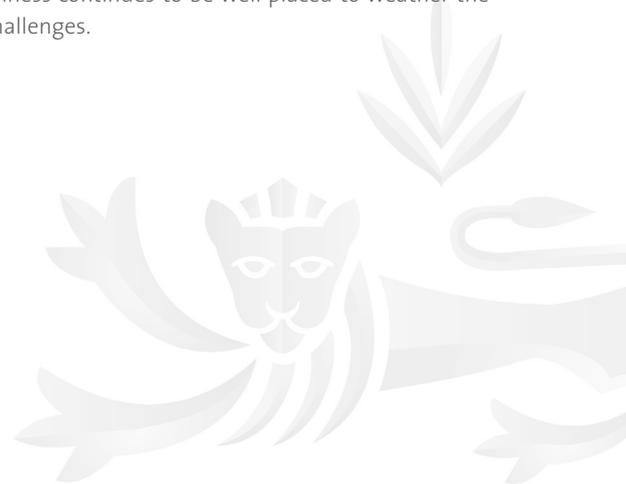
Finally, we are continuing to participate in IOSCO's Standing Committee 4 on Enforcement and the Exchange of Information. Standing Committee 4 considers, and reflects upon, what is probably one of the most significant piece of international cooperation work that IOSCO undertakes. Experiences of enforcement cases are shared and improvements to the mechanisms for the exchange of information discussed. Earlier in the year we were also invited to sit on IOSCO's Multilateral Memorandum of Understanding ("MMoU") Screening Group. This Group screens the applications from those jurisdictions which are not yet signatories to the IOSCO MMoU.

Risk Outlook

As seen during the previous year, the closed-ended investment sector continued to experience shortage of credit and liquidity issues and investor appetites for the new offerings generally remained lower than they had been several years ago. Some funds have had to adapt to tighter credit conditions for fund-related lending over the course of 2014 and this has had some impact on operations for a number of them. The European Central Bank has very recently agreed a significant programme of quantitative easing, extending over a two-year lifespan however, it is unclear to what extent this will improve credit and liquidity conditions for investment funds.

Emma Bailey
Director

Whilst confidence levels relating to investment funds continued to improve, this was largely as a result of repeat business, although there was an upturn in 2014 in the number of new promoters with whom the Commission met. However, until there is a significant turnaround in the international outlook, repeat business is likely to continue to be the significant source of new business in 2015. That said the Bailiwick – and the Commission's regulatory regime – continue to seek to encourage high-quality business to locate here thus, whilst adopting a cautious outlook, the Bailiwick's investment business continues to be well placed to weather the international challenges.



FIDUCIARY SUPERVISION POLICY AND INNOVATIONS

Supervision

2014, as outlined elsewhere in this report, brought the implementation of PRISM to the Commission. The Fiduciary Division went 'live' with PRISM in May. An on-site PRISM risk assessment is underpinned by an appreciation of the licensee's business model, and focuses through a series of engaged discussions on identifying the key risks to that business and the management or mitigation of those risks.

It is too early to draw trend conclusions; however, PRISM risk assessment visits thus far have identified the importance of focusing on Governance (including evidence of adequate board challenge), Financial Crime (including evidence of adequate Client Due Diligence) and Operational Risks (including relevant historic events, policies and procedures). More detail on PRISM visits is contained in the "Risk Outlook" section below.

A notable change to the Division was the addition of 'Innovations' to the title. Whilst "innovative business" can arise from any sector, from our experience Corporate Service Providers are often involved in providing services to innovative businesses, and the Non-

Regulated Financial Services Businesses (NRFSBs) tend to act as a conduit for proposals which do not fall within one of the existing legislative regimes. As a non-regulated population of firms, our focus as a Division is on NRFSB applications or "innovative" approaches.

A number of behind the scenes steps have been taken to support "innovative" approaches, including the Commission Economist encouraging applicants to contact the Commission directly for early-stage discussions and establishing a cross-Commission forum. It should be noted that whilst the Commission has been taking steps to develop its processes in this area, only a handful of "innovative NRFSB" approaches were actually made in 2014.

The Commission's data indicates that the Fiduciary sector remains strong, stable or with slight growth on key indicators (turnover, assets under regulated activity, number of licensees, and number of employees in the sector). General ownership movement within the sector continues due to consolidation, new entrants and changes to controllers.

Policy

In parallel to the Revision of Laws project, revising the NRFSB Law is high on our agenda for 2015. In the latter stages of 2014 we started laying the ground work for this, including a questionnaire which was sent to all NRFSBs.

The 17th of October 2014 was a watershed moment for Fiduciaries when the Group of International Finance Centre Supervisors (GIFCS) issued a new standard on the regulation of Trust and Corporate Service Providers. The standard drew on its previous Statement of Best Practice and on other international best practice and provides an international benchmark that we can assess ourselves against. The Commission has performed a gap analysis in respect of our current legislation and will take forward the minor changes required to enable us to demonstrate compliance with the standard as part of the Commission's Revision of Laws project.

We are grateful to those who responded to the Retirement Annuity Trust Scheme (RATS) consultation process. As has been outlined before, the object of the consultation was to explore whether the legislation could be simplified to enable lower-cost pension provision for the Bailiwick. Work is ongoing in this area and is a priority for 2015.

As in previous years the Division has met with fellow fiduciary supervisors in the Quatre Isles Group (comprising Guernsey, Jersey, the Isle of Man and Gibraltar). This continues to be a useful forum to share and explore topics of mutual interest. Another important area for the Division is the international horizon-scanning work we have been undertaking in respect of Innovative or Digital Finance legislative developments.

Risk Outlook

Although the economic recovery remained patchy in 2014 it did benefit those firms whose clients were active in progressing transactions, particularly real-estate property transactions. Breaking into new markets remains a considerable challenge in the current low-interest rate environment. Consolidation of ownership of the sector continued with more private equity firms taking a stake. We would expect that process to continue in 2015.

As highlighted elsewhere in this report, 2014 marked the rolling out of the impact and risk-based approach to supervision. Although PRISM went live in mid-year, the risk assessment methodology was tested in earlier on-site visits. The first year gave us a better understanding of licensees' business models and their approach to corporate governance enabling supervisors to get a better feel for what drives firms. Full risk assessments (FRAs) were undertaken at several larger medium high impact firms.

It is evident in the bank-owned and private equity-owned firms that strategy is driven at group level from outside the Bailiwick: the onus is on local firms to deliver performance and profits. However, there are often benefits in accessing group wide resources to address international initiatives, for example, FATCA readiness.

Structured engagement visits were conducted with several medium low impact firms but these still covered the key risk questions addressed in FRAs. We embarked on this programme

hoping to see evidence of corporate governance working effectively and of boards aligning adequate levels of resources with their key risks and not economising on critical functions. Overall we were encouraged by what we saw. Clearly some smaller firms outsource key functions so we have been looking to see whether performance of service providers has been adequately monitored so that the responsibility is seen not to be outsourced.

We now know a lot more than we did prior to PRISM about the challenges facing firms: some have to deal with major litigation cases whilst others have constantly to manage their dependence on large clients. Another positive outcome has been that all firms have said they found the process beneficial to them in asking questions they would not otherwise have considered.

More on-site PRISM-based risk assessments are scheduled for 2015 but we cannot escape the reality that the fiduciary sector has a large number of firms and the Division has only a small team of supervisors. A key supervisory tool in respect of Low impact firms (a core Fiduciary population), is to employ focused thematic reviews using survey questionnaires and selected on-site visits. For 2015, we will be exploring how the fiduciary duty is maintained throughout the lifecycle of an investment portfolio.

Gillian Browning
Director



INSURANCE SUPERVISION AND POLICY

Supervision

With insurance trends in 2014 yet to be pinned down in detail, it is nevertheless certain that a key theme in global insurance – and one relevant to the Bailiwick – was the growth in the catastrophic reinsurance market by way of alternative finance. This means that there are more entrants into the market – such as pension schemes – searching for a yield higher than available elsewhere. However, with traditional reinsurers already offering good deals, the cost of catastrophe reinsurance may now be materially under-priced.

Elsewhere global life insurance premiums in 2014 are estimated to have returned to growth because of a strong rebound in Japan and the United States, in part due to improved economic conditions. Return on equity in the life industry increased from 10% in 2013 to an estimated 12% in 2014 due in part to industry efficiencies. Global general insurance premium growth in real terms is estimated at 2.5%, marginally down on 2013.

In the Bailiwick, 2014 aggregate figures are unavailable. However in 2013 gross assets stood at £22.9bn (the same as 2012), net worth at £10.1bn (up from £9.3bn in 2012), and premiums at £4.8bn (up from £4.6bn in 2012). Given that these figures can be unduly influenced by a few of the larger firms, all that can be safely said is that the local industry has remained stable in recent years, with some signs of modest real growth.

In terms of the number of insurers, international insurer licences increased from 758 in 2013 to 797 in 2014. As might be expected given past trends, the main change was a net increase of 22 in

Protected Cell Company (PCC) cells, given the general popularity of the PCC cell (which in 2014 accounted for 55% of all international insurers). However, Incorporated Cell Company (ICC) cells increased by 14 to 40 in 2014, reflecting the increasing usage of this vehicle. Insurance Linked Securities (ILS) accounted for over two thirds of new PCC cells in 2014.

Specific business highlights in 2014 included a large ICC longevity transaction involving the Bailiwick and a wider sourcing of ILS funders.

As in previous years, in 2014 the domestic Bailiwick market remained stable in terms of licences. In 2014, there were 8 licensed domestic insurers dealing with local requirements compared to the same number in 2013. There were 20 authorised managers serving the captive market compared to 20 in 2013, although the latter figure included one exit and one entry.

There were relatively few major supervisory issues affecting insurance firms. However, 2014 saw the implementation of PRISM with 6 risk governance panels being held for insurance companies. None of these resulted in a material change in supervisory action, although they did lead to a deeper understanding of the relevant firms, including greater board challenge in several cases. In 2014 there were no general supervisory themes although when issues arose they almost invariably, as in 2013, related to the adequacy of board oversight of the business. No relevant supervisory colleges were held in 2014, although the Commission undertook bilateral contact with home supervisors where appropriate.

Policy

The Commission continued to be engaged in the international insurance arena; and in particular with the International Association of Insurance Supervisors (IAIS) and the Group of International Insurance Centre Supervisors (GIICS). In 2014 Guernsey was elected by the GIICS constituency onto the IAIS Executive Committee.

The focus of global regulation continued in 2014 to be on capital and large international firms. None of this was of direct relevance to the Bailiwick.

Following extensive discussion with the industry and a local quantitative impact study, the Commission intends in 2015 to implement quantitative and qualitative proposals to ensure that the Bailiwick adheres to new international insurance standards. In quantitative terms the Commission will introduce a framework for prescribed and minimum regulatory capital, differentiating capital requirements by types of issuer. In qualitative terms the Commission will set out appropriate supervisory standards around corporate governance and disclosure.

Risk Outlook

Non-diversified catastrophe reinsurance exposure may be significantly at risk both from under-pricing and unmodelled catastrophes, especially if the providers of alternative finance are less sanguine about tail loss than their traditional reinsurance peers. In this context it is important that such exposure does not drift down into the retail market, even indirectly. Elsewhere, fronting agents and reinsurance are used extensively in the

Bailiwick and there is always the remote risk of a large non-Bailiwick insurer or reinsurer failing. It is important to note that the definition of a captive is different in different jurisdictions. Bailiwick insurers need to work to ensure that they are not confused with similar-sounding but structurally different US vehicles.

Jeremy Quick
Director



BANKING SUPERVISION AND POLICY

Supervision

In global terms, 2014 was much like 2013. Interest rates and inflation remained low, with growth limited, although there was a pick-up in growth in 2014 in the US and UK. Under market and regulatory pressure, banks have been re-capitalising through a combination of de-leveraging and capital accumulation. Regulators have continued to apply large fines, with several reaching record levels in 2014.

Correspondingly, conditions in the Bailiwick remained much the same in 2014 as in previous years. With another retail bank closing, choice in the retail banking sector further narrowed. Expatriate deposits in UK banks have been increasingly centralised for business reasons in other jurisdictions while Swiss fiduciary deposits have been in decline because of low interest rates. Nevertheless, the core of the banking sector, in the form of several long-standing wholesale and private banks that employ the majority of bank employees, remained firmly in situ.

One bank was licensed in 2014 – the first since 2008. In this case, the Bailiwick branch of a large retail overseas bank will offer routine banking services to professional, expatriate and high-net-worth individuals. With this bank opening offset by the above closure, the overall number of banks in Guernsey remained at 31 in 2014.

The aggregate deposit base in the Bailiwick has been in structural decline since its high point of £179bn in 2008. Compared with 2013, in 2014 total liabilities rose marginally from £107bn to £111bn. In contrast the key disaggregated figure of non-bank deposits fell marginally from £35bn in 2013 to £34bn in 2014. Full-time banking staff numbers in the Bailiwick have fallen from 2,009 in 2008 to 1,515 in 2014, a marginal fall from 1,568 in 2013.

The aggregate pre-tax profit on regulatory capital for Bailiwick subsidiaries after provisions remained at much the same level in 2014 as in 2013, that is 13.1%. However, given intra-group transfer

pricing, this figure should be treated with caution. The minimum regulatory capital requirement in the Bailiwick is a Risk Asset Ratio of 10% – otherwise expressed as an Internal Capital Guidance (ICG) ratio of 125%. All banks operate above this limit.

The main divisional task in 2014 was the gradual implementation of the Commission's new impact and risk-based supervisory framework – PRISM – and its absorption of the more long-standing internal capital adequacy assessment programme. PRISM has led to a closer and more searching supervisory approach that has focused more on business plan and board behaviour. In 2014 the PRISM schedule resulted in 6 banks being reviewed by risk panels. No overriding theme has become evident as yet.

The number of supervisory colleges attended by the Commission increased from 3 in 2013 to 5 in 2014. There was also periodic bilateral contact with home regulators during 2014 and several meetings with the Association of Guernsey Banks.

In terms of sector risk, the risk attached to the Bailiwick banks up-streaming to their parents remained relatively subdued as home governments took measures to strengthen bank capital and government ownership of banks often remains in place. However, the risk attached to the Bailiwick banks that lend significantly into the UK property market, especially in central London, increased in 2014 as signs of an asset bubble emerged. Banks look to moderate loan to value ratios, and collateralisation as mitigants. Default levels here continue to remain very low. In the longer term, the impact of recent UK tax changes on such lending remains unclear.

In 2014, the Commission obliged all bank subsidiaries to undergo a pre-set stress test. The main – unsurprising – conclusion was to highlight the exposure of those banks who upstream to a parental default or who have third-party lending concentration.

Policy

Alongside the States and its sister regulators in the Crown Dependencies, the Commission has closely monitored UK plans to ring fence systemic retail banks and the possible implication of this on the relevant Bailiwick operations. This has involved discussions with the relevant banks and the UK authorities. The UK government decided in 2014 that the Crown Dependency operations of the relevant banks would not form part of the ring-fenced operations. As at end-2014, we continue to work with banks to consider how best to comply with the new UK regime.

In 2014, the Commission continued its work in implementing Basel III in partnership with the other Crown Dependencies. There was a tripartite discussion paper on the leverage ratio and tripartite

feedback on earlier discussion papers on capital and domestically significant banks. The tripartite authorities also began work on a liquidity discussion paper. In 2015, the Commission intends to issue a consultation paper and then implement a Basel III compliant regime on capital and the leverage ratio.

In 2014, the Commission implemented its new Large Exposure policy. It marginally hardened policy for third-party and sovereign large exposures and augmented limits on bank exposures. The policy had a direct impact on the business of some banks, although this was in part mitigated by grandfathering allowances.

Risk Outlook

Banks in the Bailiwick continue to face the risk of a local adverse finding connected with AML/CFT and/or tax evasion; the maintenance of high standards in this area is therefore crucial. Indeed one bank was fined by the Commission for failures around preventative measures in this area. A newer risk that is emerging

is around sales advice to wealthy individuals; this points to extra care around the selling process. Finally, as noted above, the risks surrounding lending into the London property price “bubble” need to be monitored and, where necessary, mitigated.

Jeremy Quick
Director



CONDUCT UNIT

2014 saw continued work by the Commission on the implementation of the new Guernsey Financial Advice Standards (GFAS). Following consultation, the Commission issued a new set of conduct rules in line with GFAS requirements and provided additional guidance on the educational requirements. GFAS implementation began in January 2015 and by January 2016 advice can only be offered by level 4 qualified advisers.

There were 38 licensed insurance intermediaries at the end of 2014 dealing with local and specialised requirements covering both life and general insurance compared to 39 at the end of the previous year.

Following a thematic series of on-site visits around sales practice for long term insurance and investment products in 2013, the Conduct Unit continued to be involved in overseeing a series of

remedial action programmes, as well as supporting enforcement actions in some cases. In 2014 alone, around a third of the long-term life insurance intermediary industry in the Bailiwick underwent material change as a result of Commission action. This reflects the continuing need for this sector to update and improve its working practices.

The Unit has also been active in forging links with other interested bodies including the putative Channel Islands Ombudsman, the Citizens Advice Bureau and States departments.

In 2015, the Commission will develop internet pages directing the public to key information sites as well as setting out easy-to-understand outlines of consumer interaction with financial services businesses.

Risk Outlook

Higher regulatory standards will continue to pose a challenge to investment and insurance long-term life intermediaries in 2015, not least around the new educational requirements. It is possible that the number of firms active in the life sector will fall, reflecting those higher standards. For their part, general insurance intermediaries will need to ensure that appropriate controls are in place for the sale of add-ons to insurance products in 2015, given evidence of issues in the UK.

Jeremy Quick
Director

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FINANCIAL CRIME SUPERVISION AND POLICY

Supervision

The Financial Crime Team became responsible for both supervision and policy in June 2013 and was renamed the Financial Crime Supervision and Policy Division 18 months after its initial establishment as the Anti-Money Laundering Unit in December 2012.

Its principal supervisory role is to assess financial crime risks within firms across banking, fiduciary, investment, insurance, non-regulated financial services businesses and the professional services sector. This is principally achieved through on-site visits to firms. The Division undertook visits to over 50 firms in 2014 including one conducted jointly with colleagues from the Investment Supervision and Policy Division.

During 2014, significant and systemic deficiencies were found in the controls framework and governance arrangements at two firms; a bank and a trust company. The Division referred these cases directly to the Enforcement Division to investigate, the culmination of which were fines and public statements against the firms concerned.

Both of the cases were characterised, in particular, by the respective firms failing to take responsibility for outsourced compliance functions and for failing to ensure effective compliance arrangements.

The Division is increasingly utilising additional means by which to assess financial crime risks on a firm or sector basis including themed work, desktop reviews, surveys and sampling of business risk assessments or policies, procedures and controls. It also uses findings and results from this work to determine where industry might benefit from further guidance, some of which is

issued in the form of FAQs. Themed work in 2014 concentrated on accountants, lawyers and estate agents and consisted of surveys followed by focused visits to selected firms. Results of these assessments were fed back to the appropriate industry bodies generally as well as to the specific firms.

The Division issued a Dear CEO letter and feedback on its visit trends and observations in June. This was followed up with a survey of a sample of firms in November to consider the effectiveness of publishing reminders about firms' duties and examples of good and bad practices. The results from the survey indicated that most firms had taken these messages on board.

We are increasingly using analysis of statistical data from firms to determine financial crime visit priorities.

Many firms met with the Division through its outreach programme which included workshops and seminars on topics ranging from challenges the sectors face to tax evasion and handling suspicious activity reporting, with input from specialist speakers from outside the Commission. This approach to supervisory engagement proved popular and the Division has begun to plan other events to hold as part of its outreach to industry during 2015.

Policy

The focus for the Division for much of 2014 was the preparation for Moneyval's evaluation of the Bailiwick's anti-money laundering and terrorist financing measures. Assessors from this Council of Europe body visited the Bailiwick in October. They met not only various Bailiwick authorities, including the Commission, but also more than 20 firms and professional organisations as part of their assessment of the effectiveness of the Bailiwick's implementation of the Financial Action Task Force's (FATF) 2003 recommendations.

The Bailiwick authorities have received the assessors' draft report which is due to be discussed by Moneyval members at its September 2015 plenary in Strasbourg.

Also during 2014, the Division established a joint working group with industry which made considerable progress towards revising the existing Handbooks to bring them into line with the FATF's 2012 Recommendations. The aims of the project include

introducing guidance for firms that are considering using technological advances in e-verification for customer due diligence purposes, assisting the emerging "Fintech" sector and casting the Handbook in a new user-friendly format. It is intended to issue a draft Handbook later this year for a period of consultation.

In the near future we also intend to issue a consultation on draft guidance on using e-verification tools.

The Division is also identifying areas where aligning certain provisions in the Handbook with Jersey could be beneficial for the Bailiwick.

The FATF's 2012 Recommendations introduced the requirement for jurisdictions to undertake a National Risk Assessment. In 2015 we will be working with the States, HM Procureur's Chambers and Law Enforcement to start this exercise.

Risk Outlook

2014 saw an unprecedented increase in the number of international sanction measures against certain persons, regimes and territories in response to the serious events in Ukraine, Syria's continuing civil war and the rapid rise of extreme Islamically-inspired organisations such as Islamic State in parts of the Middle East and Africa.

Present indications are that the situation in many of these countries will continue to deteriorate and terrorist activity

will increase. As a consequence, efforts by the international community against these persons and regimes will continue to include the use of sanctions to stifle economically those targeted persons and regimes and to sever their funding. There could not be more pressing reasons for all firms in the Bailiwick's financial services sector to remain vigilant and ensure their AML/CFT regimes and sanctions compliance controls remain robust.

Fiona Crocker
Director



ENFORCEMENT

General

Established in the summer of 2013, the Division necessarily spent the first few months of its existence in recruiting and training its people and developing essential supporting processes and procedures. 2014 was therefore the Division's first full calendar year in operation and this has provided a useful platform from which to assess constructively the progress that has been made.

The Division's role is to act on referrals from supervisory divisions, taking action against those who have broken financial services laws in a significant manner. This approach ensures that those firms that are conducting their business in accordance with the standards of regulation that have been adopted by the Bailiwick can do so, whilst the small minority who are paying little or no attention to the laws that have been put in place to protect the Bailiwick, its citizens and the international financial system, are dealt with fairly, transparently and robustly by a professional Enforcement Division striving to protect all that is good in our industry.

In the early part of 2014, the Commissioners delegated to the Commission Secretary the power under section 11 of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended (the FSC Law) to appoint Senior Decision Makers as officers of the Commission. A panel of Senior Decision Makers comprising leading Queen's Counsel was subsequently appointed to determine the outcome of the Commission's major enforcement cases which were previously heard by a "Commissioners' Decisions Committee" comprising three Commissioners. In future a QC will be appointed by the Commission as a "Senior Decision Maker" to sit and hear those cases involving serious findings against a licensee and / or individual Directors where those findings are contested by the licensee.

The principal benefit of this new approach is that it reinforces the independence of the Commission's decision-making process

while at the same time enabling Commissioners to undertake their wider corporate governance responsibilities for oversight of the Commission. At the same time it will ensure that the hearings are dealt with in accordance with best practice and any legal issues that may be brought by a party's legal counsel can be properly and professionally dealt with at the time to ensure that the process is smooth and, most importantly, fair to all concerned. It is still in its infancy but our experience to date is that the benefits of having this level of independence and expertise are clear to see.

In March 2014, the Commission published its guidance document on the Decision Making Process. It provides more detail than previous documents and sets out the various processes and procedures that licensees can expect to be involved in if a matter is referred for investigation. Also within the document is mention of the Senior Decision Makers. The document was updated in September.

During 2014, an assessment was made of the number of cases that the Division had acquired on its formation as well as the new ones that had arisen. A common feature of most of these cases was the level of complex legal issues; this required the Division to seek external legal advice and support to ensure that serious breaches of the regulatory regime could continue to be dealt with robustly and effectively. The Commission decided that to manage costs effectively it would employ an additional legal counsel to assist the Enforcement Division with its litigation.

The Commission continues to receive considerable support from HM Procurer's Chambers and specifically from the civil litigation team. It is envisaged that some level of ongoing support from Chambers will still be required from time to time for which the Commission is grateful.

Cases

2014 was a busy year for the Division. Four significant cases were brought to a conclusion with fines totalling £506,000. Two of the cases concluded were with regard to AML/CFT breaches of the Handbook for Financial Services Businesses on Countering

Financial Crime and Terrorist Financing ("The Handbook") and the remaining two cases were concerned with a combination of mis-selling of investment products, poor corporate governance and poor conduct. The seriousness of the conduct identified was

varied and that is reflected within the discretionary financial penalties imposed and other sanctions that were brought against either the licensee or individuals concerned.

The two cases involving AML/CFT breaches of the Handbook were primarily concerned with systemic failings in the licensees' anti-money laundering procedures, corporate governance failings relating to the management of associated risks and a failure to ensure adequate client file reviews had taken place. There was also concern over the Customer Due Diligence with regard to high risk clients and how the risks were being mitigated. In both cases there was a heavy reliance on the outsourcing of functions but the responsibility for those activities always remains with the licensee.

A common finding throughout those investigations carried out to date relates to the outsourcing of functions. Any outsourced function ultimately remains the responsibility of the licensee and irrespective of whether a function(s) has been outsourced, this will not be accepted as a form of defence by a licensee if the function(s) has not been properly managed. The Commission's expectation is

that, any report given to a board or senior management team in respect of a function that has been outsourced, will be properly scrutinised and challenged where necessary and, where failings have been identified, they are addressed as early as possible.

It is of note that, in three of the four cases, settlement was reached with the parties and the appropriate discount was afforded to them. In the case where settlement could not be reached, the Senior Decision Maker afforded a discount to one of the parties involved as they accepted the findings made in the case against them.

It has also proven advantageous to all parties when early discussions have taken place with the Enforcement Division to assess the potential for reasonable outcomes. It is accepted that this approach will not be feasible on every occasion. However, it is a process which is encouraged by the Commission where the circumstances are appropriate. There will also be occasions where the Commission deems it inappropriate to consider settlement.

Whistleblowing Line

The Commission's dedicated whistleblowing line is used as a method for receiving information about regulatory misconduct. Calls to the line are neither electronically recorded nor traced by the Commission and callers can remain anonymous if they choose to do so.

The line is manned by staff from the Commission's Intelligence Team who review the information supplied and refer any relevant material to the Commission's Supervision and Policy Divisions in a sanitised format.

Simon Gaudion
Director

During 2014, reports were received regarding alleged failings in anti-money laundering procedures, questionable business behaviour by directors, alleged unlicensed financial services firms and negligent treatment of customers.

The number of the whistleblowing line is 01481 748094.



CHIEF OPERATING OFFICER'S REPORT

Introduction

The Commission is cost-conscious and promotes an ethos of best value. That both the Chairman and the Director General have dedicated significant parts of their messages in this Annual Report to highlighting operational matters is an indication of the importance the Commission places upon the management of resources and the role of the Finance and Operations (F&O) Division. The three pillars of operational management are, firstly, the daily management of resources; secondly, the formal reviews of functions, structure, corporate governance and other control systems such as audits and thirdly, the regular streamlining of operational business processes. These three activities combine to create an overall impact across the operational arena of the Commission.

The daily management of limited resources echoes the Commission's risk-based approach. Risk-based supervision explicitly recognises that the Commission has limited resources and, through PRISM, supervisory effort is channelled to where it should have the greatest effect. The concept remains true in the management of operational resources and the role of the F&O Division in the Commission is to ensure that IT, HR, Finance and Facilities are managed as efficiently and cost-effectively as possible to support the supervision, policy and enforcement divisions.

In addition to meeting the requirements of good corporate governance (see Appendix for further details), we also regularly review our internal business processes, building upon the 2013 restructuring to ensure that we continue to deliver a balanced, proportionate and cost-effective approach to our supervisory and regulatory responsibilities. To this end, during 2014, the activity of the Data Management Unit was integrated into the Risk Team.

The Commission has also sought to increase its efficiency through initiatives in 2014 to deepen understanding across all areas of what separate units do and how they interact together. One good example of this approach was a simple initiative that saw all F&O staff undertaking an in-house course in the fundamentals of risk-based supervision. This has allowed them to understand the work of supervisory divisions and therefore be better placed to focus on how to enable our overarching mission by providing the right IT, Facilities, HR and Financial support needed by our supervisors to allow them to make good-quality judgements efficiently and effectively. We have also continued to reinforce internal communication and develop training in a thematic and structured way.

Within F&O specifically, throughout this year, we have been re-analysing the roles, and numbers, of F&O staff and have been able to rationalise the back office operations. This has allowed us to release more staff into front line supervision and enforcement activity. The proportion of front office to back office has risen from 65% to 70% overall.

Finally, under the guidance of HR, we have continued to focus on recruiting as well as retention and have clarified our approach to training and staff development. Underpinning all activity, our IT department has continued to meet our "business as usual" requirements as well as supporting the development of online submissions.

Financial Information

This section highlights financial information detailed in the statements and the accompanying notes on pages 32 to 43 of this report. It also contains detail on the fees for 2014 and the Commission's approach to retained income.

The Commission's Net Assets for the year show £398,489 which is a marked improvement from 2013 (£348,163 adverse). As the Director General's report makes clear, this change was driven by a sharp focus on staff costs together with rigorous management of non-staff costs combined with running the Sentinel programme more slowly than planned. The closure to future service accrual of the defined benefit pension scheme produced a one-off curtailment gain of £497,000.

Applications and licensing across all sectors saw overall total licensee income for the year of £12,755,412.

Fees set in 2014 for implementation in 2015 showed the final stages of a 2-year incremental increase in several areas – the most predominant being banking. 2014 was also the second year of a

3-year pledge to keep the blended rate of increase, including all anomalies, at under 2 per cent. Keeping fee rates below 2 per cent presented a challenging target that the Commission worked hard to meet.

We remain committed to managing costs so that future fee increases are modest.

With regard to financial reserves, these are required to cover unforeseen costs arising from enforcement or extraordinary regulatory activity which may involve professional assistance and advice – for example, in the event of a firm or more than one firm failing. Therefore, the Commission will continue the policy, initiated in 2001 and articulated in annual reports since then, to aspire to establish and maintain a reserve equivalent to 6 months operating costs. Given that the last realistic triennial valuation of the Commission's portion of the States pension scheme showed a small surplus, the Commission does not intend to raise fees to offset the volatile FRS 17 pension liability.



Authorisations Project - the Creation of an Authorisations Division

The role and importance of the Commission's Authorisation Unit have grown since its inception in October 2012. Its initial mandate encompassed centralising the reception of Personal Questionnaires and Declarations. It became clear in 2014 that further commonality should be sought in dealing with the applications for new licences, together with other applications for various approvals, authorisations and registrations under the regulatory laws that were being considered separately by the relevant supervisory divisions of the Commission.

We therefore moved the Authorisations Unit from the Financial Crime Division to become a distinct entity in its own right. This

was completed in August 2014. We plan further work to reinforce the Authorisations Unit in 2015.

We have already repositioned and retrained our staff to best effect in order to ensure they have the skills to analyse all requests for new licences, approvals, authorisations and registrations. Streamlining processes not only involves developing IT systems, but also preparing, and then allowing our staff to make, recommendations to decision makers on more routine work within a supported and controlled environment.

Balanced Scorecard

Our internal balanced scorecard has been further developed. It ensures that the objectives of staff are aligned with the Commission's strategic objectives and priorities.

The essence of a balanced scorecard is that objectives are identified and articulated at an overall organisational level before being carefully weighted (balanced) to ensure work is appropriately prioritised.

2014 was the first year in which the Commission operated under a balanced scorecard approach. It proved useful and, in tandem

with PRISM, the balanced scorecard helped to focus all levels of the Commission towards our mission and key objectives. Throughout the year the reporting of progress towards the achievement of the balanced scorecard objectives was refined and, as a result of the lessons learned of the actual application of the method in a Commission context, the approach has been further tailored but the overarching objectives, as articulated in the Director General's report, will continue to be followed in 2015.

People

Against a background of the closure of the defined benefit pension scheme, a sharp focus on staff pay and the rigorous management of non-staff costs – all clearly articulated in the Director General's statement – the human resources team has been focused on four major themes throughout 2014. These are the interlinked activities of recruiting, remuneration, retention and staff development.

Recruiting: Whilst always cognisant of the benefits of maintaining a strong core of experienced staff, the Commission has been encouraging the recruitment and development of junior staff. To that aim, 2014 saw the first attempt to recruit a pool of talented young graduates and school leavers into the Commission.

The programme has been a success and graduates were selected to join the Graduate Development Programme (GDP) in 2014. The aim of the programme is to develop and train the next generation of financial services experts ensuring that they have a detailed knowledge of regulation and specifically risk-based supervision. The programme sees a yearly rotation through Commission divisions over a three-year period. To complement the in-house training initiatives (see below), those on the GDP are also enrolled onto external courses such as the Investment Management Certificate and the Chartered Financial Analyst. The initiative is continuing into 2015.

Remuneration: We aim to recognise and reward excellent work and to encourage high performers to work at the Commission. However, in common with all sectors, because of the current economic climate and the subsequent focus upon costs, remuneration has remained static for several years. 2014 was no exception and there was no general increase in staff pay.

Salary and related costs for the year were £8,772,484. An analysis of these figures is provided in table 3 on page 54.

Analyses of staff by salary band and movements in staff numbers are shown in tables 4 and 5 on page 55.

A breakdown of Commissioners' fees is shown in table 7 on page 55.

Retention: The Commission demands a lot from its staff and the Bailiwick deserves the best-qualified and most able staff that we can reasonably retain. We must strike a balance of presenting an employment package which is competitive, yet also within the limitations of the Commission's finances. We believe that in a risk-based supervisory environment where supervisors are required to challenge, exercise good-quality judgements and mitigate unacceptable risks, there are considerable opportunities for us to provide high levels of job satisfaction for our people.

The Commission has realigned its mission and overarching objectives in a balanced way as detailed above. This, in turn, means that our staff know exactly how the work they are doing relates to the overall aims of the Commission. We actively encourage staff

to use initiative and intelligence to solve problems – knowing that they remain within the framework of what has been agreed. Our revised moderation-based appraisal system reflects this and it has been welcomed by staff as a way of measuring and rewarding real performance and teamwork.

Staff development: Regulation provides a challenging and complex working environment where only continual professional development will allow our staff to keep pace with our stakeholders, be they local industry, peer jurisdictions or international regulatory bodies. We must strive to be informed and contemporary in all financial services disciplines to equip our people to meet the demands of their profession.

Training is organised thematically and we always look for value for money – we use on-island resources where they offer best value. We also use in-house resources wherever possible – both in the context of organising peer briefings on specialist subjects, as well as asking individuals who have attended courses to pass on their knowledge in learning environments.

Where we cannot deliver training in-house, and there is no course available on-island, we use specialist individuals and organisations to deliver on-island training to ensure that our people receive up to-date and relevant training. For example, we have undertaken specialist business model analysis training as well as risk-based supervision training, impact and influence training and interview skills training.

Communication and Information Systems

During 2014, we continued to maintain and upgrade our core communication and information technology infrastructure in line with our long-term IT strategy. We replaced our network storage and switching infrastructure, and made a surplus on the disposal of the fully depreciated existing equipment, purchased primarily in 2008. The new, robust infrastructure provides the Commission with network storage capacity for the foreseeable future, including the increased storage requirements expected to arise from the Sentinel programme deliverables.

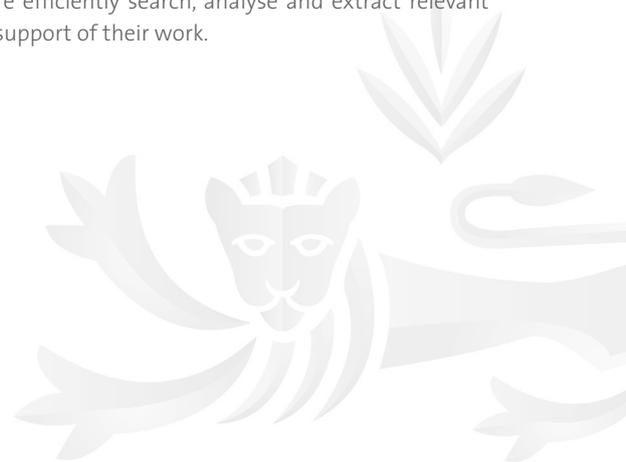
We continued our programme of cost-effective service provision, identifying areas where it is more cost-effective to outsource

than to up-skill individual members of staff, and successfully negotiated more cost-effective contracts with new and existing suppliers.

We continue to focus on information security both in terms of user awareness and the technical improvements to mitigate against threats to our systems and information.

We implemented a version of Nuix eDiscovery software for our Enforcement Division during the year thereby enabling the Division to more efficiently search, analyse and extract relevant information in support of their work.

Stephen Cole
Chief Operating Officer



INDEPENDENT AUDITOR'S REPORT

Independent Auditor's Report to the Guernsey Financial Services Commission

We have audited the financial statements of the Guernsey Financial Services Commission (the "Commission") for the year ended 31 December 2014 which comprise the Income and Expenditure Account, the Statement of Total Recognised Gains and Losses, the Balance Sheet, 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 (United Kingdom Generally Accepted Accounting Practice).

This report is made solely to the Commission, in accordance with our Terms of Engagement as detailed in our letter dated 28 November 2013. Our audit work has been undertaken so that we might state to the Commission, 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 Commission, for our audit work, for this report, or for the opinions we have formed.

Statement of the Commission's Responsibilities

The Commission is required by the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended to prepare financial statements for each financial year which give a true and fair view, in accordance with applicable Guernsey law and United Kingdom Accounting Standards. In preparing these financial statements, the Commission is 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 Commission will continue to operate.

The Commission is responsible for keeping proper accounting records which disclose with reasonable accuracy at any time the

financial position of the Commission and to enable it to ensure that the financial statements have been prepared in accordance with the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended. It is also responsible for safeguarding the assets of the Commission and hence for taking reasonable steps for the prevention and detection of fraud, error and other irregularities.

Respective Responsibilities of the Commission and Auditor

As explained more fully above, the Commission is 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 Financial Reporting Council's (FRC'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 Commission's circumstances and have been consistently applied and adequately disclosed; the reasonableness of significant accounting estimates made by the Commission; and the overall presentation of the financial statements. In addition, we read all the financial and non-financial information in the Annual 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 Commission's affairs as at 31 December 2014 and of its surplus for the year then ended;
- have been properly prepared in accordance with United Kingdom Accounting Standards; and
- have been properly prepared in accordance with the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended.

BDO Limited
Chartered Accountants
Guernsey

7 May 2015



FINANCIAL STATEMENTS

INCOME AND EXPENDITURE ACCOUNT

For the year ended 31 December 2014

	Note	2014 £	2013 £
Income	2		
Fees receivable	1(b)	12,755,412	12,517,683
Financial penalties imposed	1(c), 13	506,000	160,000
Interest receivable and similar income	1(d)	68,036	94,491
		13,329,448	12,772,174
Expenditure			
Salaries, pension costs, staff recruitment and training		8,772,484	9,221,754
Gain on curtailment of pension scheme	7(b)	(497,000)	–
Commissioners' fees		214,500	214,583
Legal and professional fees		502,896	631,116
Premises and equipment, including depreciation	1(f), 1(h), 4, 9	1,510,556	1,406,684
Other operating expenses		890,714	629,031
Bad debt provision expense	5, 13	200,000	–
Other finance costs	1(i), 7(b)	61,301	134,909
Auditor's remuneration		8,750	8,750
		11,664,201	12,246,827
Surplus for the year		1,665,247	525,347

There is no difference between the surplus for the financial year as stated above and its historical cost equivalent.

The notes on pages 36 to 43 form an integral part of these financial statements.

STATEMENT OF TOTAL RECOGNISED GAINS AND LOSSES

For the year ended 31 December 2014

	Note	2014 £	2013 £
Surplus for the year		1,665,247	525,347
Actuarial loss	7(e), (k)	(918,595)	(2,247,755)
Total recognised gain/(loss) for the year		746,652	(1,722,408)

The notes on pages 36 to 43 form an integral part of these financial statements.



BALANCE SHEET

As at 31 December 2014

	Note	2014 £	2013 £
Fixed assets			
Tangible assets	4	3,327,016	2,941,650
Current assets			
Debtors and prepayments	5	675,972	468,629
Short-term investments	1(g), 12	7,140,274	7,474,029
Deposits with States Treasury	12	22,923	21,650
Cash at bank and in hand	12	1,424,830	624,396
		9,263,999	8,588,704
Creditors – amounts falling due within one year	6a	(2,080,423)	(2,385,750)
Net current assets		7,183,576	6,202,954
Creditors – amounts falling due after one year	6b	(137,752)	(103,700)
Net assets before post-retirement liability		10,372,840	9,040,904
Post-retirement liability	7(a), (k)	(9,974,351)	(9,389,067)
Net assets / (liabilities)		398,489	(348,163)
Reserves	8	398,489	(348,163)

The financial statements on pages 32 to 43 were approved by the Commissioners and signed on their behalf on 7 May 2015 by:

C Schrauwers
Chairman

A Rodger
Vice-Chairman

W Mason
Director General

The notes on pages 36 to 43 form an integral part of these financial statements.

CASH FLOW STATEMENT

For the year ended 31 December 2014

	Note	2014 £	2013 £
Reconciliation of surplus of income less expenditure for the year to net cash inflow from operating activities			
Surplus of income less expenditure		1,665,247	525,347
Other finance costs	7(b)	61,301	134,909
Current pension service cost	7(c)	414,645	682,690
Gain on curtailment of pension scheme	7(b)	(497,000)	–
Contributions made to defined benefit pension scheme	7(d)	(312,257)	(450,578)
Depreciation on tangible fixed assets	4	589,219	478,113
Interest receivable		(68,036)	(94,491)
(Increase)/decrease in debtors		(207,343)	78,630
(Decrease) /increase in creditors		(271,275)	699,655
Net cash inflow from operating activities		1,374,501	2,054,275
Cash flow statement			
Net cash inflow from operating activities		1,374,501	2,054,275
Returns on investments and servicing of finance - interest		68,036	94,491
Capital expenditure	4	(984,585)	(981,440)
Receipts from sale of tangible assets		10,000	–
Management of liquid resources	1(g), 12	333,755	(743,923)
Increase in cash in the year	12	801,707	423,403
Reconciliation of net cash flow to movements in net funds			
Increase in cash in the year	12	801,707	423,403
Net funds at 1 January	12	8,120,075	6,952,749
Cash (inflow)/outflow from (decrease)/increase in liquid resources	12	(333,755)	743,923
Total funds at 31 December	12	8,588,027	8,120,075

The notes on pages 36 to 43 form an integral part of these financial statements.

NOTES TO THE FINANCIAL STATEMENTS

For the year ended 31 December 2014

1. Accounting policies

(a) Convention

These financial statements have been prepared in accordance with the historical cost convention and under applicable accounting standards in the United Kingdom. The principal accounting policies which the Commissioners have adopted within that convention are set out below. They have been applied consistently in dealing with items which are considered material to the financial statements of the Commission.

(b) Fees receivable

Fees are a combination of annual licence fees and application fees. Fees receivable are accounted for on an accruals basis.

(c) Financial penalties imposed

The Commission imposed financial penalties during the year under section 11D (1) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended.

(d) Interest

Bank and States Treasury deposit interest is accounted for on an accruals basis. Interest income received on a portfolio of certificates of deposit is accounted for on an accruals basis.

(e) Investigation and litigation

Costs arising from investigation and litigation are accounted for as expenditure is incurred, whether or not it had been billed at the balance sheet date. Such costs recovered from third parties are accounted for in the year in which they are received. No provision is made for expenditure or recoveries which may arise in future years.

(f) Tangible fixed assets and depreciation

Depreciation on tangible fixed assets is calculated to write down their cost to their estimated residual values over the period of their estimated useful economic lives at the following annual rates:

Leasehold improvements	over the shorter of the term of the lease and the estimated useful economic life of the assets
Office equipment and fittings	25% straight-line
Furniture	over the shorter of 10 years and the estimated useful economic life of the assets
Computer equipment:	
Hardware	33 $\frac{1}{3}$ % straight-line
Software	over the shorter of 10 years and the estimated useful economic life of the assets

(g) Short-term investments

Short-term investments, represented by a portfolio of certificates of deposit and managed by an investment manager, are actively traded and thus included as current assets irrespective of the maturity date of individual certificates.

(h) Leases

Rental payments made in relation to office accommodation are treated as operating leases and are charged to the income and expenditure account on a straight-line basis over the lease term.

(i) Pensions

Employees of the Commission who joined before 1 January 2008 were eligible to be members of the States of Guernsey Superannuation Fund ("the Fund") which is a defined benefit pension scheme funded by contributions from both the member and the employer.

This defined benefit scheme closed to future service accrual on 30 June 2014

A separate Actuarial Account comprising the assets and liabilities of the Fund attributable to the Commission's members ("the scheme") was established with effect from 1 January 2004. Regular valuations are prepared by independent professionally qualified actuaries.

In accordance with Financial Reporting Standard 17 - Retirement Benefits ("FRS 17"), the regular service costs of providing retirement benefits to employees during the year, together with any past service costs, are charged to the income and expenditure account in the year.

A debit is included within other finance costs, representing the interest cost on the scheme's liabilities, less the expected return on the scheme's assets, for the year. The difference between the market value of assets and the present value of accrued pension liabilities is shown as an asset or liability in the balance sheet.

1. Accounting policies (continued)

(i) Pensions (continued)

Differences between the actual and expected returns on assets during the year are recognised in the statement of total recognised gains and losses in the year together with differences arising from changes in assumptions and experience gains and losses arising on the scheme liabilities.

Following closure of this defined benefit scheme to future service accrual, employees had the option to transfer out their pension or become deferred members of the scheme.

Employees who joined the Commission after 31 December 2007 up until 30 June 2014 were generally eligible to be members of the Island Trust Plan (the DC Plan). With effect from 1 July 2014, members of the DC Plan, deferred members of the defined benefit scheme and new employees were offered a choice of pension offerings. The options consist of the Island Trust Plan DC plan, a multi-member Group RATs scheme or a personal approved pension plan. Contributions by employees are no longer a mandatory requirement.

2. Income

Income is derived wholly from continuing activities.

3. Taxation

The Commission is exempt from the provisions of the Income Tax (Guernsey) Law, 1975 as amended.

4. Tangible assets

	Leasehold improvements	Office equipment, furniture and fittings	Computer hardware	Computer software	Total
	£	£	£	£	£
Cost					
At 1 January 2014	1,280,372	438,569	561,472	2,494,610	4,775,023
Additions	–	19,345	248,070	717,170	984,585
Disposals	–	(30,675)	(109,031)	(305,957)	(445,663)
At 31 December 2014	1,280,372	427,239	700,511	2,905,823	5,313,945
Depreciation					
At 1 January 2014	182,455	250,322	444,081	956,515	1,833,373
Charge for the year	56,404	58,529	112,704	361,582	589,219
On disposals	–	(30,675)	(104,641)	(300,347)	(435,663)
At 31 December 2014	238,859	278,176	452,144	1,017,750	1,986,929
Net book value at 31 December 2013	1,097,917	188,247	117,391	1,538,095	2,941,650
Net book value at 31 December 2014	1,041,513	149,063	248,367	1,888,073	3,327,016

5. Debtors and prepayments

	2014	2013
	£	£
Other debtors	242,914	18,903
Provision for bad debts (see note 13)	(200,000)	–
Prepayments	633,058	449,726
	675,972	468,629

Included in the total are prepayments of £160,082 (2013: £20,654) which relate to periods longer than 12 months.

NOTES TO THE FINANCIAL STATEMENTS (continued)

6a. Creditors – amounts falling due within one year

	2014	2013
	£	£
Expense creditors and accruals	816,382	1,148,378
Fees received in advance	1,264,041	1,237,372
	2,080,423	2,385,750

6b. Creditors – amounts falling due after one year

	2014	2013
	£	£
Expense accruals	137,752	103,700
	137,752	103,700

7. Superannuation

- (i) FRS 17 Disclosure for the Guernsey Financial Services Commission Actuarial Account of the States of Guernsey Superannuation Fund

Employee benefit obligations

The scheme closed to future service accrual with effect from 30 June 2014 although the pension scheme deficit continues to be recognised in the balance sheet in accordance with FRS 17. This is a defined benefit pension scheme funded by contributions from both the member and the employer which provides retirement benefits based on final pensionable salary. The employer contributions were determined on the basis of independent actuarial advice and were calculated to meet the cost of benefit accrual over the next year of pensionable service.

A separate Actuarial Account comprising the assets and liabilities of the Fund attributable to the Commission's members was established with effect from 1 January 2004 within the Fund following an instruction from the former States Advisory and Finance Committee. The Actuarial Account is used solely for the purpose of determining the contributions payable to the Fund by the Commission and to avoid the possibility of inappropriate subsidisation of one employer by another.

A full actuarial valuation of the scheme was carried out at 31 December 2013 by the scheme's actuary, which resulted in a funding surplus of £315,000. Subsequent to the closure of the scheme to future accrual of benefits, no further contributions were made by the Commission. The States of Guernsey ("the States") confirmed the advice of the actuary that, given the funding surplus in the Commission's actuarial account, additional contributions would not be required pending the result of the next triennial valuation in 2016.

The valuation used for FRS 17 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.

- (a) The amounts recognised in the balance sheet are as follows:

	2014	2013
	£	£
Fair value of scheme assets	18,190,000	17,123,000
Present value of funded obligations	(28,164,351)	(26,512,067)
Post-retirement liability	(9,974,351)	(9,389,067)

The asset and liability values on the FRS17 basis reflect market conditions at the Commission's year-end date and, as point-in-time calculations, can be expected to vary greatly from year to year, without prejudicing the scheme's long-term ability to provide the required benefits.

7. Superannuation (continued)

(b) The amounts recognised in the income and expenditure account are as follows:

	2014	2013
	£	£
Interest on obligation	1,182,551	1,029,669
Expected return on scheme assets	(1,121,250)	(894,760)
Other finance costs	61,301	134,909
Current service cost	414,645	682,690
Gain on curtailment (see note below)	(497,000)	–
Net expense recognised in income and expenditure account	(21,054)	817,599

The closure of the Actuarial Account to future accrual of benefits on 30 June 2014 has led to a curtailment gain in accordance with FRS 17. This comprises a gain from the loss of linkage of benefits to final salary, with partially offsetting losses due to the reduction in the assumed retirement age when members become deferred pensioners.

Actual return on scheme assets	1,022,570	1,845,929
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(c) Changes in the present value of the defined benefit obligation are as follows:

	2014	2013
	£	£
Opening defined benefit obligation	(26,512,067)	(22,051,291)
Current pension service cost	(414,645)	(682,690)
Interest on obligation	(1,182,551)	(1,029,669)
Contributions by members	(282,845)	(234,184)
Actuarial losses on obligations	(819,915)	(3,068,403)
Gain on curtailment	497,000	–
Net benefits paid including pensions, lump sums, refunds of member contributions and transfer values	550,672	554,170
Closing defined benefit obligation	(28,164,351)	(26,512,067)

(d) Changes in the fair value of scheme assets are as follows:

	2014	2013
	£	£
Opening fair value of scheme assets	17,123,000	15,277,000
Expected return on scheme assets	1,121,250	894,760
Actuarial (losses)/gains on scheme assets	(98,680)	820,648
Contributions by employer	312,257	450,578
Contributions by members	282,845	234,184
Net benefits paid, including pensions, lump sums, refunds of member contributions and transfer values	(550,672)	(554,170)
Closing fair value of scheme assets	18,190,000	17,123,000

NOTES TO THE FINANCIAL STATEMENTS (continued)

7. Superannuation (continued)

(e) Analysis of amount recognised in statement of total recognised gains and losses ("STRGL")

		2014	2013
		£	£
Opening amount of losses recognised in STRGL		(8,685,474)	(6,437,719)
Actuarial losses on obligations for the year	7(c)	(819,915)	(3,068,403)
Actuarial (losses)/gains on scheme assets for the year	7(d)	(98,680)	820,648
Total actuarial losses for the year		(918,595)	(2,247,755)
Cumulative amount of losses recognised in STRGL		(9,604,069)	(8,685,474)

(f) Following the closure of the scheme to future service accrual the employer does not expect to make any contributions to the scheme in the year ending 31 December 2015.

(g) The major categories of fund assets as a percentage of the total Fund assets are as follows:

	2014	2013
	%	%
Equities	75	71
Gilts	1	3
Corporate bonds	14	13
Property	7	9
Other assets	3	4

This allocation is at the discretion of the States.

(h) Long-term principal actuarial assumptions at the balance sheet date (expressed as weighted averages where applicable):

	2014	2013
	%	%
Discount rate as at 31 December	3.6	4.5
Expected return on fund assets at 31 December	see note below	6.6
Rate of increase in pensionable salaries	3.85	4.5
Rate of increase in deferred pensions	3.1	3.7
Rate of increase in pensions in payment	3.1	3.7

The FRS 17 standard refers to a discount rate determined as the current rate of return on high quality corporate bonds (normally taken to be rated as AA) of equivalent currency and term to the Actuarial Account's liabilities.

As a result of the implementation of FRS 102 with effect from 1 January 2015 the expected return on fund assets at 31 December 2015 will be governed by the discount rate applicable at the time.

7. Superannuation (continued)

(i) Mortality assumptions

The mortality assumptions are based on standard mortality tables which allow for future mortality improvements. The assumptions are that members aged 60 will live on average until age 87 if they are male and until 89 if female. For members currently aged 45, the assumptions are that if they attain age 60 they will live on average until age 88 if they are male and until 90 if female.

(j) Description of the basis used to determine return on fund assets

The States adopts a building block approach in determining the expected rate of return on the Fund's assets. The States retains full responsibility for the management of 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.

(k) Amounts for the current and previous periods are as follows:

	2014	2013	2012	2011	2010
	£	£	£	£	£
Defined benefit obligation	28,164,351	26,512,067	22,051,291	21,033,140	19,356,128
Fair value of scheme assets	18,190,000	17,123,000	15,277,000	13,455,961	14,811,865
Deficit in the scheme	(9,974,351)	(9,389,067)	(6,774,291)	(7,577,179)	(4,544,263)
Actuarial (losses)/gains on scheme assets	(98,680)	820,648	525,784	(1,582,355)	793,060
Actuarial (losses)/gains on defined benefit obligation	(819,915)	(3,068,403)	748,805	(1,853,787)	(564,879)
Actuarial (losses)/gains recognised in STRGL	(918,595)	(2,247,755)	1,274,589	(3,436,142)	228,181

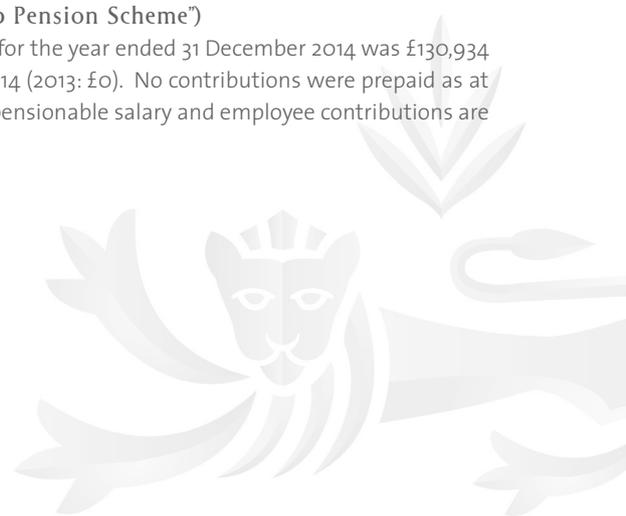
The States has confirmed that in the final resort the claims of the Commission's pensioners and employees would be met from the whole Fund and any shortfall in the scheme would then be met by the States from General Revenue.

(ii) FRS 17 Disclosure for the Island Trust Pension Plan ("the DC Plan")

The net cost of employer contributions to the DC Plan for the year ended 31 December 2014 was £233,080 (2013: £301,376). No contributions were outstanding as at 31 December 2014 (2013: £4,665). No contributions were prepaid as at 31 December 2014 or 2013. Employer contributions are calculated at 12% of pensionable salary and mandatory employee contributions were at a rate of 5% of pensionable salary up until 30 June 2014. Subsequent to this date, employee contributions are entirely voluntary.

(iii) FRS 17 Disclosure for the Multi-member RATs scheme ("GFSC Group Pension Scheme")

The net cost of employer contributions to the GFSC Group Pension Scheme for the year ended 31 December 2014 was £130,934 (2013: £0). Contributions of £11,004 were outstanding as at 31 December 2014 (2013: £0). No contributions were prepaid as at 31 December 2014 or 2013. Employer contributions are calculated at 12% of pensionable salary and employee contributions are entirely voluntary.



NOTES TO THE FINANCIAL STATEMENTS (continued)

8. Reconciliation of movements in reserves

		2014	2013
		£	£
Reserves brought forward		(348,163)	1,374,245
Surplus of income less expenditure for the year		1,665,247	525,347
Actuarial loss on post-retirement liability	7(e)	(918,595)	(2,247,755)
Reserves carried forward		398,489	(348,163)

Reserves are stated after deducting the accumulated pension liability of £9,974,351 (2013: £9,389,067) which equates to the post-retirement liability under FRS 17 (see note 7).

9. Lease commitments

The Commission leased office accommodation at Gategny Court during the year. The lease for Gategny Court expires on 16 September 2034 and the rental payable in 2015 under the terms of the lease amounts to £655,188 (2014: £655,188).

10. Investigation and litigation costs

As a consequence of fulfilling its regulatory responsibilities, from time to time the Commission undertakes investigations and is a party to legal actions, the costs of which may be significant. No provision has been made in the financial statements for any future costs in respect of current investigations or legal actions because the nature, complexity and duration of such actions remain uncertain.

In a few cases, some or all of the Commission's investigation and legal costs may be recoverable, although not necessarily in the same financial year as the expenditure is incurred. In such cases the recovery is recognised when received.

11. Controlling party

In the opinion of the Commissioners there is no controlling party of the Commission, as defined by Financial Reporting Standard No. 8 – Related Party Disclosures, as no party has the ability to direct the financial and operating policies of the Commission with a view to gaining economic benefits from their direction.

12. Analysis of changes in total funds

	At 1 January 2014	Cash flow	At 31 December 2014
	£	£	£
Deposits with States Treasury	21,650	1,273	22,923
Cash at bank and in hand	624,396	800,434	1,424,830
Total cash balance	646,046	801,707	1,447,753
Certificates of Deposit	7,474,029	(333,755)	7,140,274
Total funds	8,120,075	467,952	8,588,027

The Certificates of Deposit are managed as liquid investments and have maturity dates typically between three months and one year after the balance sheet date.

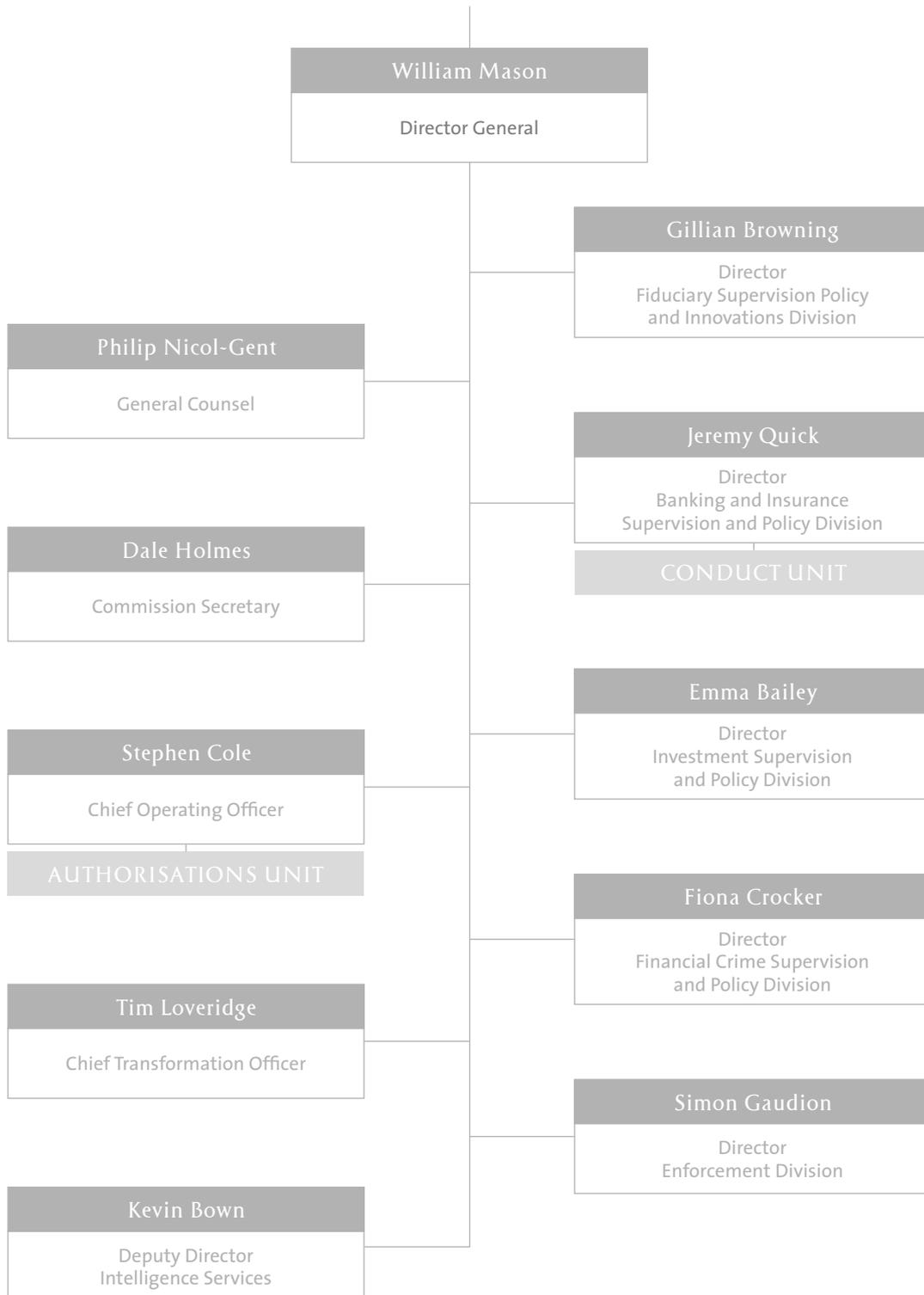
13. Financial penalties

During the year the Commission imposed financial penalties under section 11D (1) of the Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended, amounting to £506,000. At the year end the Commission raised a provision of £200,000 in relation to amounts outstanding.



SENIOR OFFICERS OF THE COMMISSION

COMMISSIONERS



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COMMISSIONERS

Drs. Cees Schrauwens **Chairman of the Commission**

Drs. Schrauwens is a Dutch citizen and has more than 35 years' financial services experience. He has served as Managing Director of Aviva International, CGU Insurance and Commercial Union, covering both the general insurance and life sectors. He was instrumental in the mergers with General Accident and Norwich Union which resulted in the creation of Aviva plc. Following the mergers he was appointed Managing Director of Aviva International, gaining valuable experience in dealing with regulators across the globe, including North America. Prior to this, he was a Partner with Coopers & Lybrand in charge of insurance consultancy. In the past he has served as Chairman of Drive Assist Holdings Limited, senior independent director of Brit Insurance Holdings Plc. and Brit Syndicates Limited, non-executive director of Canopus Holdings UK Limited and Canopus Managing Agents Limited and as an independent Director at Scottish Widows Group and as a director of Munich Re (UK) Plc. He was appointed as a Commissioner in 2008 and Chairman in 2012 and is the senior independent director of Record Plc since November 2007. He was educated at the Vrije Universiteit Amsterdam and the Nautical College Den Helder. He lives with his wife near London.

Susie Farnon FCA **Vice-Chairman of the Commission (until 31 March 2015)**

Susie Farnon was appointed as a Commissioner in February 2006. She was a Banking and Finance Partner with KPMG Channel Islands from 1990 until 2001. She has served as President of the Guernsey Society of Chartered and Certified Accountants and as a member of the Guernsey Audit Commission and the Guernsey Public Accounts Committee. She is also director of a number of private and listed companies.

The Lord Flight MA (Cantab) MBA FRSA **Commissioner**

Howard Flight was appointed as a Commissioner in 2005. He was the Conservative MP for Arundel and South Downs from 1997 – 2005, during which time he held the posts of Shadow Economic Secretary, Paymaster General and Chief Secretary to the Treasury and was a member of the Shadow Cabinet. He was appointed to the House of Lords in 2010 and serves as a working Conservative Peer focusing particularly on financial legislation, financial regulations and pensions. He has been a member of the Lords EU Economic and Financial Affairs Sub-Committee. He has worked for over 40 years in the financial services industry, starting his career at Rothschilds. In the second half of the 1970's he worked for HSBC's merchant bank in Hong Kong and India. In 1979 he joined Guinness Mahon and established what became Guinness Flight Global Asset Management, of which he was joint Managing Director until it was acquired by Investec in 1998. He formed, and is Chairman of, Flight & Partners, which is the manager of the Flight & Partners Recovery Fund, and is currently a director of Investec Asset Management Limited, Metro Bank PLC, Aurora Investment Trust plc and a number of other companies and investment funds.

Alex Rodger MCIBS **Commissioner**

Alex Rodger was appointed as a Commissioner in February 2008. He spent over 40 years with the Royal Bank of Scotland ("RBS") Group. Prior to moving to Guernsey in 1989 as Island Director, he occupied senior posts in relationship management and credit control in London and New York. He was executive director of RBS International from its formation in 1996 and was appointed Managing Director of RBS International Securities Services Group in April 2002. Later that year his responsibilities were increased to that of Managing Director of RBS International Corporate Banking Division with responsibility for corporate banking operations in each of Jersey, Guernsey, the Isle of Man and Gibraltar. He was also Chairman of RBS International Employees Pension Trust. Alex Rodger is the non-executive Chairman of advocates Collas Crill.

**Richard Hobbs MCIPD
Commissioner**

Richard Hobbs was appointed as a Commissioner in January 2012. His first career was in the UK Civil Service where he concentrated on a variety of consumer protection and European issues. Latterly, he was a director of the Department of Trade and Industry's Insurance Division where he was responsible for overall supervision of the Lloyd's insurance market during its reconstruction in the mid-1990s. He has been Head of Life and Pensions at the Association of British Insurers, and for the past 15 years has been a consultant advising a wide range of clients in financial services on regulatory, risk and governance issues. He is also chairman of Faber Global Ltd, a wholesale insurance broker, and a non-executive director of Barbican Managing Agency Limited, a Lloyd's managing agent.

**Bob Moore
Commissioner**

Bob Moore was appointed as a Commissioner in February 2012. He has spent over 30 years in the financial services industry in Guernsey and internationally. From 1979 to 1997, he held positions in international banking and international private banking with the Lloyds Bank/Lloyds TSB Group in South America, the USA, the UK and Luxembourg. These included responsibility for Lloyds' international private banking operations in New York and in Luxembourg. From 1997 to 2011, he was jurisdictional Managing Director with responsibility for the Butterfield Group's operations in Guernsey, including banking, investment management, custody and fiduciary services. In June 2011, he was appointed to the position of Executive Vice President and Head of Group Trust for the Butterfield Group. He has also been a director of a number of other Guernsey banks and investment funds.

**Simon Howitt
Commissioner**

Advocate Howitt was appointed as a Commissioner in June 2013. He has 26 years' experience as an advocate and is a partner at Babbé. He is a member of the Council of the Chamber of Commerce and served as its president between 2001 and 2003. Advocate Howitt has served on a number of States Committees including being a non-States member of the Legislation Select Committee since 2004, the share transfer duty working party and the Inheritance Law Review Committee.



STATISTICAL DATA - UNAUDITED

Investment Supervision and Policy

Figure 1. Net asset values of schemes under management at the year end

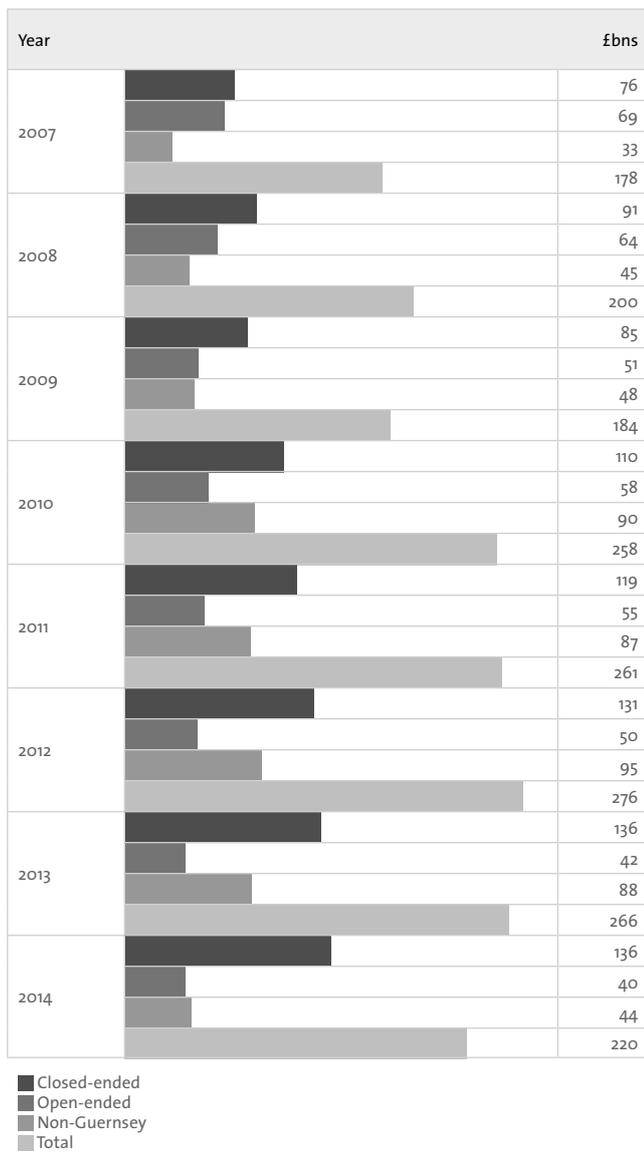


Figure 2. Total number of investment funds at the year end

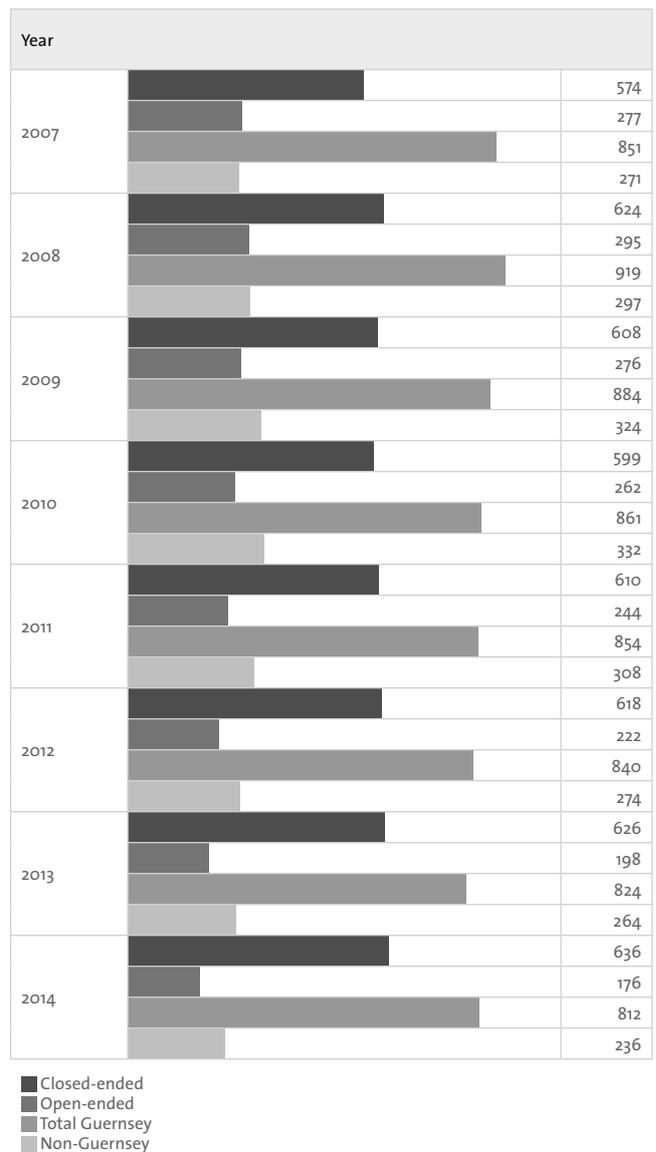


Figure 3. Total number of licensees at the year end

Year	Investment licensees
2007	636
2008	680
2009	661
2010	652
2011	654
2012	644
2013	635
2014	622

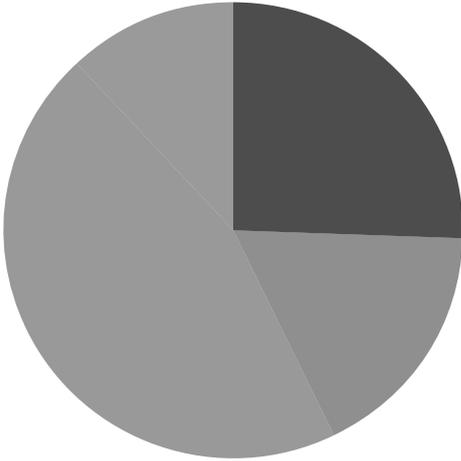
■ Investment licensees

Table 1. Movements within period

Type	Total as at 31 December 2013	Approved in year	Lost in year	Total as at 31 December 2014
Total of open-ended schemes	198	10	32	176
of which Authorised	186	8	30	164
of which Registered	12	2	2	12
of which Qualifying Investor Funds (QIFs)	41	2	11	32
Total of closed-ended schemes	626	57	47	636
of which Authorised	446	17	28	435
of which Registered	180	40	19	201
of which QIF's	150	15	14	151
Total of licensees	635	52	65	622
Total of non-Guernsey schemes	264	70	98	236
of which QIF's	47	0	19	28

Fiduciary Supervision Policy and Innovations

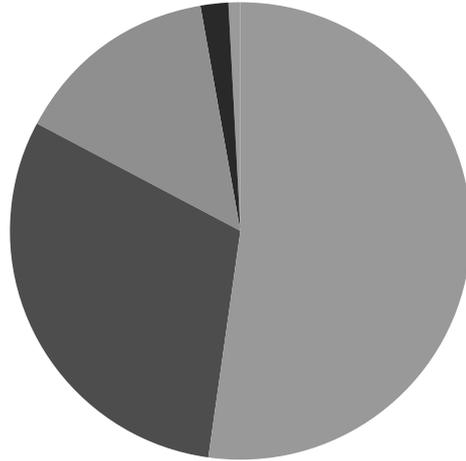
Figure 4. Ownership of lead licensees at 30 June 2014*



	2014	2013
■ International financial group	39	42
■ Lawyers and accountants	26	25
■ Privately owned – local	68	66
■ Privately owned – overseas	18	17

*Based on 151 persons holding a full fiduciary licence as at 30 June 2014.

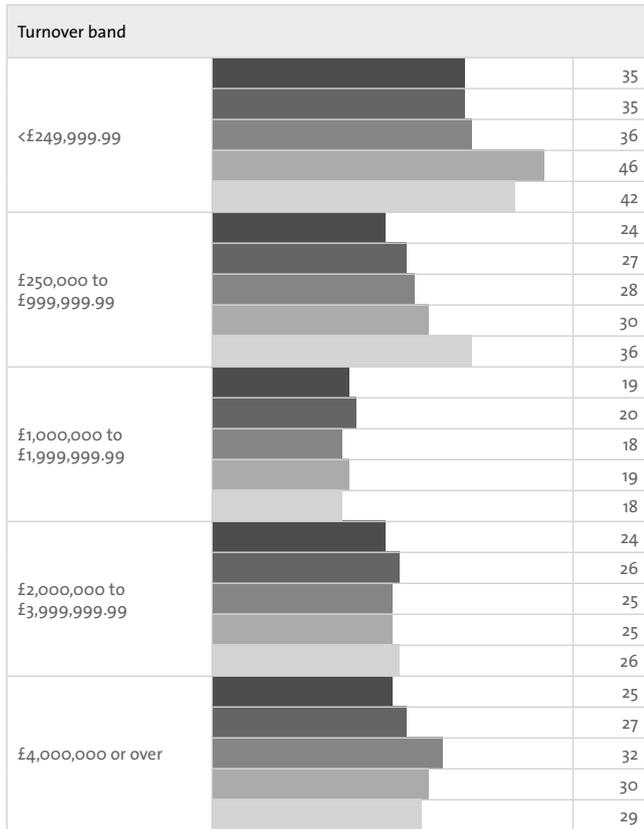
Figure 5. Number of licensees per number of total staff carrying out regulated fiduciary activities*



	2014	2013
■ Up to 10 staff	79	77
■ 11-25 staff	46	44
■ 26-50 staff	22	25
■ 51-75 staff	3	3
■ 76-100 staff	1	1

*Based on 151 persons holding a full fiduciary licence as at 30 June 2014.

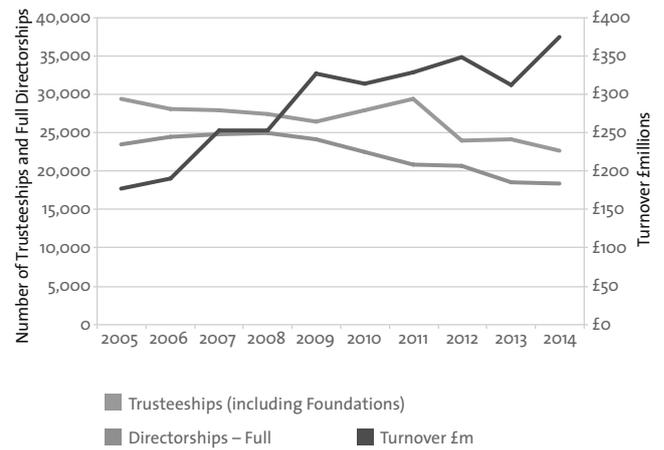
Figure 6. Number of licensees in each turnover band based on fiduciary turnover for accounting periods falling in the year ended 30 June 2014*



*Based on licensees that have submitted audited financial statements. Financial statements may not have fallen due for recently licensed companies.

- 2010
- 2011
- 2012
- 2013
- 2014

Figure 7. Number of Director and trustee appointments for full fiduciaries at the year end; aggregate turnover of full fiduciary licensees*



*Please note turnover records aggregate annual chargeable fees. It does not represent assets under trusteeship.



Insurance Supervision and Policy

Figure 8. International insurers as at 31 December 2014

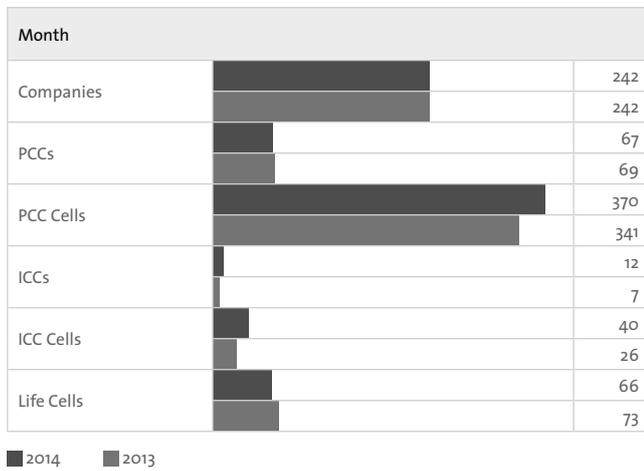


Figure 9. International insurers – net worth

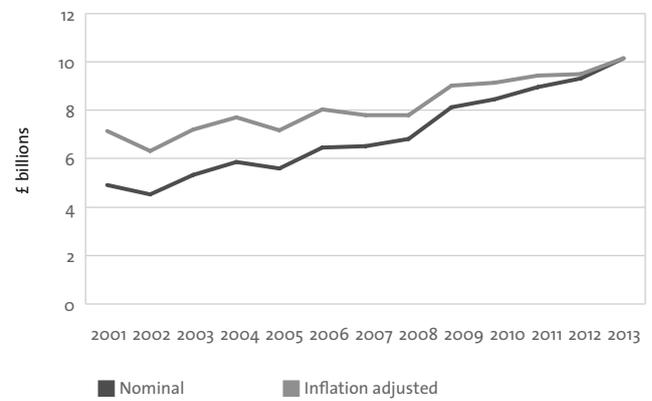
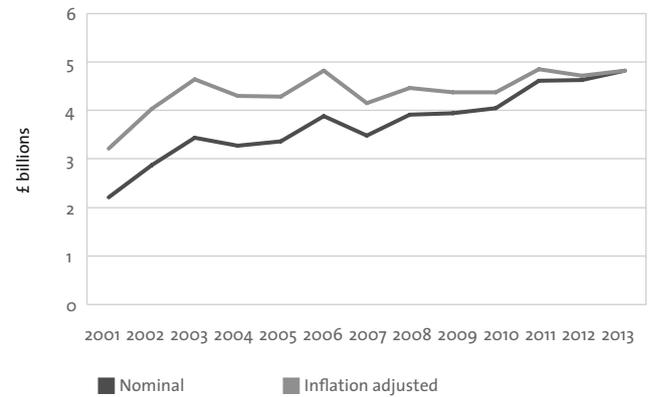


Figure 10. International insurers – gross assets



Figure 11. International insurers – gross premium



Banking Supervision and Policy

Figure 12. Total assets, number of licensees and Full-Time Equivalent staff (FTE)

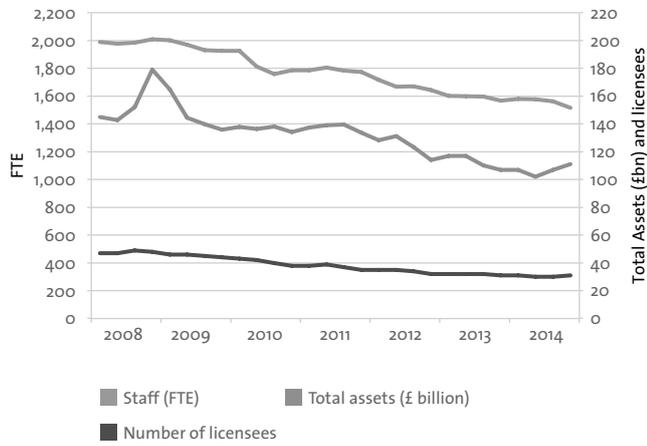
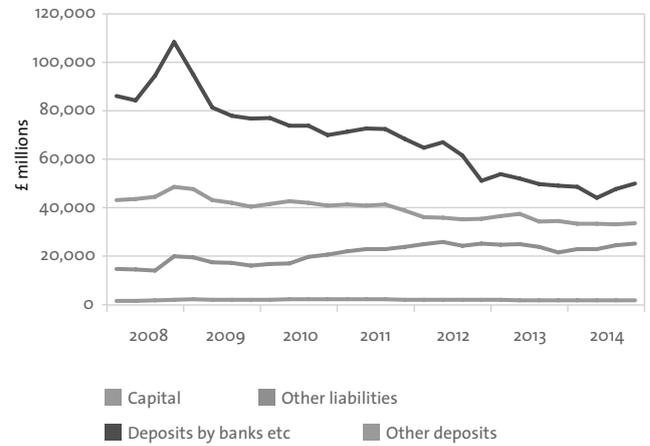


Figure 13. Guernsey bank liabilities



Finance and Operations

Table 2. Expenditure by functional area

	2014	2013
	£'000	£'000
Enforcement	1,076	819
Authorisations and Data Management Unit	776	726
Risk and Transformation	754	722
Supervisory and Policy divisions (incl. Financial Crime)	5,728	6,363
Other operational	1,130	1,294
Overheads, incl. Premises, IT expenses and depreciation	2,697	2,323
Gain on curtailment of pension scheme	(497)	–
Total	11,664	12,247

Table 3. Salaries and related costs

	2014	2013
	£'000	£'000
Salaries	6,921	6,980
Consultants/ secondees	–	91
Pension costs	819	1,192
Social insurance, permanent health and medical insurance	720	701
Recruitment and training	312	258
Total	8,772	9,222

Table 4. Number of staff by salary band

Annual salary	2014	2013
£0 – £39,999 p.a.	37	36
£40,000 – £79,999 p.a.	47	52
£80,000 – £119,999 p.a.	14	10
£120,000 – £159,999 p.a.	6	6
£160,000 p.a. and above	1	3
Total number of staff	105	107
Full-time equivalent	101.7	102.1
Comprising:		
Full-time staff	93	91
Part-time staff	12	16
	105	107
Vacancies at year end	8	2

Table 5. Movement in number of staff

	2014
Employed at start of year	107
Recruited into new positions	3
Positions removed	(6)
Existing vacancies filled	1
Employed at end of year	105

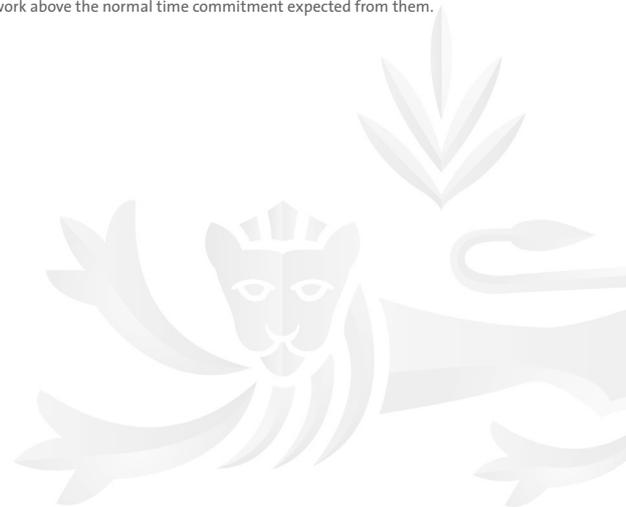
Table 6. Legal and professional fees

	2014	2013
	£'000	£'000
Legal fees – enforcement	132	165
Legal fees – judicial process	119	–
Legal fees – advisory	14	129
Professional fees	125	208
Consultancy fees – Independent Evaluation Review and implementation of recommendations	–	35
Consultancy fees – Sentinel programme	73	63
Internal audit	40	31
	503	631

Table 7. Commissioners' fees

		2014	2013
		£	£
Cees Schrauwers		52,000	61,000
Susie Farnon		25,000	25,000
Alex Rodger		25,000	25,000
Lord Flight		32,500	32,500
Richard Hobbs		30,000	38,000
Robert Moore		25,000	25,000
Simon Howitt	Appointed 3 June 2013	25,000	18,083

N.B. The Policy Council, in anticipation of the increasing input required from Commissioners, wrote to the Chairman of the Commission in January 2012 varying the fee arrangement for Commissioners. The arrangement allowed for per diem remuneration of £1,000 for Commissioners for work above the normal time commitment expected from them.



APPENDIX

Functions, Structure and Corporate Governance and other Control Systems of the Commission

Functions of the Commission

The Financial Services Commission (Bailiwick of Guernsey) Law, 1987 as amended (the Commission Law) established the Commission with both general and statutory functions. The general functions include the taking of “such steps as the Commission considers necessary or expedient for the effective supervision of finance business in the Bailiwick”. The statutory functions include those prescribed under or arising pursuant to the following regulatory laws:

- the Protection of Investors (Bailiwick of Guernsey) Law, 1987 as amended;
- the Banking Supervision (Bailiwick of Guernsey) Law, 1994 as amended;
- the Criminal Justice (Proceeds of Crime) (Bailiwick of Guernsey) Law, 1999;
- the Regulation of Fiduciaries, Administration Businesses and Company Directors, etc. (Bailiwick of Guernsey) Law, 2000 as amended;
- the Insurance Business (Bailiwick of Guernsey) Law, 2002 as amended;
- the Insurance Managers and Insurance Intermediaries (Bailiwick of Guernsey) Law, 2002 as amended;
- the Non-Regulated Financial Services Businesses (Bailiwick of Guernsey) Law, 2008.

Relationship with the States

The States Policy Council is responsible for international financial matters and for establishing the policy framework for financial regulation, including the government’s relationship with the Commission. The Commission Law states that the Commission shall issue its audited financial statements and the two reports, referred to later in this appendix, annually to the Policy Council. The Policy Council is also responsible for the administration of the Control of Borrowing Ordinances. Individual officials of the Commission act for the Policy Council in matters requiring consent under the Ordinances.

The Commission maintains regular, constructive dialogue with the States. During 2014, the Commission continued to engage with the Policy Council, principally through the Fiscal and Economic Policy Group (“FEPG”), with meetings held in order to facilitate an open exchange of views on matters of importance to the States and the Commission. This is one of the key mechanisms through which the Commission is held to account by the States. The Commission also engages with the Commerce and Employment Department in relation to financial services legislation. The Department is an important stakeholder and the Commission values its relationship with the Department’s political board. During May and June, the Commission held a series of “workshops” for States Members where the Director General and senior staff were able to update them on the work of the Commission and the various challenges it currently faces. In addition, a presentation of the Commission’s 2013 annual report was held for States Members in July. Outside of these formal meetings and presentations, the Commissioners and Director General maintain regular contact with Ministers.

The Commissioners

The activities of the Commission's executive are overseen by the members of the Commission (Commissioners). The Commission Law provides that the Commission shall consist of a minimum of five members and a maximum of seven members elected by the States from persons nominated by the Policy Council and appearing to it to be persons having knowledge, qualifications or experience appropriate to the development and supervision of finance business in the Bailiwick. The Chairman is appointed for a period of one year from amongst the Commissioners and is elected by the States following nomination by the Policy Council. The Vice-Chairman is appointed for a period of one year by the Commissioners. Each member is appointed as a Commissioner for a period not exceeding three years. A member whose term of office has come to an end is eligible for re-election. The Chairman and Vice-Chairman are also eligible for re-election to their positions. A member of the Commission must retire on reaching the age of 72 years.

The Commission had seven Commissioners during 2014: Drs. Cees Schrauwens, Susie Farnon (retired 31 March 2015), The Lord Flight, Alex Rodger, Richard Hobbs, Bob Moore and Simon Howitt. A brief résumé for each Commissioner is provided on pages 46 and 47 of this report. All of the Commissioners are non-executive – four reside in Guernsey, with the remainder living in the UK.

There were 11 meetings of the Commissioners in 2014. The attendance was as follows: Drs. Cees Schrauwens 11, Susie Farnon 10, Howard Flight 10, Alex Rodger 10, Richard Hobbs 11, Bob Moore 11 and Simon Howitt 11. Prior to each meeting, Commissioners are provided, save in exceptional circumstances, with a full information pack to support the meeting's agenda.

An induction programme is in place for new Commissioners. The Commissioners periodically consider their roles, responsibilities

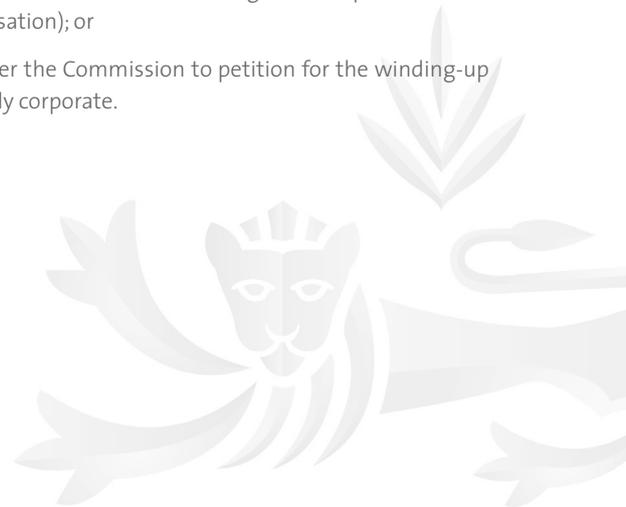
and accountabilities. In addition, each year Commissioners undertake a board effectiveness review and in 2015 this will be facilitated by an external third party.

The Commission Law also makes provision for the appointment of such officers and servants as are necessary for carrying out the Commission's functions and for the most senior officer to have the title of Director General.

Delegation of functions to executive staff

The Commissioners have delegated certain of their statutory functions to the executive staff of the Commission. These statutory functions are exercised by the executives both jointly and individually. All statutory functions of the Commission may be delegated to the executives except:

- the power of the Commissioners to delegate functions;
- the Commissioners' duty to make an annual report on the Commission's activities during the previous year to the Policy Council;
- any statutory functions which:
 - (i) require the Commissioners to consider representations concerning a decision which they propose to take; or
 - (ii) empower the Commission to cancel, revoke, suspend or withdraw a licence, consent, registration, permission or authorisation (except where the cancellation, revocation, suspension or withdrawal is done with the consent of the person who is, or who is acting on behalf of, the holder of the licence, consent, registration, permission or authorisation); or
 - (iii) empower the Commission to petition for the winding-up of a body corporate.



Functions, Structure and Corporate Governance and other Control Systems of the Commission *(continued)*

Annual report and financial statements

The Commission must, as soon as possible in each year, make a report to the Policy Council on its activities during the preceding year. The Chief Minister shall, as soon as possible, submit that report for consideration by the States.

The Commission Law also provides that the Commission shall:

- (a) keep proper accounts and proper records in relation to those accounts; and
- (b) prepare in respect of each year a statement of accounts giving a true and fair view of the state of affairs of the Commission;

and that the accounts of the Commission shall be:

- (a) audited by auditors appointed by the States; and
- (b) laid before the States.

The Commission includes a copy of its audited financial statements in the annual report to the Policy Council, referred to above.

Report on internal control and corporate governance

Under the Commission Law, the Commission must also review in each year, by the appointment of appropriately qualified and independent professional persons or otherwise:

- (a) the adequacy and application of the Commission's systems of internal control;
- (b) the selection and application of the Commission's accounting policies and accounting procedures;
- (c) the effective, efficient and economical management of the Commission's assets and resources; and
- (d) the Commission's compliance with such generally accepted principles of good corporate governance as it is reasonable to regard as being applicable to the Commission.

The Commissioners are required to satisfy themselves in connection with the conclusions of each review and provide the Policy Council with confirmation in the annual report on the matters covered by it.

The Commissioners are responsible for overseeing the Commission's corporate governance regime and for monitoring

the effectiveness of management's systems of internal control. These systems are subject to regular review by management and address the risks to which the Commission is exposed. The Commission has an ongoing process for identifying, evaluating and managing operational risks (including regulatory and financial risks). Although not required to comply with the UK Corporate Governance Code, the Commission has regard to the guidance contained therein and complies wherever valid to do so.

The Commission has robust policies and procedures in place to ensure that any conflicts of interest involving Commissioners or staff are managed effectively.

In accordance with the Commission Law, the Commissioners have reviewed the Commission's approach to risk management policies and processes. The report required by the law on internal control and corporate governance has been provided by the Commission to the Policy Council.

Audit Committee

In 2014, the Commission's Audit Committee comprised Alex Rodger and Richard Hobbs and was chaired by Susie Farnon until 3rd July at which point Richard Hobbs was elected Chairman and Simon Howitt replaced Susie Farnon as a member. The Committee covered oversight of the management of risk, reviewed corporate governance and the systems of internal control and reported routinely to meetings of the Commissioners as a whole. Meetings were usually attended by the Director General, the Chief Operations Officer and the Financial Controller. The Committee met 4 times in 2014.

The attendance of the individual members at these meetings was as follows: Susie Farnon 3, Alex Rodger 3, Richard Hobbs 4 and Simon Howitt 1. From February 2014 the Committee became an Audit Committee rather than an Audit and Risk Committee, although it will continue to have oversight for non-regulatory risk. This change has been executed to comply with evolving thinking on audit and risk governance which suggests that audit and risk committees should not be combined. Regulatory risk is reviewed routinely by the Commissioners as a whole.

Remuneration Committee

The Remuneration Committee, which comprised Bob Moore and Richard Hobbs and was chaired by Alex Rodger, is mandated to advise and assist the Commission in fulfilling appropriate governance in respect of remuneration policies, practices and structure.

The Committee has specific responsibility for proposing to Commissioners (1) the remuneration and reward of the senior executive and (2) the general policy for staff remuneration and benefits to ensure that all of our people are fairly rewarded for their individual contributions to the Commission.

During 2014, the Committee exercised oversight of the closure of the Commission's defined benefit pension scheme to future accrual. In doing so the Commission ensured that affected members were consulted and treated in an appropriate and consistent manner.

Meetings were attended by the Director General and the Chief Operating Officer. The Committee met twice in 2014 with all members attending the meetings.

Review systems

The Commission has retained specialist internal and external expertise to monitor the Commission's non-regulatory internal audit standards to ensure that the Commission is up to date with current expectations.

During 2014, the Commission appointed an external party to undertake internal audits in the following areas:-

- Enforcement policies and procedures;
- Anti-Money Laundering and Countering the Financing of Terrorism in preparation for the Moneyval visit;
- Payroll processes and procedures;
- Implementation of Part I of PRISM; and
- Pension administration.

In addition, the Commission undertook three peer reviews within the finance function: expenditure; assets and liabilities; and capital expenditure. The outcomes of the audits and reviews have been taken forward to the satisfaction of the Audit Committee and Commissioners.

In 2014, the corporate governance standards of the Commission were reviewed by Commissioners, the Audit and Risk Committee and by the Commission's officers. The Commission is satisfied that it meets expectations in connection with internal audit and corporate governance. The International Monetary Fund ("IMF") undertook an evaluation of the Bailiwick against international regulatory and supervisory standards in 2010 under its Financial Stability Assessment Programme. The Commission and the other authorities in Guernsey were found by the IMF to have a high-level of compliance with these standards.



CONTACT US

info@gfsc.gg
www.gfsc.gg
+44 (0)1481 712706

(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:-

IX.- Whether, after consideration of the Policy Letter dated 1st June , 2015, of the Policy Council, they are of the opinion to note the annual report and accounts of the Guernsey Financial Services Commission for the year ended 31st December 2014.

HEALTH AND SOCIAL SERVICES DEPARTMENT**MATERNITY SERVICES AND OTHER KEY REVIEWS**

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

19th May 2015

Dear Sir

1. Executive Summary

- 1.1 In simple terms, this policy letter asks the States to approve additional expenditure of up to £3.0 million in 2015. This has been occasioned by: the identification of serious deficiencies in the quality of delivery of specific acute and social care services, as identified by various external and internal reviews; and the need to provide the necessary resource to undertake the commissioning of secondary healthcare necessitated by the expiry of the current contract. The States are also being asked to note the potential for recurring additional expenditure of up to £3.4 million from 2016 onwards although the Department will consider this in the context of a wider review of the costs of delivering services which is being undertaken in conjunction with the Treasury and Resources Department.
- 1.2 However, the Health and Social Services Department (“HSSD”) recognises that it is the largest General Revenue spending department of the States of Guernsey and that any change in its budget has ramifications for public expenditure elsewhere. HSSD also recognises that all developed western economies face vexed questions about the affordability of health and social care expenditure in relation to an ageing population, rapidly changing health technologies and treatments, and the increased longevity of people with complex and multiple long term conditions. The financial impact of these structural issues is exacerbated by key international skills’ shortages across health and social care, resulting in expensive use of agency staff.
- 1.3 Against this background, HSSD has already initiated comprehensive reviews across many service areas and a programme of transformational efficiencies, designed to ensure that financial sustainability is maximised, whilst simultaneously securing better outcomes for local people. Equally, and jointly with the Treasury and Resources Department (“T&R”), HSSD is currently engaged in a comprehensive costing, benchmarking and prioritisation exercise

that will allow the States to accurately compare the Department's itemised spend with other, relevant jurisdictions and identify where costs might be reduced or reallocated. The outputs from this exercise will be available towards the end of July, and will provide key empirical evidence to HSSD and T&R about the appropriateness of expenditure against key priorities. They will also be pivotal to the detailed development of HSSD's 2016-2018 budgets.

- 1.4 The States are also being asked to fund a programme team that was established in November 2014 in order to undertake essential work required to re-commission Secondary Healthcare. This results from the imminent expiry of the Medical Specialist Group ("MSG") contract and the need to ensure that the future commissioning of secondary healthcare is predicated on up to date information about healthcare need, adheres to good procurement practice and delivers good health care outcomes for Islanders.
- 1.5 Overall, there is evidence that HSSD is being successful in closely controlling its expenditure. At the end of April, the financial 'business as usual' position (i.e. excluding both the additional expenditure requested in this policy letter and the year to date FTP savings target of £125,000) reveals that the Department was £131,000 overspent (0.7%).
- 1.6 However, as the Minister's Statement in the States in March 2015 made clear, HSSD faces a significant programme of improvement and reform. The Department is responding to the recommendations of a range of different maternity reviews; namely: the review of maternity services (undertaken by the Nursing and Midwifery Council ["NMC"] and the Royal College of Obstetricians and Gynaecologists ["RCOG"]); and the annual Local Supervising Authority ("LSA") audit and the University of East Anglia ("UAE") audit of nurse training. In addition, a Recruitment and Retention Taskforce ("RRT") commissioned by the States' Chief Executive made a series of recommendations to the HSSD Board in early March resulting in a detailed action plan approved by the Board in early May. Finally, but no less significantly, an independent diagnostic of children's services was commissioned in late November 2014. The resultant report from the consultant employed was considered by HSSD in January 2015, which agreed a children's services action plan to address the findings and recommendations in early March 2015.
- 1.7 All of these reviews carry immediate additional funding requirements for the remainder of 2015 and beyond. In addition, in March 2015, HSSD agreed to commission an independent review of adult community services, but due to the unavailability of appropriately qualified people/organisations this review has yet to commence. However, it is now anticipated to take place in September/October 2015.
- 1.8 The above-named reviews are indicative of the fact that HSSD must undergo whole systems reform if we are to meet the health and social care needs of local people to the standards they can reasonably expect and within the resources

available. Since its election at the end of October, the HSSD Board has needed to address and respond to a large number of pressing operational demands. As we move forward, however, it is accepted that HSSD must also focus on how it can best “future proof” the island’s health and social care system. This is challenging because there is no known panacea or “ready-made model” that can be transplanted from elsewhere. Guernsey has some unique characteristics and the future health and social care system must be bespoke, and proportionate, to the needs of Islanders.

- 1.9 There are, however, some widely applied foundations to any effective and sustainable health and social care system: assured early intervention; effective commissioning and partnerships; and appropriate use of skills mix and using investment to accelerate change and innovation.
- 1.10 In February, HSSD established a transformational efficiencies working group to develop key proposals in all these areas. This group comprises staff from HSSD and T&R as well as representatives of the voluntary sector. Progress to date is set out in section 7 below.
- 1.11 This wider transformation and reform programme, once developed, will provide some opportunity to off-set expenditure through future proofing services against likely escalating costs. In the meantime, however, the Department faces immediate and significant risks that must be mitigated, and which cannot wait for the development and implementation of the complete reform of health and social care. Additional funds are needed in order to implement the detailed action plans that have been developed by HSSD to secure: effective clinical governance; safe practice across the maternity services; appropriate staffing levels at the Princess Elizabeth Hospital (“PEH”); and appropriate social worker caseloads and practice across children’s services, including the funding of the Island Child Protection Committee.
- 1.12 Moreover, at the time of writing, the General Medical Council (“GMC”) was due to visit Guernsey on the 18th June to assess progress in improving clinical governance: if not satisfied they have the ability to continue to suspend the revalidation of all connected doctors. The NMC will also be inspecting nursing services in September or October – this will be their third inspection in twelve months and they will be using the new nursing and midwife revalidation standards as inspection benchmarks.
- 1.13 **The purpose of this policy letter is, therefore, to secure additional funding in 2015 necessary for the implementation of the detailed action plans to address current critical service risks as briefly set out above and described in detail below.**
- 1.14 Appendix 1 provides a detailed overview of all of the additional in year budget requests being made.

a. An in-year additional £1.85 million for maternity services, excluding the costs of any additional consultants.

- 1.15 Succinctly, the costs of implementing the action plans arising from the NMC Extraordinary Review and the LSA audit amount to £1.85 million in 2015. The components of this expenditure are set out below as captured in HSSD's Maternity Services Improvement Plan ("MSIP"). It should be noted that, in its Interim Review of progress undertaken in late February, the NMC concluded that HSSD had made "significant progress": they judged the midwifery services to be "safe but fragile". Continuing the implementation of the MSIP is vital to ensuring that the NMC judge us to be meeting regulatory standards across all our nursing services in their forthcoming inspection.
- 1.16 It should also be noted that the Department is working closely with the Social Security Department ("SSD") and the MSG to develop an appropriate and proportionate response to the recommendations arising from the review undertaken by the RCOG. Key amongst the RCOG recommendations were additional consultant posts across the range of maternity and children's specialism's as well as anaesthetics. The current contract with the MSG costs the States £380,000 per consultant – and thus creating any additional consultant post is always carefully considered, taking into account professional advice in relation to medical safety and effectiveness. Both the Interim Medical Director and the Interim Director of Governance are leading the development of a detailed action plan – incorporating it into a single MSIP.

b. An in-year additional £572,000 revenue and £50,000 routine capital to implement the action plan arising from the recommendations of the RRT.

- 1.17 Commissioned by the States' Chief Executive in December 2014 in response to mounting concerns about staffing levels and reported difficulties in recruiting and retaining key staff at the PEH, the RRT made a series of recommendations and comments to the Chief Executive's Management Team in February. At the beginning of March, the RRT formally reported to the HSSD Board, which approved the resulting action plan in early May.
- 1.18 Key amongst the RRT's 18 recommendations is the need to apply a validated "dependency and acuity tool" in order to routinely assess the numbers of nurses required in the PEH (as determined by the numbers and intensity of needs of different patient groups across the hospital). Other RRT recommendations pertain to: staff conditions of service designed to attract and retain the best staff; improvements to the existing recruitment procedures; and capacity within the HSSD Human Resources ("HR") team.
- 1.19 The costs associated with implementing the action plan amounts to additional revenue expenditure of £572,000 plus £50,000 additional routine capital expenditure for 2015, and an increase in HSSD's 2016 revenue cash limit of

£1.65 million. The great majority of this additional expenditure pertains to the need for additional nurses as dictated by the application of the dependency and acuity tool which reveals that an additional 71.38 Full Time Equivalent (“FTE”) nurses were needed if the formula was adhered to and in the absence of any other changes to the service model. This would cost £3.1 million per annum and would be very difficult to achieve: not only financially but also practically, because of the international shortages of nurses. Over April, therefore, the senior nurse forum at the PEH undertook further detailed analysis and identified where the most pressing nurse shortages currently exist. As a consequence, HSSD is of the view that there is a need to create an additional 21 nursing posts at the PEH in 2015.

c. An in-year additional £292,000 to implement the results of the Children’s Services Diagnostic.

- 1.20 Commissioned in November 2014, Ruby Parry, then an independent consultant, submitted her full report to the Board in January 2015. The report focussed on the outcomes achieved for the Bailiwick’s most vulnerable children and the quality of professional practice and partnership working underpinning those outcomes. The conclusion was that, using the same standards as those applied by Ofsted, HSSD’s children’s social care services were currently “inadequate”.
- 1.21 To address these findings, in March 2015, HSSD agreed a comprehensive action plan. The section below provides a fuller account of the report’s findings and recommendations, but the key additional financial requirements for 2015 pertain to the urgent need for additional social workers in the Assessment and Intervention Team and Disabled Children’s Team in order to bring caseloads down to a safe level. The in-year additional sum of £292,000 includes £71,000 one off additional funding for the Island Child Protection Committee. This results from the need to recruit a paid Independent Chair and to fund two Serious Case Reviews (which have to be led independently as stipulated by the States’ policy) and to contribute towards a third Serious Case Review.

d. An in-year additional £222,000 to implement the review of Secondary Healthcare programme.

- 1.22 The Secondary Healthcare Programme was re-established in November 2014 by the new Chief Officer. The programme of work was required to review and determine how the future provision of secondary care should be structured and planned to meet for the longer term health needs of the population. A Programme Team was established to undertake this work.
- 1.23 The work undertaken to date by the Secondary Care Programme Team includes numerous individual projects configured into a programme of work to deliver key outputs to support decision making regarding the current contract for the Medical Specialist Group. The individual projects making up the programme include: a communication strategy; an analysis of the current provider; market testing; epidemiological needs analysis; and the development of a business case

to support decision making by the Secondary Care Programme Board. A final decision concerning the commissioning option to be implemented post expiry of the current contract with the MSG will be taken at the end of July 2015 by the secondary health programme board chaired by the States Chief Executive.

2. The Reviews of Maternity Services

- 2.1 As a direct result of the death of a baby at the beginning of 2014, there have been two independent inspections and one independent review of Guernsey's maternity services conducted by: the NMC; the LSA; and the RCOG, respectively. Only the latter review was jointly commissioned by HSSD and the MSG: the NMC (as the independent registering body for all our nurses and midwives), and the LSA (with statutory responsibility to ensure that all midwives adhere to their standards of registration) both undertook reviews against their own criteria and terms of reference.

The Nursing and Midwifery Council Reviews

- 2.2 The NMC Extraordinary Review took place at the beginning of October and its report was published on the 30th October 2014. The NMC's first published report identified a large number of serious failings against the NMC Midwifery Rules as practised by HSSD and the LSA. Unusually, the NMC decided to publish a second "Additional Evidence" report which identified a large number of equally serious failings pertaining to: practice and management; governance; policies and procedures; the care environment; and organisational culture/leadership.
- 2.3 On 6th October 2014, the seriousness of the NMC findings was reported verbally in strict confidence to a senior group from the States, MSG and LSA (including the previous HSSD Minister, the States' Chief Executive and the HSSD Chief Officer) by Jackie Smith, the NMC Chief Executive. It was made perfectly clear at several junctures that Guernsey's midwifery services were not safe.
- 2.4 The NMC action plan was developed in full over the following weeks – and this involved engaging with midwives, senior nurse managers, the Governance Team, the MSG and the Maternity Services Liaison Committee amongst others, as well as a continual process of verification and check with the NMC and LSA (this being one of their requirements). Indeed, the seriousness being attached by the NMC to the identified failings is evidenced by the fact that Jackie Smith personally chaired weekly telephone conferences with the Department that also included Board level representatives from NHS England.
- 2.5 In addition, and in order to ensure that the NMC action plan was proportionate and appropriate to local circumstances, staff from T&R were invited to undertake a detailed "challenge and audit exercise" of emerging iterations of the action plan. This involved every line of additional expenditure being carefully scrutinised by T&R for best value.

- 2.6 Approved in November 2014, the NMC action plan comprises some 88 different action points. The action plan is available to Deputies upon request but, for ease of access, some of the key actions that require additional expenditure are:
- The appointment of an Interim Medical Director, who commenced employment in January 2015 (0.5 FTE)
 - The appointment of an Interim Director of Clinical Governance, who commenced employment in November 2014 (0.8 FTE)
 - Ensuring that an obstetrician is on duty in the hospital 24 hours a day/7 days per week
 - Ensuring that a Band 7 midwife is always on duty
 - Ensuring that there are always 4 Band 5 midwives on duty
 - The employment of an additional Supervisor of Midwives
 - Urgent and immediate work to improve the physical environment and care experience within Loveridge Ward (the maternity ward)
 - The development and implementation of a detailed continual professional development scheme for midwives and midwifery managers
 - Investment in the development of a maternity services "dashboard" to ensure effective performance management of patient safety and clinical effectiveness
- 2.7 In addition, a revised assurance and performance framework has been developed and is currently being implemented to ensure that there is a consistent approach to monitoring high standards in health and social care services, including Guernsey's midwifery service. As part of HSSD's improved approach to assurance a set of metrics called "Vital Signs" has also been developed. This will be used throughout HSSD to give the Board, clinicians and managers improved operational oversight of the services provided by HSSD.
- 2.8 Furthermore, HSSD has reviewed and implemented an extensive suite of policies and procedures to ensure a consistent approach to managing risk, and to provide leadership on the organisational changes that will embed these policies and procedures effectively. Weekly briefing sessions for senior nurses, midwives and managers from other areas such as the Institute of Health & Social Care Studies, Governance and Facilities & Estates have also been established, to ensure this transformation programme is well-led, clinically-informed and widely-supported.
- 2.9 In addition, the Joint Clinical Governance Committee, where HSSD, MSG and primary care come together to review clinical safety and effectiveness issues, has stronger clinical input and a greater focus on providing assurance with regard to the quality of services. HSSD is also developing a wide range of initiatives to obtain feedback from those who use HSSD services and women using maternity services are now routinely surveyed about their experiences. The incident reporting and risk management processes have also been improved, albeit it is recognised there is still more to do to compare favourably with other healthcare organisations. HSSD is also undertaking regular audits to provide

assurance that it is delivering high quality care, and responding to the result of these audits.

2.10 In addition, HSSD:

- continues to have strong support from the NMC, the LSA and NHS England (South);
- has an experienced external Supervisor of Midwives working with its midwives;. continues to work with its counterparts in Jersey;
- is working with a UK University to deliver additional continuing professional development for midwives;
- is exploring ‘buddying’ arrangements with a group of hospitals in the South of England , to provide additional support for the midwifery and obstetric team.

2.11 In relation to staffing and training:

- HSSD has continued to advertise for high quality midwives as part of its plan to increase the number of midwives caring for local women. It currently has a good supply of agency midwives who undergo stringent checks;
- HSSD has appointed three night nurse practitioners to provide senior presence and improved safety across the hospital at night;
- A group of midwives, doctors and local GPs have completed additional expert training in caring for an acutely unwell new-born (Neonatal Life Support);
- HSSD is also providing additional training for its frontline staff to identify the root causes when things go wrong.

2.12 In relation to the physical environment in which maternity services are delivered, HSSD and the Maternity Services Liaison Committee are working together with an architect to develop proposals for the potential reconfiguration of Loveridge Ward and the introduction of a new theatre (one of the key recommendations from the NMC and the RCOG reviews).

2.13 All of the above is evidence of the high priority being given to delivering excellence in the maternity service. Many of the steps put in place will lead to measurable positive outcomes in the medium- to long-term.

2.14 There has also been key progress achieved in the immediate wake of the NMC Extraordinary Review and this has been confirmed by the NMC itself. At the end of February 2015, the NMC conducted an interim review of progress against HSSD’s action plan.

2.15 The NMC acknowledged “significant” progress in a short space of time and stated that maternity services were now “safe, but fragile”. There is no room for complacency, however, as the NMC’s Interim Review report also pointed towards an ongoing need for transformation and improvement in order to embed

and sustain safe and sustainable midwifery care. HSSD recognises it must continue to implement its action plan and the NMC will return again in September or October to undertake another inspection of continued progress, as well as a wider inspection of nursing practice elsewhere in the Department and readiness for the “tougher” standards of revalidation being introduced by the NMC.

The Royal College of Obstetricians and Gynaecologists Review

- 2.16 In addition to the NMC Extraordinary Review, the Department jointly with the MSG commissioned an independent review by RCOG. Focussed on medical practice and leadership, as well as how well the whole system of maternity services was operating, this Review took place in November 2014 and reported in February 2015.
- 2.17 The RCOG report contains 81 recommendations across the following nine areas:
- Communication
 - Obstetric
 - Midwifery
 - Paediatric
 - Intrapartum care
 - Theatre and anaesthetic cover
 - Outpatients
 - Governance
 - Women’s experience
- 2.18 The RCOG review identified the following recommendations for immediate implementation:
- Investment in staff of all disciplines (midwives, consultant obstetricians and paediatricians and neonatal nurses) to ensure the highest level of safe and patient-centred care is possible in a geographically isolated island.
 - Resident obstetrician for all women in labour with risk factors that would lead them to need to be delivered in a “Consultant” unit (i.e. not suitable for midwifery led Intrapartum care).
 - Change to neonatal resuscitation with neonatal nurses leading the resuscitation and removing A&E doctors from the resuscitation team.
 - Improvement to the physical environment on the labour ward.
 - Support for the Interim Head of Midwifery and recruitment to the substantive role.
 - Office space on Loveridge Ward for the on-call consultant.
 - Initiation of a plan for a co-located delivery suite and maternity theatre.

- 2.19 As mentioned above, however, the RCOG report contains a large number of additional recommendations for both HSSD and SSD including:

HSSD

- Investment in business intelligence (linked to the RRT report).
- Additional Neonatal Intensive Care Unit nurses to provide safe cover for neonatal resuscitation (also linked to the RRT report).
- Additional theatre staff.
- Appointment of a Clinical Chair for Women's and Children's Division.
- Refurbishment of Loveridge Ward to include upgrade of the obstetric theatre (linked to the safety priority identified by the RCOG).

Much of the HSSD revenue costs associated with the RCOG recommendations are already incorporated within the MSIP or the RRT (see below), with the exception of £35,000 of expenditure (relating to one-off investment of £10,000 for leadership development and £25,000 recurring for clinical and audit support.)

SSD

- Increased obstetric capacity through additional Consultant Obstetricians.
- Increased Consultant Paediatric capacity
- Increased Consultant Anaesthetic capacity to ensure a 24/7 presence to meet Royal College guidelines.

- 2.20 At the time of writing, the high costs associated with employing more consultants, as much as £4m, are being evaluated by HSSD, SSD and the MSG to ensure that there is a proportionate response. Moreover, HSSD, SSD and MSG have adopted a programme approach to the RCOG recommendations and detailed work is taking place to amalgamate any remaining undelivered actions across all of the maternity related reviews into a combined programme.

The Local Supervisory Authority Audit

- 2.21 The LSA's annual audit of midwifery services in Guernsey took place in January 2015. Positively, it reported patients' and their partners' praising the service, as well as midwives reporting greater access to supervision that was equally supportive and challenging. Less positively, the audit highlighted that further progress was needed in relation to medicines management (for example secure storage) and infection control (best practice could be applied more consistently). Most critically, however, the LSA Audit revealed a lengthy list of environmental deficiencies ranging from poor decoration to serious health and safety concerns.

- 2.22 In total, more than 30 environmental defects were identified by the LSA auditors, all of which were backed by photographs which the LSA immediately shared with the NMC. This resulted in HSSD instigating an emergency action plan with estates and facilities staff. The fact that the February 2015 Interim Review commended the scale of the physical improvements made to the Loveridge Ward is testament to the progress achieved through the hard work of these staff.

The University of East Anglia (UEA) Audits

- 2.23 On behalf the UEA, and as an officially "endorsed" higher education programme, the Institute of Health and Social Care Studies delivers the nursing pre-registration programme (i.e. nursing degree). This is a vital "growing our own" initiative and is an important Higher Education offer on Guernsey. As part of the NMC's Extraordinary Review, the inspection team interviewed a number of student nurses. These interviews and subsequent evidence provided to the NMC inspectors, revealed serious shortcomings in the way in which the UEA was validating the quality of its endorsed programme, most especially in practice placements.
- 2.24 This resulted in the UEA undertaking a detailed audit of the quality of the practical placements' component of the nurse degree programme. Specifically, in November 2014, a team from the UEA paired with teaching staff from the Institute to undertake detailed audits in each of the practice placements provided as a compulsory component to all nurse students. The findings were highly critical and included: mentors had not undertaken the necessary mandatory training or received their mandatory reviews; there was inadequate preparation for students' arrival in placement; and there were serious environmental shortcomings in all bar one practice placement offered by HSSD.
- 2.25 As a consequence, at the end of November all three years of the nurse pre-registration programme was suspended. Specifically, the first year student nurses' programme was suspended until November 2015; the second year until the end of May 2015; and the third year students returned to their studies at the end of January 2015.
- 2.26 This was a considerable blow both to the students - whose training was being interrupted for reasons outside their control - and to the Institute.
- 2.27 As a consequence, HSSD needed to redeploy the student nurses to appropriate employment - student nurses are HSSD employees paid a salary of just over £18,000 throughout their training – and every attempt was made to meet individual nurse students' preferences.
- 2.28 HSSD also needed to convene a large number of additional courses to ensure that all nurse mentors had received and passed their mandatory training, and met the standards set out by the NMC. This incurred additional costs for the Institute,

and resulted in some wards having to employ agency staff in order to release nurse mentors to attend these courses.

3. Creating the Maternity Services Improvement Plan (“MSIP”)

- 3.1 HSSD and MSG have adopted a programme approach to the RCOG recommendations and detailed work is taking place to amalgamate the remaining undelivered actions in the MSIP and the LSA 2015 audit recommendations into a combined Transformation Programme.
- 3.2 The MSIP was developed immediately following the initial review by the NMC, as a combined effort between HSSD and the MSG. Each of the actions within the MSIP related to the five areas of concern and focus for the NMC; namely: care and the environment, policies and procedures, governance, leadership and management and organisational culture.

Review & Challenge of costs arising from the MSIP

- 3.3 Any costs identified by those responsible for implementation of the MSIP that were over and above existing resources have been subjected to peer review by finance officers independent of the project. Responsible officers had to report why the expenditure was necessary (i.e. linking to the action themes within the NMC report) and what options they had considered. Costings for each action were reviewed for appropriateness and accuracy. From this process, HSSD completed financial projections showing the additional revenue resources needed to address both specific maternity issues and also the wider organisational issues. Those cost projections were completed in November 2014, and were then subjected to further independent scrutiny by officers of T&R.
- 3.4 The funding requirements by theme are summarised below and set out in detail in Appendix 1:

Care & Environment - £1.327 million

Maternity Services specific –

- Changes in midwifery establishment (i.e. more midwives and changes in skills mix).
- Maternity expert clinical reviews (i.e. Obstetrics, Paediatrics and Pathology reviews).
- LSA external reviews (i.e. investigations into midwifery practice)
- Additional Supervisor of Midwives capacity.
- Loveridge Ward environmental improvement and remedial works.

Wider HSSD –

- Student nurse provision is linked with the results of the UEA review of practice placements – there is a potential need to send students to other facilities if LSA audit recommendations are not satisfactorily addressed.
- Safe Night Working (i.e. one Band 7 nurse must always be on duty at the PEH) and the ratio of qualified to non-qualified nursing provision needs addressing.

Governance & Leadership - £0.526 million

- Interim governance leadership.
- Interim medical leadership.
- Increased audit capacity.
- Increased HR support.
- Environmental improvements and remedial works to practice placement areas.

3.5 These projections only deal with HSSD costs and exclude any SSD costs relating to additional consultants. With the current per capita costs of consultants in the contract between the States and the MSG being £380,000, the additional costs to the Guernsey Health Service Fund, administered by SSD, could be as much as £4.0 million per year, depending on the decisions on proportionality and appropriateness.

4. Other Key Reviews

a. Children's Services Diagnostic

4.1 Aside from acute services, a diagnostic of Children's Social Care took place in November/December 2014. The report presented to HSSD in late January 2015 highlighted:

“...significant concern that without some immediate investment, there will be serious consequences for the safety of children and young people. Moreover, some of the transformational change that has begun needs to be further progressed as a matter of urgency if the level of demand for Children's Social Care is to be reduced and risks to children effectively managed.”

4.2 The current level of cases held in front line services continue to rise (with caseloads as high as 30 children per social worker - double what is deemed acceptable in the UK), as does staff sickness; and whilst staff are hopeful about the future changes, the current reality is undermining morale and capacity.

4.3 The bulk of the requested investment (£168,000) is therefore to increase staffing capacity in the child protection service, create a multi-agency support hub, and streamline procedures, to enable work to be allocated and children's cases to be

safely managed. A further £68,000 is required to improve provision for children in States' care, including moving to a small group homes' model and recruiting specialist carers for children who would otherwise need to be placed off-island, potentially saving £200,000 in placement costs.

- 4.4 The review also highlighted the lack of impact of the Island's Child Protection Committee and the need to review its membership and resourcing. The Committee has a very small budget of £40,000 per year, and this is not sufficient to support its work or to fund an Independent Chair who is able to provide the necessary level of independent leadership and challenge to drive the work. There is also a requirement to fund a child sexual exploitation strategy and to support serious case reviews, of which two have been identified for this financial year. These costs will be in addition to the usual business of the Committee, and for 2015 amount to £56,000.
- 4.5 A resultant action plan has been agreed and, in view of the seriousness of the findings, implementation has already commenced. The total costs associated with implementing the initial phase (which is focussed only on addressing immediate safety and capacity concerns) are detailed in the table below.

Children's Service Diagnostic - Spend Projections Theme	2015		2016 onwards	
	£000's	£000's	£000's	£000's
	Total	One off	Recurring	Recurring
Child Protection, Quality Assurance and LAC Review	20	2	18	71
Islands Children Protection Committee	36	15	21	25
Single Assessment & Pathway Procedures and Protocols	10	10	0	-
Multi Agency Safeguarding Team	20	-	20	39
Children Accommodation Reconfiguration	26	8	18	72
Staff & Foster Carer Training programme design	33	25	8	15
AIT Restructure & additional staff	139	5	134	267
Foster Carer upskilling	9	6	3	7
Total	292	71	221	496

b. Recruitment & Retention Taskforce

- 4.6 In December 2014 the States' Chief Executive, commissioned an internal investigation into recruitment issues in HSSD and the RRT was established comprising a multi-disciplinary team from four departments (HSSD, Housing, T&R and Policy Council). The taskforce was established because of concerns relating to the following:
- Low staffing levels and potentially inappropriate skills mix at the PEH.
 - Terms and conditions (pay, relocation etc.) were not competitive enough to attract and retain key staff.
 - HSSD was failing to recruit in a timely manner to posts.

4.7 The report was submitted to the Chief Executive's Management Team and HSSD Board at the beginning of March 2015 and had 18 recommendations. From a financial perspective, the key recommendations were:

- *Develop operational plans and/or policy to balance the demand and resources in the PEH. Options are:*

*a – increase efficiency by conducting a full review of current configuration, and shift patterns of nurses and professions allied to medicine to ensure the most efficient use of available resources is made.
And;*

*b – reduce workload to match staffing levels by reviewing the medical procedures conducted on-island and consider which are non-essential, which can be conducted off island or provided in a different manner; in effect reduce the workload on the PEH, potentially lose beds to align the current budgeted establishment with acuity and dependency models ; in terms of scale, this would equate to the closure of up to two wards with the potential increase in transfer of patients off-island for treatment.
And/or*

c – grow establishment to match workload by increasing budgeted FTE by 71.38 FTEs to align with acuity and dependency modelled establishment level at the additional annual staff cost of circa £3.1m.

4.8 In addition, recommendations were made:

- To address a requirement to bolster HR resources.
- To provide a clearer and broader range of introductory incentives to ensure HSSD is attractive and retains staff.

4.9 Bearing the RRT's recommendations in mind, an action plan was approved by HSSD in early May 2015, by which it agreed to support¹:

- Increasing the PEH establishment in a phased approach, starting with 21 registered nurses (focusing on operational and safety pinch points).
- Increasing HR capacity with 3 additional posts to facilitate recruitment.
- Increasing capacity in HSS data and intelligence function.
- The continued use of the Safer Nursing Care Tool.

¹ HSSD also noted that the RRT report identified inefficiencies in the way the workforce was organised at the PEH and is already addressing them within the action plan, for instance, a review of nursing shifts has already been undertaken and will result in the introduction of new rota guidance for managers).

- Consideration of fast tracking registered nurses and midwives through their incremental pay points (i.e., for those nurses who are performing well, move them up their pay spine in order to prevent them leaving for higher paid jobs elsewhere).
- Expediting HSSD's digital job advertising presence to ensure it effectively competes in global nursing and midwifery recruitment.
- The provision of additional early accommodation support for staff moving to Guernsey.

4.10 The financial resources necessary to proceed with the above RRT-related activities are estimated at £572,000 revenue and £50,000 routine capital for 2015, and £1.65 million for 2016 and ongoing. The additional revenue expenditure is summarised as follows:

RRT Action Plan - Revenue Spend Projections	2015			2016 onwards
	£000's	£000's	£000's	£000's
Theme	Total	One off	Recurring	Recurring
Increase in HR Capacity	45	-	45	107
Phase 1 - Recruitment of 21 Nurses	319	-	319	958
Data & Business Intelligence	43	-	43	129
Gateway Fast Tracking RGNs & Midwives	120	-	120	360
Safer Nursing Care Tool	20	-	20	20
Early Accommodation Support - New Staff	25	-	25	75
Total	572	-	572	1,649

4.11 The States are asked to note that HSSD and T&R are working closely together to identify sources of the additional funding required to action the full RRT and Children's Service Diagnostic recommendations. T&R will provide an update in the 2016 Budget Report at the October 2015 States meeting.

c. Secondary Healthcare Programme

- 4.12 The HSSD Secondary Healthcare Programme will secure safe and effective secondary health care for Islanders.
- 4.13 The immediate programme of work involves reviewing the commissioning options for secondary care services in Guernsey for the next five years as a minimum. The project costs for this first phase throughout 2015 are £444,000, to be jointly funded by HSSD and SSD.
- 4.14 In total nine commissioning options were reviewed by the Secondary Care Programme Board in January 2015. The Board selected the further evaluation of two:

- Option 3: Commissioning an on-island provider to deliver specialist consultant service provision as an external provider working within the Princess Elizabeth Hospital. The estimated implementation costs for this option is £1,045,000 jointly funded by HSSD and SSD.
- Option 4: Integrate the specialist consultant services within the Princess Elizabeth Hospital as a States run service.

- 4.15 The remaining phase of work will involve the selection and implementation of one of these remaining options by the Secondary Care Programme Board in July 2015, by reviewing all evidence and intelligence available, including the review of clinical recommendations from a Clinical Senate of medical experts that has been established. The chosen option regarding the configuration of secondary care services will then be implemented in 2015 and 2016.
- 4.16 Over the remainder of 2015, the focus will be to obtain the necessary epidemiological intelligence needed to underpin a secondary health care commissioning strategy that will meet the longer term health care needs of the population. The costs for the long term piece of work have been calculated within both remaining secondary care options.

Secondary Care Programme	Phase 1 2015
Project Management Personnel	127
Data and Analysis Personnel	126
Contract Personnel	25
Service Design Personnel	82
Technical Personnel	0
Other Costs	84
TOTAL	444
Support from SSD	(222)
Total (unfunded spend)	222

5. Financial Position of HSSD

- 5.1 HSSD's 2015 financial results for the first four months of the year indicate that, excluding the costs attributable to the NMC & LSA Reviews and the year to date FTP savings target (£125,000), the Department's underlying "business as usual" expenditure was £131,000 overspent (0.7%).
- 5.2 Forecast overspends against HSSD's existing authorised cash limit are broadly all caused by the necessary activities undertaken in pursuit of mitigating the risks and issues noted in the reviews. Every effort continues to be taken to absorb additional cost pressures as they arise but, given the depth and breadth of

transformational change required, HSSD needs additional financial support, not only in relation to the MSIP, but also to address the recommendations of the more recent RRT and Children's Service Diagnostic reviews.

- 5.3 The current forecast out-turn is approximately £116 million (including the full financial impact of the MSIP actions i.e. £1.85 million but not the additional spend needed to address the RRT and Children's Service Diagnostic). This represents a small deterioration on business as usual expenditure to a 1% (or just over £1 million) overspend. A key component of the HSSD outturn overspend pertains to the rising levels of agency staff currently used – and forecasting that rising trend forward.
- 5.4 The number of agency staff has been increasing in the last few months, especially in nurse posts. In addition, there have been several vacancies in the Off Island Team which have been filled by agency staff (as patients needing treatment off island often cannot wait and because the costs of off island placements for children and adults are very high and must be managed). In addition, HSSD has established a small team to lead the commissioning work necessary regarding the provision of secondary medical care (the MSG contract expires at the end of 2017). The majority of the staff in this team are also agency staff.
- 5.5 In January 2015, there were 65 agency staff employed across the Department: this rose to 75 in February and 87 in March 2015. Year to date expenditure as at April 2015 was £1.95 million compared with £1.0 million for the same period in 2014.
- 5.6 Employing large numbers of agency staff is neither sensible financially nor clinically. Whilst HSSD is aware of the need to raise its profile and the attractiveness of its professional offer in recruiting and retaining excellent staff, it is also aware that it is seeking staff in a situation where there are known shortages. HSSD has always made use of agency staff across a wide array of different professional areas: nursing; social work; occupational therapy; psychology and psychiatry; to name a few. The Department does not budget any additional allowance for the use of agency staff (who come at a significant premium to permanent staff) which places considerable strain on expenditure when the ratio of agency staff has increased so significantly.
- 5.7 The Department has employed five key strategies to try and reduce the unacceptably high use of agency staff: by increasing understanding of the issue (via improved rostering and performance management); by managing the process and taking control (ensuring that agency staff are approved at the right level of authorisation); better management of the existing workforce; working collaboratively with agency partners and exploring joint procurement with other organisations to secure efficiencies; and engaging with staff (so that they help to identify solutions).

6. A detailed listing of all the in-year additional expenditure requested

- 6.1 The sections above set out the variety of actions, and associated additional investment needed, across a number of areas. For ease of access, Appendix 1 sets out the additional expenditure item by item.
- 6.2 It should be noted that at this juncture, no costs for additional consultants have been included.

7. The Reform and Transformation of HSSD

- 7.1 Clearly, a programme of reform across HSSD services needs to be developed and implemented so that the States is better placed to meet the increased expenditure associated primarily with an ageing population. As the HSSD 2020 Vision document states, there is a need for a health and social care system that is financially sustainable and provides services to the quality that Islanders expect and deserve.
- 7.2 Accordingly, HSSD has initiated a twin programme of reform and transformation across the Department. The brief details are as follows:

a. Transformational Efficiencies Group (TEG)

- 7.3 Comprising staff from the States and the voluntary sector, HSSD has established the above group that meets on a monthly basis to develop business cases against four axes of transformation:
- **Earlier intervention**- ensuring that health and social care needs are identified as quickly as possible to prevent them becoming expensive crises
 - **Commission properly**- ensuring that HSSD commissions services based on good and up to date information the needs of Islanders, secures best value via effective procurement and supports providers to adapt their delivery in the face of changing needs so that HSSD shapes the market
 - **Deploy Appropriate Skills mix**- ensuring that we are using expert staff appropriately and increase productivity via better triage (e.g. by making more use of social work assistants more systematically so that social workers are freed up to do the work that only they should do; ensuring that housekeeping do all bed making so that nurses do not have to; etc)
 - **Financing “invest to save”** – HSSD needs to invest in new ways of working before it can stop current forms of support. For instance, it needs to ensure that there are facilities on-island before it can decommission off-island placements that cost, across long-term children and adult placements, in excess of £1,800 per person per week.
- 7.4 In all likelihood, the States’ Transformation Fund may be an appropriate source of this transformational seed funding, which HSSD will apply for in time,

especially where these changes are clearly linked with major policy developments such as the Supported Living and Ageing Well Strategy and the Children and Young People's Plan. New forms of social finance are being used to good effect elsewhere and it is incumbent on the Department to identify any potential new revenue resources, with the risks clearly calibrated.

- 7.5 To date, the TEG has met three times. Detailed business cases are now being developed in a number of key areas of delivery: therapeutic fostering; strengthening families programme; reablement; and telehealth and telecare.

Therapeutic Fostering

- 7.6 As this report is drafted, there are 11 looked after children in placements in the UK. The most costly of these placements is £280K per annum for one child. These are children who have experienced several breakdowns in placements in foster care and residential care on island; they are children who pose a risk to themselves and/or to others; they are children with very complex support needs or whose complex disabilities mean that they require constant, around the clock, care and support.

- 7.7 Therapeutic fostering is a well established and well-evidenced way of supporting these children closer to home. We are mapping the needs of all children looked after off island and the aim is to introduce a therapeutic foster care scheme so that at least 5 looked after children could be either brought back home to Guernsey within the next 18 months or prevented going off island. We estimate that this would save at least £250k per annum.

Strengthening Families Programme

- 7.8 There are about 30 families with chronic, diverse and intergenerational problems – where multiple generations of their children have come into care. The Strengthening Families Programme, drawing from the extensive evaluation of evidence from the UK's Troubled Families Programme, will work intensively with these families, in practical ways, to address their many problems including: employment; housing; parenting; domestic abuse; offending; poor school attendance; drug and alcohol; and health issues.

Reablement

- 7.9 Too often, we are currently missing a vital service in preventing people, especially elder people, from entering hospital and leaving hospital in a safe and timely fashion: reablement services. Again, there is an extensive evidence base from the United States and United Kingdom about the cost savings and better outcomes that can be delivered via a comprehensive approach to reablement.

- 7.10 Currently, the reablement offer is very limited. So the TEG is developing a reablement strategy that will comprise bed-backed and community provision and be accompanied by a major training programme for home carers led by occupational and physiotherapists.

Telehealth and Telecare

- 7.11 Guernsey enjoys good broadband connectivity and has the potential to exploit telehealth and assistive technology in reducing the need for some patients to travel off island and supporting people to remain living at home safely.
- 7.12 We will be developing our proposals in this area with the input of clinicians and the Chief Information Officer. There are examples where remote health communities are already using telehealth facilities to good effect including: the remote interpretation of imaging, remote appointments with consultants and remote diagnosis. The application of telehealth might also deliver cost savings in the medium to longer term.
- 7.13 Telecare is especially well developed internationally – and there are many examples of different health and social care communities using telecare to support disabled people and elders, including those suffering from dementia, to: take vital medication; prevent people from “wandering” and thereby placing themselves at risk; and control home equipment such as TVs, ovens and kettles.
- 7.14 We want to “leapfrog” in our approach to telehealth and telecare –learning from those who have gone before us and not repeating their implementation mistakes.

b. The wider HSSD Reform Programme

- 7.15 In April, HSSD provided a presentation to States Members setting out the principles and timetable for a wholesale programme of reform for the Department. This will be a complex undertaking.
- 7.16 In 2015, HSSD’s priority must continue to be one of improvement, but increasingly the focus must be on the design of a more sustainable health and social care system. Prompted by the 2017 expiry of the current contract with the MSG, the focus on sustainability includes the programme of work currently underway to commission secondary health care. Funded via SSD, the contract with the MSG amounts to over £15 million per annum. HSSD, SSD and T&R are working together to ensure that the future commissioning of secondary health care: provides value for money (as measured by quality and cost); meets Islanders’ health care needs; is based on best practice clinical care pathways; and supports the delivery of safe and clinically effective secondary health care.
- 7.17 The results of the Costing, Benchmarking and Prioritisation exercise jointly commissioned by HSSD and T&R, is being undertaken by BDO, and is due to report its findings in late July. This will provide important information about

where the Department's costs are lower or higher than appropriate benchmarks and thus where the HSSD might invest or disinvest in order to meet priority needs.

7.18 In 2015, the Department will also be re-establishing work to ensure that end-to-end business processes are as efficient as they can be: this will be focussed initially on the procurement of agency staff.

7.19 HSSD has also met with its counterparts in Jersey and the Isle of Man to identify where and how we might work together to secure savings – as the other two jurisdictions face similar financial challenges to our own.

8. Consultations

8.1 In preparing the maternity services sections of this report, HSSD has worked with SSD and MSG.

9. Housing licences

9.1 The Housing Department were approached to consider the granting of four 15-year housing licences for midwives; one newly recruited position and three vacancies at Band 6 (as opposed to the usual granting of 5-year licences). Furthermore the Housing Department was asked to consider the approval of three 15-year licences 'en-bloc' to support the recruitment process for clinical leadership roles within the maternity service (one Band 7 and two Band 8a posts). This will enable HSSD to recruit and retain the highly skilled supervisors of midwives who are needed to assist the service to recover, and to meet the expected actions aligned with the MSIP. HSSD is grateful to the Housing Department, which has been supportive of all requests to date.

9.2 Officers from HSSD and Policy Council are jointly working to source and recruit the additional 21 staff identified as urgent following HSSD's consideration of the RRT. The Housing Department were represented on the RRT and continue to be kept informed of progress including potential housing licence needs.

10. Corporate Governance

10.1 The Department believes that it has fully complied with the six principles of good governance in the public services in the preparation of this policy letter (as set out in Billet d'État IV, 2011 and approved by the States).

11. Conclusions

11.1 Significant work has already been undertaken to secure a safer service and improve patient experiences, but more is still to be done. The NMC has informed HSSD that it will return in September or October to undertake a wider inspection of nursing. Whilst HSSD awaits formal notification of the terms of reference from the NMC, it has been verbally informed that the forthcoming

inspection will address: nurses' scope of practice; whistleblowing (and implementation of the duty of candour); and progress in arranging for the introduction of new processes around the re-validation of all nurses and midwives. It is essential that HSSD has satisfied in full the recommendations of the earlier Extraordinary Review by the time the NMC return of confidence is to be maintained.

- 11.2 All the actions arising from the reviews referred to in this Policy Letter are necessary to mitigate unacceptable risks. They are but the start of a wider transformation of the Department that seeks to ensure that HSSD's service users are at the centre of everything it does. Nonetheless, HSSD is determined to ensure proportionality in any response it gives to external review bodies and the island context is always taken into account in dealing with compliance, best practice and regulatory recommendations – thereby securing a balance of sustainable affordability with safe and appropriate health and social care.
- 11.3 Against that background, in summary the funding requirements to address the immediate concerns are:

Summary of revenue spend projections for 2015		Recurring costs	Total
	One-off costs		£000's
NMC/LSA Reviews	761	1,435	2,196
Less:already secured through 2015 budget process	0	(343)	(343)
	761	1,092	1,853
Recruitment & Retention Taskforce	0	572	572
Children's Services Diagnostics	71	221	292
RCOG Review (excluding SSD costs)	10	25	35
Secondary Care Programme	222	0	222
Total (unfunded spend)	1,063	1,910	2,973

12. Recommendations

The States are asked:

- 1) To direct the Treasury and Resources Department to increase the 2015 revenue expenditure budget of the Health and Social Services Department by a maximum of £3.0 million, in recognition of the in-year cost pressures from the implementation of the recommendations arising from the Nursing and Midwifery Council's Extraordinary Review, the Children's Services Diagnostic and the Recruitment and Retention Taskforce, to be funded by a transfer from the Budget Reserve.
- 2) To direct
 - a. the Health and Social Services Department to develop and present to the Treasury and Resources Department by 31 August 2015 an evidence based budget for 2016 – 2018 taking into account, inter alia, the

additional cost pressures identified in this report; the transformational efficiency opportunities being developed within the Health and Social Services Department; and the outputs of the Costing, Benchmarking and Prioritisation exercise due to complete in July.

- b. the Treasury and Resources Department to take the Health and Social Services Department's budget for 2016 – 2018 into account when setting the recommended 2016 cash limit and indicative cash limits for 2017 and 2018 for the Health and Social Services Department in the 2016 Budget Report.

Yours faithfully

P A Luxon
Minister

H J R Soulsby
Deputy Minister

M P J Hadley
S A James MBE
M K Le Clerc

R H Allsopp OBE
A Christou
Non States Members

APPENDIX 1 - FUNDING REQUEST FOR ACTION PLANS

ACTION PLAN FOR MATERNITY SERVICES IMPROVEMENT PROGRAMME (MSIP)

Ref:	Key actions to address areas for improvement	2015 Planned			2015 Committed	2016
		One-Off £000'	Recurring £000'	Total £000'	Total £000'	Annualised £000'
A: CARE AND ENVIRONMENT						
A1	Secure alignment with NHS Trust to support the transformation of maternity. 6 key themes include supervision of midwives, team visit and assessment, governance, education, workforce, staffing and coaching	54	0	54	54	
A2	Reprofile and recruit staff for 8.8 FTE additional positions to attain appropriate staffing levels at all times to meet clinical needs	18	1,024	1,042	1,042	938
A3	Contract with Jersey based on SLA for supervision of midwives extended to Dec 15	28	0	28	28	
A11	Draw up contingency plans (UEA and HSSD) with regard to enabling students to complete their programme of learning, should some placements not meet acceptable standards, with a focus on 3rd year students who are near to graduating, plus second and first year cohorts.	0	0	0	0	
A11	UEA review led Refurbishments & Health & Safety improvements to enable students to complete their programme of learning in placements areas not meeting acceptable standards	136	0	136	136	0
A13	IHSCS and acting Head of Midwifery to support implementation of ongoing CPD plan and associated TNA (in line with HSSD policy G601)	30	0	30	30	0
A23	Maintenance cost for installed baby tagging system on the ward	0	19	19	19	25
A45	Safe Working Practices (increase in overtime pay, bank and agency nurses to ensure appropriate staffing levels) to Mar 15 & Night work Practitioners from April to Dec 15	175	70	245	245	171
Less: already provided in 2015 cash limit			(227)	(227)	(227)	(227)
		441	886	1,327	1,327	907
B: POLICIES AND PROCEDURES						
B2	Audit Function 1 Band 6/07 Nurse to be recruited to enhance regular audit of compliance of the appropriate security of patient notes within the wards as part of the governance team	0	0	0	0	41
C: GOVERNANCE						
C1	Strengthen the leadership of clinical governance within HSSD - recruit to a Director of Clinical Governance post to replace the interim director currently in place until Nov 15	212	0	212	212	110
D: LEADERSHIP AND MANAGEMENT						
D1, D2, D5 & D7	Recruit a temporary Maternity Services Clinical Director position for 6 months then a permanent on going basis and create a temporary Medical Director post for 1 year in order to establish and embed the changes in medical practices needed to deliver improved patient safety and outcomes across all acute services 2 temporary HR Assistants EG1/02 & EG4/02 posts for 6 months to support recruitment	108	322	430	430	345
Less: already provided in 2015 cash limit			(116)	(116)	(116)	(116)
		320	206	526	526	380
TOTAL UNFUNDED FOR THE MSIP ACTION PLAN		761	1,092	1,853	1,853	1,287

RECRUITMENT & RETENTION TASKFORCE - ACTION PLAN (RRT)

AG1	HR - Increase in Capacity by 2 FTE positions (Full year increase £107,000)	0	45	45	0	107
AG3	Fast tracking 109 registered nurses and midwives through incremental points Band5 point 06 to 5 point 10 estimated £360,000 for full year	0	120	120	0	360
SH1	Data & Business Intelligence - Recruit 3 FTE staff to increase capacity in BI team (£129,024 full year)	0	43	43	0	129
CG 1	Safer Nursing Care Tool endorsed for continued use in adult inpatient areas & Birth rate Plus for Maternity	0	20	20	0	20
CG 3C	Nurses Phase 1 - 21 RGNs increasing the PEH establishment in a phased approach, starting with 21 registered nurses (focusing on operational and safety pinch points) (£958,000 - full year) currently using overtime pay, bank and agency nurses to ensure appropriate staffing levels	0	319	319	526	958
LD 1	New Staff Accommodation Support - provide additional early accommodation support for new staff moving to Guernsey estimated £75,000 for full year	0	25	25	0	75
TOTAL UNFUNDED FOR THE RRT ACTION PLAN		0	572	572	526	1,649

CHILDREN'S SOCIAL CARE DIAGNOSTIC ACTION PLAN (CSCD)

1d	Additional capacity for Child Protection, Quality Assurance and LAC Review processes - 1 SSW post	2	18	20	0	71
1d	ICPC budget uplift to provide an independent chair, fund 2 serious case reviews, and multi-agency training for the new integrated services pathway	15	21	36	30	25
2a	Consultant time to create Procedures & Protocols for Single Assessment and Single Pathway to reduce duplication and paperwork	10	0	10	10	0
2c	MASH - 1 Administrator to support the pilot plus accommodation & IT needs	0	20	20	20	39
2g	Children Accommodation Reconfiguration - Close Le Carrefour move into 2 rented bungalows for young people @ £3k per month max inclusive plus moving costs	8	18	26	0	72
3c/i	Training and consultancy for residential staff and foster carers- 25k - one off and then 15k recurring for mandatory training programme	25	8	33	25	15
3a	Additional staff in to AIT and restructure with FPT to make safe 5x FSW at 34.4k each and two health visitors at 47.5k each from 1 July plus 5k one off recruitment	5	133	138	0	267
3f	Foster Carer Training Upskill 4 foster carers to level 4 (currently level 2) From lvl 2 to 3 by July 15 and to lvl 4 by 1 Jan 16. Uplift in allowance shown plus one off 6K	6	3	9	0	7
TOTAL UNFUNDED FOR THE CSC DIAGNOSTIC ACTION PLAN		71	221	292	85	496

ROYAL COLLEGE OBSTETRICIAN GYNAECOLOGISTS REVIEW ACTION PLAN (RCOG)

		10	25	35		0
TOTAL UNFUNDED FOR THE RCOG ACTION PLAN		10	25	35	0	0

SECONDARY CARE PROGRAMME

Phase 1 - Review						
		444	0	444	444	0
Less: already provided by SSD funding (50%) Phase 1		(222)	0	(222)	(222)	0
TOTAL UNFUNDED FOR THE SCP ACTION PLAN		222	0	222	222	0
TOTAL UNFUNDED - ALL ACTION PLANS		1,063	1,910	2,973	2,685	3,432

(N.B. The Treasury and Resources Department recognises the importance of addressing and providing funding for measures that have been identified as being essential for the safe delivery of services provided by the Health and Social Services Department. In particular, the Department supports the Health and Social Services Department in addressing the issues raised by the Nursing and Midwifery Council (NMC) extraordinary review.

2015 Expenditure

The responses to the reviews outlined in this Policy Letter have an impact on expenditure in 2015 of £3million and the Department understands that the majority of this expenditure is already committed and appreciates the reasons for those decisions having been made in advance of funding being sought.

For 2015, the Policy Letter recommends that a maximum increase of £3m in the revenue expenditure budget of the Health and Social Services Department is funded by a transfer from the Budget Reserve. It is not clear at this stage whether the funding requested can be contained within the overall approved budget in 2015. The size of the ‘general’ Budget Reserve in 2015 was substantially reduced in order to fund some of the known cost pressures in HSSD at budget setting time and has since been used to fund, inter alia, the increase for St. John Ambulance and Rescue Service (SJARS), the cost of the Costing, Benchmarking and Prioritisation review in HSSD and in year funding for the new bus contract.

Should there prove to be insufficient funds in the Budget Reserve to cover the £3m, and underspends from other Departments by the end of the year do not cover the balance, then recourse would need to be made to the General Revenue Account Reserve. That reserve has a balance which is some £2.5m higher than had been anticipated due to a lower deficit than forecast in 2014. Therefore, despite the fact that any call on the General Revenue Account Reserve would inevitably mean that the fiscal policy target of no real terms growth in revenue expenditure would be broken in year, there is sufficient flexibility to cover, as a one-off, this significant unanticipated expenditure.

Expenditure in 2016 and subsequent years

The 2016 impact of measures arising from this report, in isolation, has been calculated at £3.4m. However, there are other real and potential cost pressures related to the delivery of Health and Social Services, some of which are outlined in this report, which could have a material impact on the States’ finances in 2016 and future years:

- The full impact of the potential increase in establishment of 71 FTE arising from implementing the recommendations of the Recruitment and Retention Taskforce could be a further £2.1m per annum phased over 2016 and 2017;
- Additional actions surrounding children's services, some of which have yet to be costed, will add at least a further £300,000;
- Additional Obstetricians, Paediatricians and Anaesthetists in response to the Royal College of Obstetricians and Gynaecologists' (RCOG) recommendations could cost as much as £4m per annum funded from the Health Service Fund;
- The costs of the SJARS contract of some £300,000 per annum for 2016 and 2017;
- Any costs arising from the independent review of adult community services which is due to take place in September/October 2015; and
- The presently 'at risk' residual FTP target which HSSD has committed to deliver but currently has no firm plans in place for.

It is therefore entirely possible that, if all reviews are considered in isolation and all recommendations accepted and implemented and the FTP target balance is not delivered, the States could be facing an overall recurring cost pressure in relation to Health and Social Services in excess of £13.5m (of which £9.5m would fall to General Revenue).

The recommendation in the HSSD Policy Letter is not seeking further funding for 2016 at this stage. However, the Treasury and Resources Department wishes to draw to the attention of the States the impact that the scale of additional expenditure outlined above would have on the fiscal position of the States.

Since 2010, the States has operated with a fiscal policy which imposes a real terms' freeze on aggregate States revenue expenditure. This objective has been a keystone in successfully maintaining restraint in public sector expenditure over recent years and, in the firm opinion of the Treasury and Resources Department, should not be varied. Such an approach means the additional funding could only be provided by reductions in the cash limits for all other States Departments of some 1.8% in 2016, excluding formula-led expenditure, if the additional expenditure is £3.4m. The effect of a £9.5m increase in expenditure would be a reduction elsewhere of over 5%. The Treasury and Resources Department recognises that putting plans in place to deal with such a significant fiscal pressure takes time and that 'cuts' cannot be imposed on Departments at short notice. At this stage, the Department simply wishes to highlight the financial implications of the matters contained within this report: a solution cannot be proposed until further discussions have taken place between Departments.

Establishing an Evidence Base

With such a considerable impact for other Departments and Committees and the States as a whole, it is therefore vital that a thorough and evidence based approach is taken to setting the cash limit for the Health and Social Services Department in 2016 and subsequent years and that the States have a clear understanding of the measurable positive outcomes arising from the responses put in place as described in this Policy Letter.

What has not been factored into any of the figures at this stage is the opportunity for delivery of benefits through changing models of care:

- HSSD has established a transformational efficiencies group in order to deliver on the outstanding Departmental FTP target;
- A project is currently underway examining the model of secondary healthcare for Guernsey which could result in services being delivered differently and more cost effectively in future; and
- The Children's Services Diagnostic, RCOG and Recruitment and Retention Taskforce reports all cite opportunities for different ways of working which could yield operational and financial benefits.

It is vital that the outputs of such projects and reviews are finalised and considered before deciding on the future funding of the Department.

In addition, the Treasury and Resources Department proposed in the 2015 Budget Report that a fundamental review be undertaken in order to establish an evidence base so as to truly understand the financial baseline of the Health and Social Services Department. The review is now underway which is costing all services provided by the Department, benchmarking those to appropriate services elsewhere and looking at service prioritisation. The key output from this project will be a budget for the Health and Social Services Department for 2016 – 2018 which should take into account the cost pressures along with the opportunities for financial benefits. In turn, this will give the Treasury and Resources Department the evidence on which to propose a cash limit for the Health and Social Services Department and enable the States of Deliberation to make informed decisions about funding health and social services over the next three years, notwithstanding the longer term demographic driven demand pressures which will result in further cost pressures, the extent of which are not yet known.

Conclusion

The Treasury and Resources Department considers that the implications set out in this letter demonstrate why transformation, reform and improvement must not stop now that the Financial Transformation Programme has come to an end. There will be ongoing need for Departmental targets and prioritisation, and for government's continuous

improvement and efficiency to ensure that imminent and future unavoidable cost pressures, such as those outlined in this Policy Letter, can be mitigated and sustainably funded. Funding all of the services required and expected by service users will involve difficult decisions in ensuring that taxpayers' money is targeted in the right areas and on the right services that deliver the best possible outcomes. The Treasury and Resources Department therefore looks forward to supporting the future reform of the public service and the necessary service transformation within that as a means of providing sustainable services and spending every pound of taxpayers' money wisely.)

(N.B. The Policy Council applauds the Health and Social Services Department for the prompt and decisive action that it has taken in response to external reviews highlighting deficiencies in the delivery of health and social care. The Policy Council recognises that there can be fewer higher priorities for Islanders than to know that health and social care services of an appropriate standard and quality are available when they need them.

However, as the Health and Social Services Department readily acknowledges, the provision of such services comes at a price. Consequently, while the Policy Council supports the budget increases for 2015 as necessary and proportionate responses to the issues identified, it is concerned on two fronts: (i) that monies voted for health and social care will almost inevitably mean less money is available for other essential public services; (ii) that, as yet, the full scope and magnitude of the changes required to ensure health and social care are delivered effectively, safely and appropriately, are unknown, with further service reviews on the horizon. This again puts a focus upon the need for informed prioritisation of expenditure both within the Health and Social Services Department and across the States more generally.

The Policy Council is under no illusion as to the size of the task to reform and redesign the health and social care system to make it more efficient and financially sustainable. The Policy Council notes with approval the steps that are already being undertaken by the Health and Social Services Department to understand and mitigate cost increases, as these are absolutely essential to the Island's future economic position.)

The States are asked to decide:-

X.- Whether, after consideration of the Policy Letter dated 19th May, 2015, of the Health and Social Services Department, they are of the opinion:-

1. To direct the Treasury and Resources Department to increase the 2015 revenue expenditure budget of the Health and Social Services Department by a maximum of £3.0 million, in recognition of the in-year cost pressures from the implementation of the recommendations arising from the Nursing and Midwifery Council's Extraordinary Review, the Children's Services Diagnostic and the Recruitment and Retention Taskforce, to be funded by a transfer from the Budget Reserve.
2. To direct -
 - a. the Health and Social Services Department to develop and present to the Treasury and Resources Department by 31st August 2015 an evidence based budget for 2016 – 2018 taking into account, inter alia, the additional cost pressures identified in this report; the transformational efficiency opportunities being developed within the Health and Social Services Department; and the outputs of the Costing, Benchmarking and Prioritisation exercise due to be complete in July 2015.
 - b. the Treasury and Resources Department to take the Health and Social Services Department's budget for 2016 – 2018 into account when setting the recommended 2016 cash limit and indicative cash limits for 2017 and 2018 for the Health and Social Services Department in the 2016 Budget Report.

HEALTH AND SOCIAL SERVICES DEPARTMENT**AMENDMENT OF THE REGULATION OF HEALTH PROFESSIONALS
(MEDICAL PRACTITIONERS) (GUERNSEY AND ALDERNEY) ORDINANCE,
2015**

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

6th May 2015

Dear Sir

1. EXECUTIVE SUMMARY

- 1.1 The Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015 ("**the Ordinance**") was drafted following extensive consultation with the profession and the General Medical Council ("**GMC**").
- 1.2 The purpose of this report is to propose a number of amendments to this Ordinance to implement an effective and proportionate regulatory system for medical practitioners locally.
- 1.3 The GMC has recently suspended revalidation of medical practitioners in Guernsey. The GMC has in discussions now indicated that it wishes to see the Responsible Officer ("**RO**") being given further powers to protect the public and patients, and to regulate medical practitioners ensuring high standards of care. The Health and Social Services Department ("**the Department**") proposes to amend the Ordinance to give the RO additional powers, including the power to impose conditions on registration, the power to assess and investigate concerns, and to suspend the registration of a practitioner. The Department also wishes to amend the Ordinance to confer powers to refuse registration and to remove a practitioner from the Register. All these powers are considered necessary for the implementation of an effective and robust regulatory system locally. These powers have traditionally been exercised by the GMC in the UK. As these powers are extensive and have far-reaching implications, the Department proposes the appointment of a Registration Panel to make major registration decisions, and to review decisions made by the RO. Appropriate appeal provisions will be added to the Ordinance, to safeguard the rights of medical practitioners.

- 1.4 In addition, the Department proposes to amend the Ordinance to provide clarity around the prohibition against "**practising as a medical practitioner**". This is to ensure that it is proportionate to the objective of protecting public safety. In order to ensure public safety and to protect the public, the Department also proposes the creation of new offences of wilfully or falsely representing oneself or others as a medical practitioner of a particular kind. New offences of obstructing the RO or the Registration Panel, and offences relating to providing false or misleading information, would also be created to provide the necessary legal sanctions to support the regulatory system for medical practitioners.
- 1.5 It is also necessary to make an allowance for GMC registered and licensed practitioners to work in Guernsey at short notice, for very short periods of time, without being registered under the Ordinance. The Ordinance should also be amended to provide for temporary registration of practitioners, pending registration under the Ordinance.
- 1.6 Finally, to avoid unnecessary duplication, the Ordinance should be amended to provide for the Register kept under it to be annotated for the purposes of determining eligibility for the allocation of medical benefits under the Health Service (Benefit) (Guernsey) Law, 1990, and eligibility for free access to pathology and radiology diagnostic services and 'admission rights' to medical and health facilities controlled by the Department.

2. BACKGROUND

- 2.1 The Ordinance was prepared following consultation with all medical practitioners, medical practices, the Social Security Department ("SSD"), and the GMC on how the Department could put in place the role of RO in Guernsey and Alderney to support the revalidation of medical practitioners. Several of the key terms and expressions used in the Ordinance are explained in the Appendix to this report. The Ordinance established the role of the RO in law (mainly relating to the evaluation of medical practitioners' fitness to practice) and gave him/her a number of powers and responsibilities. More recent feedback from the GMC has indicated that the GMC wishes to see the powers extended still further, which would take those powers beyond the original scope of the States Report by which the RO was established (Billet d'État No XII, 2014).
- 2.2 Further discussions have been undertaken between the interim RO, the Department, the Law Officers' Chambers, the GMC and other interested parties to identify the remaining gaps that need to be filled in order to put in place an effective and proportionate system of regulation for medical practitioners in Guernsey and Alderney.
- 2.3 Legislation regulating medical practitioners in Jersey, for example the Health Insurance (Performers List for General Medical Practitioners) (Jersey) Regulations 2014 also proved useful as a source of ideas and a benchmark.

3. THE EXISTING ORDINANCE

The Ordinance currently:

- requires medical practitioners practising in Guernsey or Alderney to be registered in a register kept under the Ordinance ("**the Register**"), registered in the register kept by the GMC, and licensed to practise under the Medical Act 1983;
- requires practitioners to: notify the Department of any change to information required by Regulations to be provided upon registration and kept in the local Register; verify information; and provide information to the Department, the RO, the GMC, and any non-Island RO;
- requires bodies and individuals who employ practitioners (or engage their services) ("**designated bodies**") to carry out duties relating to recruitment, and monitoring and addressing conduct and performance; and
- establishes the office of RO independent of any employing organisation, and gives the RO general functions and powers to support revalidation of practitioners and to ensure their fitness to practice.

4. ISSUES AND GAP ANALYSIS

Definition of "practising as a medical practitioner"

4.1 The Ordinance currently prohibits "**practising as a medical practitioner**", unless one is registered under the Ordinance. However, no definition is given of the expression "**practising as a medical practitioner**". As a result, there is a risk that this expression can be interpreted too widely to cover any kind of practise, for example a visiting sports team doctor or a consultant visiting a single post-operative patient to remove some stitches. Such a broad interpretation would not be proportionate to the objective of protecting public safety.

4.2 The Department considers it helpful to provide an inclusive definition of "**practising as a medical practitioner**" in the Ordinance to provide some clarity as to conduct which is proscribed, and to prevent the prohibition being interpreted too widely, which is disproportionate to its objective. This definition would include:

- holding out to the public that one is authorised to practise as a medical practitioner in Guernsey or Alderney;
- signing statutory medical certificates;
- prescribing a prescription-only-medicine, unless permitted to do so under the Medicines (Human and Veterinary) (Bailiwick of Guernsey) Law, 2008; and
- offering or providing services to the public in relation to assessing, diagnosing, treating, reporting or giving advice in a medical capacity using knowledge, skills, attitudes and competence attained for a Bachelor of Medicine or equivalent, or a post-graduate qualification.

Registration Panel and criteria for registration

- 4.3 Although the current Ordinance requires considerable information to be provided when applying for registration, and for that information to be kept updated, the Department cannot refuse to register a practitioner if the two key criteria are met (registration and licensing by GMC).
- 4.4 There is a clear need to ensure that unsuitable applicants are not registered under the Ordinance, and to prevent the registration of a practitioner where there are good grounds for concern, e.g. public safety. This is over and above the basic requirement for the practitioner to be registered and licensed by the GMC.
- 4.5 The Department considers it would be helpful for a Registration Panel to be appointed by the Policy Council, on behalf of the States of Deliberation, to make significant decisions on registration, e.g. refusing an application for registration. This Panel would also serve as a review body to review decisions made by the RO relating to registration under the Ordinance (e.g. imposing additional registration conditions, or suspending a registration). The Department proposes that the Panel be composed of a legally-qualified member, a medical practitioner who has not practised in Guernsey or Alderney within the last 20 years, and a lay member who is resident in Guernsey or Alderney. The costs of operating the panel are estimated at £5000 pa and have been built into those identified in paragraph 6.
- 4.6 The amendment to the Ordinance would specify mandatory grounds for refusing an application for registration, such as a murder conviction or being subject to a national disqualification under section 159 of the National Health Service Act 2006. Discretionary grounds for refusal would also be specified, such as unsatisfactory references, suspicion of fraud, where the practitioner's registration with the GMC is subject to conditions, or general unsuitability.

Allowance for short-term practice and temporary registration

- 4.7 The Ordinance currently does not make any allowance for appropriately qualified doctors to practise in Guernsey or Alderney for very short periods of time, without being registered and being liable to pay the annual charges required. However, there will be occasions where a GMC-registered and licensed doctor (e.g. a locum) will need to visit and practise for a very short period of time often at very short notice. The Department considers that it would be helpful, and in the public interest, to make an allowance for this without requiring the doctor to be registered under the Ordinance and to pay the annual charges required to be paid by practitioners on the Register. The Department considers that such a doctor should be allowed to practise in Guernsey or Alderney for a maximum of 5 days in any calendar year, although the Department would need to be able to vary this maximum period by regulation.

- 4.8 In addition, the Department is aware that tightening up the process for applying for registration and the requirements for registration could result in a delay in the time taken to process an application. As such, in addition to the exemption for very short-term practise, it would also be appropriate to provide for temporary registration of up to 4 weeks to be granted to a GMC-registered and licensed practitioner for the purpose of allowing him/her to practise while an application to be registered is being processed.

Multiple use of Register

- 4.9 For the purposes of the Ordinance, the Department is required to keep a Register of medical practitioners.
- 4.10 At the same time, the Department is required to maintain lists of medical practitioners for other purposes. One list is kept for the purpose of determining eligibility for allocation of benefits under the Health Service (Benefit) (Guernsey) Law, 1990, and another list is kept to determine eligibility for provision of free radiological and pathological services as well as for access to other health and medical facilities controlled by the Department (e.g. 'admission rights' for the Princess Elizabeth Hospital in Guernsey and Mignot Memorial Hospital in Alderney), under States Resolutions made in 1990 (Billet d'État No II, 1990).
- 4.11 The Department considers that only practitioners registered under the Ordinance should be eligible for allocation of the benefits, or for the free services or facilities mentioned in paragraph 4.10. Therefore, it would be more efficient to use and annotate the Register kept under the Ordinance for these purposes, rather than to continue keeping separate lists.

Conditions of registration

- 4.12 Under the Ordinance, there is no direct mechanism to ensure that registered practitioners follow GMC guidance on good medical practice, participate in appraisals, and take part in and cooperate with assessments of English language knowledge or clinical skills and performance. There is also no mechanism to ensure that GMC decisions, and undertakings given to or required by the GMC, are given force locally.
- 4.13 The Department considers that all registered practitioners should be subject to standard conditions relating to conduct, appraisals and assessments. In addition, the Department considers that it is essential to give the RO power to impose additional conditions on the registration of a practitioner, where appropriate, to protect patients, to preserve public finances, to avoid prejudice to efficient provision of medical services funded or subsidised by public funds, and to prevent fraud. This would also provide the RO with a mechanism for giving effect, locally, to GMC decisions and conditions, and to undertakings given to or required by the GMC.

Concerns, allegations and complaints

- 4.14 In the Ordinance, designated bodies are required to ensure that systems are in place to monitor and address conduct and performance issues relating to registered practitioners. However, there is no requirement to notify the RO of concerns (including allegations or complaints) regarding a registered practitioner.
- 4.15 The Health Service (Benefit) Ordinance, 1990 provides for SSD to refer to the Health Service Advisory Committee any medical practitioner whose conduct appears to have prejudiced the efficient administration of the Health Service (Benefit) Law, 1990 or have created an unreasonable charge on the Guernsey Health Service Fund. Findings of that Committee can, in turn, be referred to referees appointed under that Ordinance.
- 4.16 In order to implement an effective regulatory system for medical practitioners, the Department considers it necessary to impose a requirement on SSD and the Health Service Advisory Committee, as well as all other parties (e.g. registered practitioners, designated bodies, and the Health and Social Services Department itself), to refer any concerns to the RO, and to keep the RO informed of any actions taken to investigate and address those concerns, and the outcomes. This requirement will enable the RO to take investigatory and regulatory action to protect patients and the public, if it is considered necessary in the circumstances.
- 4.17 The Ordinance currently provides for information-sharing between ROs, the Department, GMC and non-island ROs. However, there will be a need for additional information-sharing in view of the increased breadth of the new regulatory system proposed for medical practitioners. Furthermore:
- there will be an overlap between the new regulatory system and the health benefits regime under the Health Service (Benefit) (Guernsey) Law, 1990, in the sense that both regimes would allow the conduct of practitioners to be examined or investigated for similar reasons; and
 - as mentioned previously, the new registration system would incorporate the lists kept to determine eligibility for the Department's services and facilities.

As such, the Department considers that the Ordinance should extend the information-sharing provisions to include designated bodies, SSD, the Health Service Advisory Committee, referees appointed under the Health Service (Benefit) Ordinance, 1990, and any regulator of medical practitioners abroad.

Regulatory powers of the RO and Registration Panel

- 4.18 The Ordinance does not provide for suspension of registration or other regulatory or disciplinary actions to be taken against registered practitioners. However, the GMC has recommended that Guernsey adopt its own regulatory procedures and powers, over and above the procedures of the GMC.

4.19 In light of this, the Department proposes that the RO be given the power to serve notices on any registered practitioner to require the practitioner to take action or make changes, following an investigation. In more serious cases, the RO would be empowered to vary registration conditions or to suspend the practitioner's registration, including immediate suspension. Suspension by the RO would be limited to 3 or 6 months, depending on the grounds of suspension (e.g. a suspension pending the decision of a court or regulatory body will have a 6-month limit), and an extension would only be able to be granted by the Registration Panel referred to in paragraph 4.5 above.

4.20 The Ordinance also provides for termination of registration only in limited cases:

- death of practitioner;
- on request of the practitioner;
- on failure to pay the annual charge despite a reminder; or
- if the practitioner fails to satisfy the requirement to be fully registered and licensed by the GMC (or if the practitioner is suspended by the GMC).

Whilst these grounds are appropriate and should continue to be grounds for removing a practitioner from the Register, the Department proposes that the Registration Panel (instead of the Department) be given the power to remove practitioners from the Register. The Panel would be allowed to delegate this power where it considers appropriate.

4.21 In addition, additional mandatory and discretionary grounds for removal should be added to the Ordinance. Grounds for removal would include:

- a murder conviction;
- a sentence of imprisonment exceeding 6 months upon a criminal conviction;
- being subject to a national disqualification under section 159 of the National Health Service Act 2006; and
- non-compliance with registration conditions.

4.22 In addition, a practitioner could be removed from the Register:

- if he or she has not practised as a medical practitioner in Guernsey or Alderney during the preceding 12 months (if he or she has been registered for 12 months or more);
- if the Panel determines that the continued inclusion of the practitioner in the Register would prejudice the efficient provision of medical services under a contract with any Department or Committee of the States of Guernsey;
- in cases of fraud; or
- where the practitioner is unsuitable to be included in the Register, based on specified criteria.

- 4.23 In the interests of fairness, it is also proposed that there should be a process for reinstating a practitioner to the Register, if, for example, the criminal conviction on which removal was based is later overturned by a court. The amendment to the Ordinance should also set out a process for the Registration Panel to review registration-related decisions made by the RO (i.e. a decision to impose additional conditions on the registration of a practitioner, the issue of a resolution notice, or suspension of registration).
- 4.24 Finally, provision should be made in the Ordinance for the decisions of the Registration Panel (including a determination of a review of the RO's decision) to be subject to an appeal to the Royal Court (in the case of Guernsey) or the Court of Alderney (in the case of Alderney). The usual grounds of appeal should apply: *ultra vires* or other error of law, unreasonableness, bad faith, lack of proportionality, or material error as to the facts or as to the procedure.
- 4.25 The Registration Panel should also be given the same powers as the RO to require and share information, for the purposes of discharging the Panel's functions. Members of the Panel should be excluded from personal liability in the absence of bad faith, so they can discharge their duties without fear of civil liability.
- 4.26 In addition, appropriate transitional provisions should be inserted in the Amendment Ordinance, to ensure that registrations made under the Ordinance (before the commencement of the Amendment Ordinance) will continue. Pending applications for registration should be dealt with as if the Amendment Ordinance had not been made.

Annual charges

- 4.27 The proposed amendments to the Ordinance will put in place a regulatory system for medical practitioners. Implementation of this system will naturally incur additional costs over and above the costs incurred in discharging the existing roles of the Department and the RO. As such, the annual charges prescribed and imposed under the Ordinance will need to reflect the additional costs attendant on the new system. Further details are given in section 6 of this report.

5. NEW OFFENCES

- 5.1 In the Ordinance, there is no offence of falsely pretending to be a medical practitioner of a certain kind, or deceiving others as to a person's status or qualification as a medical practitioner. It would be helpful to create specific offences to prevent wilful and false representations or descriptions of this kind, in order to protect the public and prevent the public from being misled.

- 5.2 In addition, in order to provide the legal sanctions necessary to support the effective regulation of medical practitioners, the Department considers it necessary to create offences of failing to comply with a requirement made by the RO or the Panel (including anyone authorised by the RO or the Panel), or of obstructing the RO or the Panel.
- 5.3 Similarly, a new offence of providing false or misleading information (where required to provide information) should also be created to ensure that the regulatory system can operate in a robust manner and rely on accurate and truthful information being provided by all the parties concerned.

6. FINANCIAL IMPLICATIONS

- 6.1 Previously, the costs of implementing the Ordinance (including salary and expenses of the part-time RO, administrative support from HSSD Corporate Services, and other running costs and expenses) were estimated to be approximately £65,000 per annum (Billet d'État No XII, 2014), which break down as follows:

Item	Overall Cost (£)
Medical Practitioner approved by the GMC 0.3wte	45,000
Administrative Support ex HSSD Corporate Services	5,000
Running costs/expenses	15,000
TOTAL COST	65,000

A levy will be paid by the individual practitioners in primary care. The Social Security Department will pay for the Medical Specialist Group consultants in accordance with current arrangements. HSSD will pay for the States-employed Consultants. HSSD will also carry some administrative costs. The total cost for HSSD will be £20,000 in a full year which will be met from existing budgets.

- 6.2 The Department estimates that the new regulatory system proposed in this Report would cost an additional £30,000 per annum (including the costs of the Registration Panel, additional functions to be discharged by the RO, and additional running costs and expenses). As mentioned above, these additional costs would be fully funded by increasing the annual charges to be prescribed under the Ordinance, so that the regulatory system for medical practitioners remains fully self-financing. This means that *implementing* the regulatory system will be cost-neutral to the States of Guernsey. However, the States pays the annual charges of States-employed consultants, and consultants employed by the Medical Specialist Group (as required under the contract with the Group), so the new regulatory system would result in an estimated £17,700 in additional

annual charges to be paid by the States of Guernsey, £12,300 of which will be payable by Social Security from its Health Service Fund and £5,400 of which would be payable by HSSD (i.e. General Revenue expenditure) Therefore the total HSSD expenditure would be £25,500 per annum, which will be met from existing budgets.

- 6.3 In summary, all the costs of running the new regulatory system will be identified and accounted for, as per the Fees and Charges Policy. All these costs will be reflected in the increased annual charges payable by medical practitioners registered under the Ordinance. These annual charges are prescribed by Regulations made under the Ordinance and may be increased from time to time.

7. RISKS / BENEFITS OF PROPOSALS

- 7.1 The new regulatory system should result in better and more robust regulation of medical practitioners, and better and more effective protection of the public, patients and public finances. The Department believes that the new system would give the GMC the assurance necessary to resume revalidation of practitioners in Guernsey and Alderney.
- 7.2 If the new regulatory system is not put in place, the risks are: the GMC might not resume revalidation of practitioners in Guernsey and Alderney; Guernsey and Alderney will become less attractive places for medical practitioners to work in future (because practitioners in the Islands will not be able to obtain revalidation); and the currently low level of regulation of practitioners will lead to an environment where the protection of the public and public safety, as well as public finances, will be compromised.

8. CONSULTATION

The Department has consulted with the following in the course of preparing this Report:

- (a) representatives of the medical profession in Guernsey and Alderney;
- (b) the Social Security Department;
- (c) the interim Medical Director of the Department;
- (d) the GMC;
- (e) the States of Alderney;
- (f) the interim Responsible Officer; and
- (g) the Medical Officer of Health.

9. LAW OFFICERS' CHAMBERS AND LEGISLATIVE DRAFTING

The Law Officers' Chambers have been consulted and have helped to draft this Report. Chambers have advised that the necessary legislation could be drafted within 3 to 4 months, assuming no unforeseen difficulties emerge during the drafting process.

10. CONCLUSION AND SUMMARY

- 10.1 The objective of the proposed amendments is to put in place an effective and proportionate regulatory system for medical practitioners.
- 10.2 The amendments will build on the existing provisions in the Ordinance, to create an environment where there are sufficient powers for the new Registration Panel to vet registrations and remove practitioners from the Register if appropriate, and for the RO to step in and take regulatory action to protect the public and patients. In this way, the GMC can be assured that local processes and procedures for the regulation of practitioners and in support of revalidation are robust, effective and adequate for the GMC's purposes.
- 10.3 The long-term objective of the proposed amendments and the Ordinance itself (as identified in the first States Report (Billet d'État No XII, June 2014)) is to improve the quality of work of medical practitioners and patient experience and outcomes, and to raise the confidence of patients and the public in the quality of work of medical practitioners.

11. RECOMMENDATIONS

- 11.1 The Health and Social Services Department recommends that the States agree that the Regulation of Health Professions (Medical Practitioners) Ordinance, 2015 should be amended, and consequential amendments to other legislation made for the following purposes:
- (a) to clarify the meaning of "**practising as a medical practitioner**" to ensure that the prohibition against practising without local registration is proportionate to the objective of ensuring public safety;
 - (b) to allow General Medical Council-registered and licensed doctors to work in Guernsey and Alderney for a very short and limited period of time, without being registered locally;
 - (c) to provide for temporary registration pending registration under the Ordinance;
 - (d) to provide for the register kept under the Ordinance to be used for the purposes of allocation of benefits under the Health Service (Benefit) (Guernsey) Law, 1990, and for the purpose of determining eligibility for provision of services or facilities provided by or controlled by the Health and Social Services Department (e.g. under the States Resolutions of 1990);
 - (e) to establish a Registration Panel (by the Policy Council, on behalf of the States of Deliberation) and empower the Panel to refuse applications for registration in appropriate cases based on mandatory and discretionary grounds;

- (f) to require registered practitioners to comply with conditions relating to conduct, appraisals and assessments;
- (g) to empower the Responsible Officer to impose conditions on the registration of a practitioner (which could include conditions or undertakings imposed by the General Medical Council);
- (h) to require all concerns, allegations and complaints regarding a registered practitioner to be referred to, assessed by, and where appropriate, investigated by the Responsible Officer or persons authorised by the Responsible Officer (whether or not these have been referred to or are being dealt with by the practitioner's designated body);
- (i) to empower the Responsible Officer to require designated bodies and other parties to report on actions taken to address any concerns about the conduct or performance of a registered practitioner;
- (j) to extend the power to share information to authorise information-sharing between the Responsible Officer (or Registration Panel), and designated bodies, Social Security Department, the Health Service Advisory Committee, any other Department or Committee of the States of Guernsey, and any regulator of medical practitioners abroad;
- (k) to empower the Responsible Officer to serve notice on a registered practitioner, after due process is followed, to require the practitioner to take action or make changes;
- (l) to empower the Responsible Officer to vary a practitioner's registration conditions or suspend a practitioner's registration (including immediate suspension) in appropriate cases;
- (m) to empower the Registration Panel to remove a registered practitioner from the Register in appropriate cases based on mandatory and discretionary grounds, and to provide for reinstatement of the practitioner to the Register in certain cases, e.g. where a conviction is overturned;
- (n) to provide a process for decisions of the Responsible Officer in relation to registration under the Ordinance (e.g. registration conditions, notice to take action or make changes, or suspension) to be reviewed by the Registration Panel;
- (o) to provide a process for decisions made by the Registration Panel (including the Panel's determination of a review of the Responsible Officer's decision), to be appealed to the Royal Court or Court of Alderney;

- (p) to provide for members of the Registration Panel to be excluded from personal liability, in the absence of bad faith;
- (q) to provide for the new regulatory system to be funded by an increase in the annual charge required to be paid by all registered medical practitioners under the Ordinance;
- (r) to make appropriate transitional provisions to continue the registration of those already registered under the Ordinance, and so that pending applications for registration can continue to be processed under the existing provisions of the Ordinance; and
- (s) to create new offences of:
 - (i) wilfully and falsely representing or describing oneself or others as a medical practitioner of a particular kind;
 - (ii) failing to comply with a requirement made by the Responsible Officer or the Panel, or of obstructing the Responsible Officer or the Panel (including anyone authorised by the Responsible Officer or the Panel);
 - (iii) providing false or misleading information, e.g. where required to provide information under the Ordinance.

11.2 The States are recommended to direct the preparation of legislation to give effect to the recommendations in the foregoing paragraph.

Yours faithfully

P A Luxon
Minister

H J R Soulsby
Deputy Minister

M P J Hadley
M K Le Clerc
S A James MBE

R H Allsopp OBE
A Christou
Non States Members

Appendix

Definitions and explanations of various titles used throughout the policy letter.

Titles	Meaning
Designated Bodies	Most licensed doctors have a common connection with one organisation that will provide them with a regular appraisal and help them revalidate. This organisation is called a “designated body”.
GMC	The purpose of the General Medical Council (GMC) is to protect, promote and maintain the health and safety of the public by ensuring proper standards in the practice of medicine.
Health Benefit Advisory Committee	A committee was established under the Health Benefit Law 1990 to examine actions of practitioners who may be deemed to be making an unreasonable charge on the health benefit fund or be prejudicing the efficient administration of the fund. These functions are defined in the ordinances made under the Law
Responsible Officer (RO)	<p>The RO will play a crucial role in the process of medical revalidation when it is introduced. There are two principal processes for which the RO has prime responsibility. These are:</p> <ul style="list-style-type: none"> • processes that will underpin the retention of doctors’ licences; and • processes underpinning referral of doctors to the GMC in those cases where there are doubts concerning fitness to practice. <p>The regulation of doctors is, and will remain, a matter for the GMC. Decisions about a doctor’s fitness to practice will be taken by the GMC only after the appropriate procedures have been followed.</p>
Revalidation	Revalidation is the process by which licensed doctors are required to demonstrate on a regular basis that they are up to date and fit to practice. Revalidation aims to give extra confidence to patients that their doctor is being regularly checked by their employer and the GMC.
UK Prescribed Connection	This where a doctor has a UK based Responsible Officer.

(N.B. The Treasury and Resources Department notes that the cost to General Revenue (in respect of the levy on States-employed consultants and some administrative costs) will increase from £20,000 to £25,500 per annum which the Health and Social Services Department plans to meet from its existing resources.)

(N.B. The Policy Council supports the proposals in this Policy Letter and confirms that the Policy Letter 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 Policy Letter dated 6th May, 2015, of the Health and Social Services Department, they are of the opinion:-

1. To agree that The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015 should be amended, and consequential amendments to other legislation made for the following purposes:
 - (a) to clarify the meaning of "**practising as a medical practitioner**" to ensure that the prohibition against practising without local registration is proportionate to the objective of ensuring public safety;
 - (b) to allow General Medical Council registered and licensed doctors to work in Guernsey and Alderney for a very short and limited period of time, without being registered locally;
 - (c) to provide for temporary registration pending registration under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015;
 - (d) to provide for the Register kept under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015 to be used for the purposes of allocation of benefits under The Health Service (Benefit) (Guernsey) Law, 1990, and for the purpose of determining eligibility for provision of services or facilities provided by or controlled by Health and Social Services Department;
 - (e) to establish a Registration Panel (by the Policy Council, on behalf of the States of Deliberation) and empower the Registration Panel to refuse applications for registration in appropriate cases based on mandatory and discretionary grounds;
 - (f) to require registered practitioners to comply with conditions relating to conduct, appraisals and assessments;

- (g) to empower the Responsible Officer to impose conditions on the registration of a practitioner (which could include conditions or undertakings imposed by the General Medical Council);
- (h) to require all concerns, allegations and complaints regarding a registered practitioner to be referred to, assessed by, and where appropriate, investigated by the Responsible Officer or persons authorised by the Responsible Officer (whether or not these have been referred to or are being dealt with by the practitioner's designated body);
- (i) to empower the Responsible Officer to require designated bodies and other parties to report on actions taken to address any concerns about the conduct or performance of a registered practitioner;
- (j) to extend the power to share information to authorise information-sharing between the Responsible Officer (or Registration Panel), and designated bodies, Social Security Department, the Health Service Advisory Committee, any other Department or Committee of the States of Guernsey, and any regulator of medical practitioners abroad;
- (k) to empower the Responsible Officer to serve notice on a registered practitioner, after due process is followed, to require the practitioner to take action or make changes;
- (l) to empower the Responsible Officer to vary a practitioner's registration conditions or suspend a practitioner's registration (including immediate suspension) in appropriate cases;
- (m) to empower the Registration Panel to remove a registered practitioner from the Register in appropriate cases based on mandatory and discretionary grounds, and to provide for reinstatement of the practitioner to the Register in certain cases, e.g. where a conviction is overturned;
- (n) to provide a process for decisions of the Responsible Officer in relation to registration under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015 (e.g. registration conditions, notice to take action or make changes, or suspension) to be reviewed by the Registration Panel;
- (o) to provide a process for decisions made by the Registration Panel (including the Registration Panel's determination of a review of the Responsible Officer's decision), to be appealed to the Royal Court or Court of Alderney;
- (p) to provide for members of the Registration Panel to be excluded from personal liability, in the absence of bad faith;

- (q) to provide for the new regulatory system to be funded by an increase in the annual charge required to be paid by all registered medical practitioners under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015;
 - (r) to make appropriate transitional provisions to continue the registration of those already registered under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015, and so that pending applications for registration can continue to be processed under the existing provisions of The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015; and
 - (s) to create new offences of:
 - wilfully and falsely representing or describing oneself or others as a medical practitioner of a particular kind;
 - failing to comply with a requirement made by the Responsible Officer or the Registration Panel, or of obstructing the Responsible Officer or the Registration Panel (including anyone authorised by the Responsible Officer or the Registration Panel);
 - providing false or misleading information, e.g. where required to provide information under The Regulation of Health Professions (Medical Practitioners) Ordinance, 2015.
2. To direct the preparation of such legislation as may be necessary to give effect to the above decision.

HEALTH AND SOCIAL SERVICES DEPARTMENT

**REVISION OF CRITERIA FOR GENERAL PRACTITIONERS TO BE GIVEN
ACCESS TO PATHOLOGY AND RADIOLOGY SERVICES PROVIDED BY HSSD**

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

6th May 2015

Dear Sir

EXECUTIVE SUMMARY

1. This report concerns revisions to the registers of medical practitioners: (i) authorised to access diagnostic services provided by the Health and Social Services Department (“**HSSD**”); and (ii) eligible for benefit under the Health Service (Benefit) Law, 1990, (as amended).
2. It also addresses issues raised by the Channel Islands Competition Regulatory Authority (“**CICRA**”) that the maintenance of the latter register was anti-competitive.
3. The report also reviews the impact of a manpower cap on the number of General Practitioners, which has also been criticised by CICRA as preventing the entry of new practices/practitioners into the market.
4. The report recommends the rescindment of this policy. To replace it, it is recommended that there be a single Register of medical practitioners authorised to access diagnostic services and to provide services eligible for health benefits. To be registered, medical practitioners will need to meet various criteria relating to their accreditation and practise in Guernsey and Alderney, which provide a basis for controlling the number of medical practitioners approved to practise in the Islands.
5. There will be transitional provisions so that existing medical practitioners will be automatically registered provided that they meet these criteria within specific timescales.
6. It should also be noted that HSSD has concurrently submitted a States Report (Amendment of the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance 2015, dated 6th May 2015) (“**the**

Amendment Report") to seek the approval of the States to amend the Ordinance to provide for the Register kept under that Ordinance to be used for other purposes, including to be annotated for the purposes of determining eligibility for the privilege of free pathology and radiology diagnostic services, and eligibility for access to facilities provided or controlled by HSSD (e.g. under the States Resolutions of 1990). The glossary of terms in Appendix 1 of that report is also of relevance in reading this report.

BACKGROUND

7. A States Resolution on the 31st January, 1990 (concerning Billet d'État No II, 1990), instructed the then Board of Health (now HSSD) to maintain two registers of medical practitioners who were authorised to access diagnostic services from the pathology and radiology departments provided by HSSD. The same registers were also to be used by the Guernsey Social Security Authority (now the Social Security Department) to identify those medical practitioners who could provide services which may be eligible for benefit under the Health Service (Benefit) Law, 1990, (as amended). CICRA indicated to HSSD in 2013 that it felt the operation of the part of the registers which related to primary care (general practice) was in their view anti-competitive. This report sets out how HSSD proposes to amend the criteria for entry to the registers for primary care to ensure they are no longer anti-competitive.
8. In particular, this report sets out proposals to introduce quality criteria against which general practitioners (“GPs”) and their practices can be monitored.
9. Further, in February 2015, CICRA released its ‘Primary Healthcare Market Study’. While there are some matters in that report which impact on the limit imposed on the number of GPs, HSSD felt it was of sufficient urgency to proceed with a report to the States seeking changes to the current accreditation and registration regime, ahead of addressing the wider issues raised by the CICRA report.

CURRENT REGISTER

10. The two registers that the 1990 Resolution created were:
 - (a) a register of all medical practitioners approved to access pathology and radiology diagnostic services; and
 - (b) a register of all medical practitioners who had the same rights as indicated in register (a) above, but who were also able to treat patients in the Princess Elizabeth Hospital.

This latter register effectively allocated ‘admission rights’ to specified medical practitioners.

11. The second register above (b) now comprises only those approved as visiting consultants from the UK, States-employed consultants and members of the Medical Specialist Group. (A small number of medical practitioners that work in the A&E department are also approved to admit - such as the 24 hour doctor - and there are arrangements for primary care doctors in Alderney to admit to the Mignot Memorial Hospital.)
12. Register (a) above comprises named medical practitioners who are, in effect, approved to work as GPs; and, as matter of policy, this number has been limited by HSSD to a number that was agreed with its Medical Advisory Committee (now the Professional Guidance Committee). This number is currently 42 whole time equivalents (wte), which is approximately one full time GP for every 1600 residents. This figure is close to the average number found in the UK.
13. This manpower cap currently operates on a “one out, one in” basis, which means the GP practices in effect control all the available slots for general practice and thus prevent the entry of new practices/practitioners into the market.

AUTHORITY TO MAKE CHANGES

14. A States Resolution on the 25th January, 2012 (concerning Billet d’État No III of 2012) delegated authority to HSSD to design the rules for determining who may admit or refer to the hospitals and diagnostic facilities operated by the Department, and to change the rules from time to time, as it saw fit. The Resolution also authorised the drafting of any future legislation necessary to amend the Health Service (Benefit) (Guernsey) Law, 1990 to ensure its consistency with any changes made by HSSD to the rules for rights of admission and referral to hospitals and diagnostic facilities.
15. HSSD has recently conducted consultations with CICRA, the States of Alderney, Social Security Department ("SSD") and the primary care practices, on how the register which both departments wish to retain as a control on costs, could be reformed to make the emergence of new entrants into the market possible. Following the consultation, the following proposals were developed with, and have been supported by, the primary care practices in Guernsey, SSD and CICRA. It should be noted that no practice in Alderney has made any comment.
16. The report published by CICRA on the 10th February 2015 includes references to the changes HSSD is proposing to make and indicates its broad support and keenness for HSSD to move this forward.
17. The new proposals which have been developed by HSSD will, in future control entry into the primary care (GP) register by the use of identifiable and measurable quality standards. This will mean that the GPs and the premises from which they operate, and the practice or group in which they work, all meet well recognised and measurable quality standards and qualifications. This will assure

the public, and the departments which support GPs, that the practitioner is suitably trained, and the premises are fit for purpose. The proposals will also ensure that the organisation of the practice, its infra-structure and IT, along with its policies and procedures, are of the necessary standard, which patients have the right to expect; and, further, that they have been audited against that standard.

18. However, at this stage, it is not proposed to make any changes to the register of doctors who are able to admit to and treat in the Princess Elizabeth Hospital.
19. This level of regulation means the public of Guernsey can be confident that the GP they see will be operating in a safe environment and meets the relevant standards for delivery of primary care in terms of his/her training. It also reflects HSSD's view that access to free pathological and radiological services, and eligibility for grants of medical and pharmaceutical benefits, is a privilege and not an automatic right.
20. It should be noted that for the sake of clarity the contract with the Medical Specialist Group for the provision of secondary care specifies the services that are to be provided by HSSD, which includes a number of medical practitioners (e.g. States-employed consultants and the 24 hour doctor). There is also a contract for medical services provided by primary care doctors in the Mignot Memorial Hospital in Alderney. HSSD will continue to manage these in line with the current contracts and agreements operating at this time and any successor arrangements.

THE PROPOSALS

21. The changes that HSSD proposes to make can be summarised as follows:
 - a) That HSSD continues to maintain the register of practitioners referred to in Billet d'État No II, 1990, but by way of annotations to be made to the register of medical practitioners kept under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, ("**the Register**") instead of keeping separate registers.
 - b) That access to the privileges set out in paragraph 10 ii) of Billet d'État No II, 1990, i.e. admission to the PEH (and other HSSD facilities), is continued as now, in line with the contract with Medical Specialist Group (and the arrangements for States-employed consultants and those applying in the Mignot Memorial Hospital, Alderney), which specifies which and how medical services are to be provided by HSSD, and any successor arrangements. The names of practitioners who are eligible for such rights will be annotated on the Register.

- c) That in order for a primary care doctor (GP) to be approved for the privileges mentioned in paragraph 10 i) of Billet d'État No II, 1990 (access to free pathology and radiology diagnostic services and eligibility to the health benefit grant and the pharmaceutical benefit grant) ("**the privileges**"), and for the Register to be annotated to this effect, the following criteria and those set out in paragraphs 22 and 23 (as explained by paragraph 24 must be satisfied). The GP:
- i. must be registered in Guernsey as a medical practitioner under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015. This means that the GP must participate in the Guernsey Responsible Officer scheme for revalidation by the General Medical Council ("**GMC**"), and must comply with all registration conditions, be liable to have additional registration conditions imposed by the Responsible Officer, and be liable to be suspended or removed from the Register in accordance with the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, (if the recommendations in the Amendment Report are approved by the States);
 - ii. must be licensed by the GMC to practice in the UK as a GP (holding a GP CCT or CEGPR); and
 - ii. if registered by the GMC at any time since 2008, must hold MRCGP.
22. In order to be approved for the privileges, a GP must also:
- a) be part of a scheme which will provide cover 24 hours every day of the week, including weekends and public holidays for their patients 365(6) days a year. (New entrants must be allowed to join any collaborative or co-operative schemes for the provision of out-hours services operated by the existing practices.) Any new practice must share in the costs of providing such a scheme;
 - b) adhere to patient care pathways agreed by primary care with SSD and HSSD;
 - c) participate and comply with SSD/HSSD prescribing initiatives and policies; and
 - d) comply with safeguarding obligations for GPs.
23. In addition, in order to be approved for the privileges, a GP must be practising in or on behalf of a primary care practice ("**the GP's practice**") that meets the following conditions:

- (a) Has been and remains accredited by an organisation approved by HSSD (e.g. CHKS or RCGP).
 - (b) Practices which lose their accreditation will have 18 months to have it restored. Until this is achieved the practice's position for its medical practitioners remaining on the approved register is provisional on their re-achieving this accreditation. Failure to do so will result in the practice being removed from the approved register, and hence all GPs working in that practice would no longer be eligible to be on the register or to be 'approved GPs' and would be removed from the register of approved GPs;
 - (c) The GP's practice must regularly and on an on-going basis provide information identified by HSSD as necessary for the planning of health service delivery and public health which will include (but is not limited to) by agreement:
 - (i) information for the Annual Influenza incidence monitoring programme; and
 - (ii) Pandemic Planning Information;
 - (d) The GP's practice must participate in:
 - (i) the child immunisation programme organised by HSSD;
 - (ii) agreed screening and health promotion / disease prevention activities / programmes organized by HSSD; and
 - (iii) the development of integrated electronic health and social care records for patients, with information sharing protocols and supporting processes, with HSSD.
24. In relation to timing, in order to be approved for the privileges, a GP must meet the criteria set out in paragraphs 21(c) and 22 from the commencement of his/her practising as a general practitioner in Guernsey. The GP's practice must be accredited as required by paragraph 23 (a) from the commencement of his/her practising as a general practitioner in Guernsey **OR** must apply for such accreditation within 6 months and must achieve the accreditation within 24 months, of the GP being approved for the privileges. Until accreditation is achieved, the GP's annotation on the Register as an approved GP is conditional on the accreditation. Failure by a practice to achieve this accreditation within that timeframe will result in revocation of the approval of all GPs working in or on behalf of that practice. The GP's practice must meet the criteria set out in paragraph 23(b) and (c) from the commencement of his/her practising as a general practitioner in Guernsey.

25. Further, in the light of the proposals set out above, it is recommended that the 'manpower cap' imposed by HSSD should be rescinded and any new GP entrant who meets the criteria set out in paragraphs 21(c)-23 above should be allowed into the primary care medical market, as a result of HSSD approving these GPs for the purposes of the access privileges.
26. These criteria for approval of GPs for the privileges should be formally reviewed at least every 10 years by HSSD following a period of public consultation which includes the medical profession and other interested States Departments and Committees, as well as a review of Guernsey and Alderney's needs for primary medical services and the practices and procedures of the UK and other comparable jurisdictions.
27. Finally, existing holders of the privileges (i.e. GPs whose names are currently on the register maintained by HSSD under paragraph 10 i) of Billet d'État No II, 1990), will also be approved for the privileges, as long as they continue to meet the criteria in paragraph 21(c) (i). They do not need to meet the criteria in paragraph 21 (c) (ii) or (iii). However, they will need to meet the criteria in paragraphs 22 and 23 (as explained by paragraph 24), and will be given a period of 3 years to meet those criteria. Failure to meet the criteria in paragraphs 22 and 23 within the 3-year transitional period would result in HSSD revoking the approval of the existing of the privilege to be accredited as GPs with the rights set out in this report.

CONCLUSIONS AND FINANCIAL IMPLICATIONS

28. HSSD believes these proposals continue to meet the GP manpower cap's original objective of managing the number of medical practitioners who can practise in the Islands. However, in the future this objective will be met, not by establishing an agreed number, but by entrants having to meet a set of quality and training standards required for entry into the general practice register. HSSD believes that by GPs having to operate in this environment they will be practising to high quality standards and hence not imposing unreasonable burdens on the HSSD or SSD.
29. The potential for new entrants will also ensure that the fees charged to patients are competitive and will give patients a choice of which general practitioners and practices they wish to engage with. It is anticipated that the resources required to administer the proposed revised arrangements will be similar to the existing regime.
30. These proposals ensure that there can be new entrants to the general practice market in accordance with the objectives set out in CICRA's report of January 2015. That entry is based on GPs being able to meet a set of reasonable quality standards which are easily auditable and managed by HSSD and SSD.

31. HSSD believes all primary practices can meet the standards required, and can do so within the transition period proposed. Equally, new entrants should have enough time to meet the requirements for accreditation and achieve this.
32. All new GPs entering the work force should have been trained as GPs, as would be required in the UK. This means that within the next three years all practices will be operating to an accredited standard, which is externally audited, and all new GPs will have successfully completed the required training for the role.

CONSULTATION

33. HSSD has consulted the following on these proposals:
 - (a) all the primary care practices operating in Guernsey and Alderney;
 - (b) the Medical Specialist Group;
 - (c) lead medical practitioners from the three main primary practices in Guernsey;
 - (d) the interim Responsible Officer appointed by the States of Guernsey for medical practitioners;
 - (e) the Medical Officer of Health;
 - (f) the States of Alderney;
 - (g) the Social Security Department;
 - (h) CICRA, to ensure that these proposals meet their concerns and objectives;
 - (i) the Law Officers' Chambers.

RECOMMENDATIONS

34. The Health and Social Services Department recommends the States to agree:
 - (a) that HSSD continues to maintain a record of the general practitioners who are approved for the purposes of being given the privileges set out in Billet d'État No II of 1990 (access to free pathology and radiology diagnostic services and eligibility to the health benefit grant and the pharmaceutical benefit grant), but by way of annotations to be made to the register of medical practitioners kept under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, ("**the Register**") instead of separate lists or registers;

- (b) that the existing 'manpower cap' (limiting the number of practitioners approved for those privileges by HSSD) is rescinded with immediate effect;
- (c) that HSSD approves any GP who meets the criteria set out in paragraphs 21(c)-24 above, for the purposes of those privileges, and annotates the Register accordingly;
- (d) that existing holders of those privileges will continue to be approved for those privileges as long as they meet the criteria in paragraph 21(c)(i) (until they retire from practise), but will be required to meet the criteria in paragraphs 22 to 24 within 3 years or else have their approval revoked;
- (e) that legislation be prepared to amend the Health Service (Benefit) (Guernsey) Law, 1990 or any Ordinance made under it, as necessary to ensure that only GPs approved by HSSD, with the appropriate annotation in the Register, will be eligible for the relevant benefits under that Law; and
- (f) that HSSD reviews the criteria for approval of GPs for the access privileges at least every ten years.

Yours faithfully

P A Luxon
Minister

H J R Soulsby
Deputy Minister

M P J Hadley
M K Le Clerc
S A James MBE

R H Allsopp OBE
A Christou
Non States Members

Appendix 1

Glossary of Terms

CHKS	An internationally recognised organisation which accredits health care providers including HSSD
CEGPR	Certificate of Eligibility of General Practice Registration
GMC	General Medical Council
GP CCT	General Practice Certificate of Completion of Training
Medical Advisory Committee	Committee Established to provide the Board of Health with clinical and medical advice, became in 2010 the Professional Guidance Committee
Professional Guidance Committee	Committee established by HSSD to provide professional advice to the board, successor to the Medical Advisory Committee
MRCGP	Membership of the Royal College of General Practice
RCGP	Royal College of General Practice

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

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

The States are asked to decide:-

XII.- Whether, after consideration of the Policy Letter dated 6th May, 2015, of the Health and Social Services Department, they are of the opinion:-

1. To agree that the Health and Social Services Department continues to maintain a record of the general practitioners who are approved for the purposes of being given the privileges set out in Billet d'État No II of 1990 (access to free pathology and radiology diagnostic services and eligibility to the health benefit grant and the pharmaceutical benefit grant), but by way of annotations to be made to the register of medical practitioners kept under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, instead of separate lists or registers.
2. To agree that the existing 'manpower cap' (limiting the number of practitioners approved for those privileges by Health and Social Services Department) is rescinded with immediate effect.
3. To agree that the Health and Social Services Department approves any general practitioner who meets the criteria set out in paragraphs 21(c) to 24 of that Policy Letter, for the purposes of those privileges, and annotates the register of medical practitioners kept under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, accordingly.
4. To agree that existing holders of those privileges will continue to be approved for those privileges as long as they meet the criteria in paragraph 21(c)(i) of that Policy Letter (until they retire from practise), but will be required to meet the criteria in paragraphs 22 to 24 of that Policy Letter within 3 years or else have their approval revoked.
5. To agree that legislation be prepared to amend the Health Service (Benefit) (Guernsey) Law, 1990 or any Ordinance made under it, as necessary to ensure that only general practitioners approved by the Health and Social Services Department, with the appropriate annotation in the register of medical practitioners kept under the Regulation of Health Professionals (Medical Practitioners) (Guernsey and Alderney) Ordinance, 2015, will be eligible for the relevant benefits under that Law.
6. To agree that the Health and Social Services Department reviews the criteria for approval of general practitioners for the access privileges at least every ten years.

ENVIRONMENT DEPARTMENT**INTEGRATED TRANSPORT STRATEGY - FUNDING**

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

6th May 2015

Dear Sir

1. Executive Summary

- 1.1 The States is asked to consider the Environment Department's funding proposals to deliver the work streams approved by the States in May 2014 in respect of the Integrated Transport Strategy and Action Plan (Billet d'Etat IX, March 2014). As a result of subsequent resolutions of the States, funding proposals that were then agreed in principle (a First Registration Duty based on width and CO₂ emissions and long-stay paid parking) are now no longer available in the forms prescribed as funding streams for the strategy. Therefore, alternative funding is required. However, partially as a result of the resolutions of the States, the level of funding required has been reduced to £3.45m, as explained further below, which is £1.62m less than the original 2014 funding level of £5.07m.
- 1.2 This report examines a range of funding elements that could be considered and combines various elements into funding packages. Five funding options each representing a package of elements are presented for States consideration in order that the work streams that were approved by the States can now proceed into the implementation phase. One of the packages presented is based on an annual paid parking clock and hence this report also fulfills the direction of the States in respect of the amendment placed by Deputies Lowe and Brouard (resolutions concerning Billet III, 2015). As a result of developments since the States approval of the Strategy and Action Plan, it is necessary to rescind certain states resolutions and these are also addressed in this report.
- 1.3 **The Department does not necessarily support or recommend all of the funding elements that have been outlined in this report** but these elements are presented in this report and explained in detail in order that States members can, should they wish, use the information in formulating alternative funding packages from the information presented. The Department's preferred package (Package 4) comprises four funding elements which together are expected to raise approximately £3.49m. The elements are: an increase of 7.5p per litre on

the duty on gas oil (diesel); an increase of 5.5p per litre on the duty on petrol (excluding aviation and marine petrol); the retention of bus fares but with added concessions; and a simplified and much reduced vehicle first registration duty based on CO₂ emissions only.

2. **Background**

- 2.1 This report does not set out the long history of the various transport strategy proposals submitted to the States since 2003 nor does it rehearse here all the arguments and documentary evidence that was set out in Billet IX, April 2014, which should be read in conjunction with this report¹. Since 2003 the States has consistently supported proposals intended to make walking, cycling and the use of public transport more viable, safer and attractive as transport options, thus reducing reliance on the private motor vehicle. The strategy supported by the States in May 2014 seeks to work towards the agreed vision:

To facilitate safe, convenient, accessible and affordable travel options for all the community, which are time and energy efficient, enhance health and the environment and minimize pollution.

- 2.2 The funding proposals set out in this report will enable relevant work streams to be delivered. Most importantly, for the purposes of this report, the States approved, after amendments, an annual income and spend model as simplified below.

Income	
First registration duty	3,920,000
Paid Parking (operating income)	<u>1,150,000</u>
	5,070,000
Lost fuel tax revenue	<u>(1,000,000)</u>
	£4,070,000
Expenditure	
Free buses	£1,000,000
Bus service funding	£ 700,000
Bus infrastructure	£ 150,000
Cycle infrastructure	£ 420,000
Pedestrian infrastructure	£ 330,000
Public Realm	£ 200,000
Disability measures	£ 150,000
Vehicle Subsidies	<u>£ 220,000</u>
	£ 3,170,000
Bus depot capital allocation	<u>£ 900,000</u>
	£4,070,000

¹ <http://gov.gg/CHttpHandler.ashx?id=86937&p=0>

3. Revised funding requirements

- 3.1 In view of the fact that the States did not resolve in January 2015 to support the amended legislation that would have implemented the principal income stream (the vehicle First Registration Duty) and in doing so removed the significant incentivisation of more fuel efficient vehicles, the reduction in fuel tax income and vehicle subsidies can fall away (£1.22 million). In doing so it is recognised that the rate of modal shift will be much slower and hence the anticipated lost income from fuel duty much less marked. Vehicles are becoming more efficient through manufacturing changes and this in itself results in reduced fuel duty income which is not otherwise specifically compensated for. As the integrated strategy funding mechanisms, which would have driven modal shift and also provided income to compensate for lost fuel duty, has been rejected by the States, this report does not seek to generate income to compensate for any reduced fuel duty income. Notwithstanding the above, the strategy objectives of improving the alternative means of transport remain and are supportable in their own right. This report seeks to establish the funding in order to deliver those States approved work streams.
- 3.2 In addition the Department is prepared to recommend that the creation of a bus depot/garage now be treated in the same way as any other major capital bid and be processed through the States Capital Investment Portfolio, taking its priority alongside other major capital projects. Therefore, the annual cost of the depot can also be set aside. While it strongly remains the case that a purpose built depot would offer efficiencies and flexibility in the management of the bus service, this decision is further informed by the fact that since the Transport Strategy was approved, a new 5.5 year bus contract has been entered into with CT Plus under current garaging arrangements and it is therefore considered appropriate to remove this cost (£0.9 million) from the current requirement for funding with the intention that a revised proposal will be submitted in the next round of States capital prioritization.
- 3.3 Against these reductions must be set increases to the bus service contract with effect from 1 April 2015. Under the previous bus contract the States provided funding of £2.6m and the operator collected fare income of circa £1.1m generating the total fund for the provision of bus services of £3.7m. The new contract sum for the enhanced bus service is £4.8m. The resulting £1.1m differential in costs represents the inflationary and underfunded aspects relating to the old contract of approximately £700,000 (i.e. the increase in the cost of the contract to maintain existing services) and improvements to routes, frequencies and general quality of £400,000. This is approximately £500,000 more than anticipated in the Transport Strategy.
- 3.4 As the States also resolved to agree a period of free travel, the total additional funding requirement for the buses, for the trial period, would be £2.2m per annum i.e. the £1.1m increase due to inflation and new routes plus the previous £1.1m of fare income. However, this report includes as a funding element,

proposals that will reduce that sum by continuing to charge passengers a fare for bus travel. A number of new products including very heavily discounted block purchase and period passes to incentivise travel will be made available but the charging of a fare will further reduce the total funding being sought.

3.5 This results in a revised expenditure table that can be set out as:

Bus Infrastructure etc.	£ 150,000
Cycle infrastructure etc.	£ 420,000
Pedestrian infrastructure etc.	£ 330,000
Public Realm improvements	£ 200,000
Disability transport measures	£ 150,000
Bus contract cost (excluding fares)	£4,800,000
Less existing bus services budget	(£2,600,000)
Total	£3,450,000

3.6 As such the amount that it is required to raise is reduced from £5.07m to £3.45m (which is effectively further reduced to £2.7m with the application of revised bus fares). The remainder of this report details various funding elements and funding packages that could fund the strategy.

4. Lowe/Brouard Amendment: Paid Parking Clock

4.1 On 27 February 2015 the States approved an amendment proposed by Deputy Lowe and seconded by Deputy Brouard (resolutions concerning Billet III, 2015), to approve the introduction of a chargeable annual disc parking clock for short stay and long stay in all disc zones in St Peter Port and in the rest of the Island at a charge between £30 and £50 per annum in accordance with detailed proposals set out in a further report to be submitted to the States by the Department. The Department has considered the mechanisms for introducing such an annual parking clock in accordance with the resolution of the States and these are set out in section 5A below. As such this report also fulfills the requirement for the Department to report back to the States in this respect.

5. Potential Funding Elements

5.1 The paragraphs below detail a range of possible funding elements. Alongside each element the Department sets out the income as well as legal and administrative requirements and costs. Each of these elements can be combined with other elements to make up a funding package. **It is important to state that the listing of an element does not necessarily indicate a recommendation, or otherwise, by the Department of that particular element.** The elements and their details are presented for general information and to enable States members to make informed proposals should they wish to put forward funding packages as an alternative to the one proposed by the Department. Some of the elements,

such as increasing fuel duty, have been previously debated and rejected but are still included here so that any members wishing to create packages incorporating particular elements can see the associated costs, advantages and disadvantages and timescales.

Element A: Paid parking clock - (Lowe/Brouard Amendment)

- 5.2 A parking clock displaying the time of arrival is currently required by those wishing to park in any timed “disc parking place” (short and long-term parking) under the Road Traffic (Parking Places) Ordinance 1963, as amended (“**Road Traffic Ordinance**”), and the Vehicular Traffic (Control of Parking on Certain States Land) Ordinance, 1988, as amended (“**Vehicular Traffic Ordinance**”). A parking clock is not currently required in order to park in an "approved parking place" under the Road Traffic Ordinance or in controlled parking places that are not "disc parking places" under the Vehicular Traffic Ordinance.
- 5.3 The amendment approved by the States of a “*disc parking clock for short stay and long stay in all disc zones in St Peter Port and in the rest of the Island*” relates only to the short and long-term disc parking designated areas and does not relate to 23 hour approved parking areas but a paid parking clock that covers both disc parking zones and approved parking areas could, of course, be adopted and this is also addressed. The Department understands, through discussions with Deputies Lowe and Brouard, that the spirit and the intention of the amendment are best represented in Element A2 below.
- 5.4 Numerous variations of a paid parking clock and numerous administrative approaches are possible. The Department has set out below the various policy considerations followed by potential associated administrative approaches. The term “clock” is used loosely as there are many ways in which evidence of annual paid parking could be demonstrated. An annual renewable clock is one approach but stamps, discs, etc. are also possible approaches.

A1. Annual paid parking restricted to short and long term disc parking.

- 5.5 This element is a strict interpretation of the amendment rather than the intent of the amendment placed by Deputies Lowe and Brouard. The display of a paid parking clock would therefore be required for all short and long stay disc parking places under the Road Traffic Ordinance and the Vehicular Traffic Ordinance. It would remain possible to park in 23 hour approved parking places and on any area not designated as a disc parking place including most of the coastal headland and cliff top parking places as well as other States land without being required to display a paid parking clock. It would also be possible to park in all disc controlled parking places outside of the disc times without displaying a paid parking clock. It is impossible to know with any certainty how many clocks would be sold for those wishing to park in disc parking places during the controlled parking times but the Department has used a figure of 30,000 clocks as a conservative but reasonable estimate, including clocks used by hire cars and

tourists bringing their own cars to the island. At £40, the midpoint of the range set in the amendment, the clocks would generate an income of approximately £1.2m. It follows that at £30 (the lower range of the amendment) income would be in the region of £0.9m and at the £50 upper figure income would be £1.5m.

Advantages and disadvantages

- 5.6 Under this model, a person who rarely requires the use of a disc parking place must pay the same annual amount as a person who regularly parks in such places. Similarly, the person parking for 30 minutes pays the same as the person parking for 8 hours. Tourists, parking for one or two weeks, pay the same as commuters parking for 50 weeks of the year. Thus while the cost may be spread equally amongst those using parking, it cannot be said to be spread fairly. The cost of the clock becomes a sunk cost to the vehicle owner and hence once paid provides no disincentive to using and parking the vehicle. For those families with the funds to own and operate several cars the additional cost of up to £50 per year would act as little more than a minor inconvenience and hence there would be no encouragement to reduce car ownership. Conversely, those who very occasionally park in disc zones would find the cost of doing so sufficient to perhaps elect to avoid such parking places. Whilst a flat charge covering both short and long term parking has the benefit of being simple, that is perhaps the only positive feature. The Department does not support this policy approach as an element of funding.

A2. A paid parking clock - all controlled areas

- 5.7 Following discussion with Deputies Lowe and Brouard the Department understands that the intention of the amendment was that the requirement to display a paid parking clock would cover all disc parking places and all 23 hour approved parking areas and that the income raised would be approximately £1.15m, being equivalent to what would have been raised by paid parking in the Transport Strategy income and expenditure table for 2016. This is, therefore, the funding element set out in this section.
- 5.8 The display of a paid parking clock would be required for all short and long stay disc parking places under the Ordinance and the Vehicular Traffic Ordinance as amended, **and** all other approved parking places under the Road Traffic Ordinance. This would cover disc parking places during the disc controlled hours and would include all 23 hour approved parking places (but **not** other States land, such as the headlands or car parks serving States buildings). It is assumed that 35,000 clocks would be sold generating income in the following ranges: at £40 per clock an income of £1.4m; at £30 per clock an income of £1.05m and at £50 per clock an income of £1.75m. A fee of £33 would be required, based on 35,000 sales, to generate the intended £1.15m

- 5.9 If it is the States desire that paid parking clocks should be displayed at all car parking areas owned by the States then such land would need to be designated as either disc parking or approved parking and signed accordingly. It should be noted that if, for example, short stay, long stay or 23 hour parking was applied to Sir Charles Frossard House or the Hospital car parks then the land would be treated as public parking available for all comers to park and hence potentially seriously impact on the effective operation of those buildings.

Advantages and disadvantages

- 5.10 As this model includes those who use 23 hour approved parking places it could be argued that it is slightly fairer than A1 above. Conversely, many 23hr parking places are in residential areas and estates and it might be argued that paid parking should not be targeted at residential areas. Certainly, the consultations carried out by the department in preparing the Integrated Transport Strategy did not support island-wide paid parking. This point aside, the model is largely the same as that set out in A1 and is not supported by the Department.

A3. A paid parking clock - differentiated by parking duration

- 5.11 An annual paid parking rate covering all disc parking places (i.e. short and long term disc parking places) would be set, together with a discounted rate for annual short term only (less than 5 hours) paid parking. An ‘all-areas’ (covering short and long stay disc parking places and 23hr approved parking places) annual paid parking rate could also be operated as could a two week all areas tourist rate. The four different types of paid parking clock (covering the disc parking places and approved parking places under the Road Traffic Ordinance and the Vehicular Traffic Ordinance) (but **not** other States land, such as the headlands or car parks serving States buildings) would all be charged at different rates. Such an approach addresses to a degree the fairness concerns that might apply to A1 and A2 above and allows drivers to purchase the form of paid parking that best suits their needs. This may then have some minor advantageous impacts on the actual use of parking spaces. It is assumed that hire car companies would offer customers the standard long stay paid parking as this would, in nearly all cases, work out more economical than the short term tourist clock but that would be a matter for each hire car company. Hire car companies could legitimately charge a refundable deposit against loss or damage to the evidence that the parking charge had been paid (see *a to c* below) to ensure its safe return and then charge a daily or weekly rate for the use of the paid parking according to their preference.
- 5.12 The Department estimates that sales volumes would be in the order of 3,000 “all areas” charged at £50; 3,000 “long and short stay disc zone” charged at £40; 30,000 “short stay only” charged at £30 and 2,000 “tourist clocks” (two week validity all areas) charged at £12 generating annual income of approximately £1.2m.

Advantages and disadvantages

- 5.13 Whilst such a paid parking system is more refined, arguably fairer and provides the potential for some small degree of behavioural influence the charge will still be seen as a sunk cost and hence will largely fail to incentivise the use of alternative travel methods. It is also more complex to administer. As such the Department does not support this policy approach as a funding element.

A4. A paid parking clock - differentiated by parking duration and period validity

- 5.14 A Monthly “all areas” i.e. all disc parking places (short and long stay) and all approved parking places (23 hour) under the Road Traffic Ordinance and the Vehicular Traffic Ordinance (but **not** other States land, such as the headlands or car parks serving States buildings) option would be sold at a cost of £20 which would equate to less than £1 a working day for parking. A two week all areas version, which would also be convenient for tourists, would cost £12. A “non-commuters option” covering short stay disc zone places and 23 hour approved parking areas but excluding 5 and 10 hour zones would be available at a cost of £50 per annum. An annual long stay version would not be available in accordance with the Transport Strategy’s objective of encouraging commuters to use alternative transport means for some journeys. Although it might seem odd including 23 hour parking with the short term disc parking these approved parking zones are generally in residential areas and many will also form part of the proposals for the St Peter Port and St Sampson Residential Parking Scheme, which, if approved, will require residents to pay for a permit.
- 5.15 The Department estimates that sales of the monthly all-areas would be in the region of 18000 at £20. Sales of the two week version would be circa 4000 at £12 and the non-commuters version would be circa 30,000 at £50 raising in total approximately £1.9m.

Advantages and disadvantages

- 5.16 If a parking clock system is to be adopted this is the only system that, to a very limited degree, supports the strategy aims. It is fairer than the other systems allowing motorists to choose the paid parking option that meets their needs whilst at the same time introducing an element of disincentive to long term disc parking. Nevertheless, the costs remain low and generally it will be treated as a sunk cost. Some motorists may, during the summer season, choose to use alternative transport rather than pay the monthly long term parking charge and this would be in accordance with the strategy. However, as any need for long term parking during the month in question necessitates purchase of the monthly card the incentive to use alternative transport for some journeys is much reduced. The system lacks the flexibility of a daily paid parking charge and lacks the ability to support modal shift and as such it is not supported by the Department as a funding element.

Administrative considerations applying to any of the above paid parking approaches.

- i. In order to maximise the volume of sales and to prevent clock sharing it is proposed that the demonstration of paid parking is single use and assigned to a specific vehicle.
- ii. The current system of displaying time or arrival by displaying a clock would continue. Clocks will also include a day wheel (alongside the hours and minutes wheels) on the parking clocks in order to assist with enforcement of 23hr parking areas.
- iii. To avoid undue wastage paid parking would be evidenced by a stamp or voucher or Windscreen Display rather than by annually renewing the parking clock itself.
- iv. In that paid parking evidence would be assigned to a specific vehicle and in that the States would have no control over who was driving that vehicle at any given time, it would be impractical to provide discounts or exemptions to certain groups using the standard parking spaces as it would be impossible for a traffic warden to know who the driver was and therefore what rate of paid parking applies. The potential for misuse of the discounted or exempt system would be high. Disabled persons parking in disabled spaces and displaying the Blue Badge would be exempt from paid parking.
- v. The requirement to demonstrate payment of paid parking should be limited to short and/or long term disc parking places and/or 23 hour approved parking places only.
- vi. An Ordinance would need to be made under the Road Traffic (Parking Fees and Charges) (Enabling Provisions) (Guernsey) Law 2009 (“2009 Enabling Law”) together with consequential amendments, for example, to existing road traffic and parking legislation to give effect to paid parking. At least three months should be allowed for legislative drafting.
- vii. The fees may currently be set by Ordinance under the 2009 Enabling Law. It is proposed that the paid parking fee set by Ordinance could be amended by Regulation of the Department such regulation to be subsequently ratified by the States thus enabling the fee to easily follow inflation and administrative costs without burdening the States with unnecessary debates whilst still enabling the States the ability to annul a regulation of the Department.

Visual demonstration of payment of paid parking.

- a) As evidence that the parking fee had been paid a stamp could be issued which would only become valid when adhered to a parking clock onto which is clearly written in indelible ink the registration number of the car to which the clock and parking stamp apply. The existing parking clocks

would need to be redesigned to create space for the registration number and for affixing annual stamps. There is already an identified need to provide a day wheel (alongside the hours and minutes wheels) on the parking clocks in order to assist with enforcement of 23hr parking areas. The stamps would indicate the valid period and the nature of paid parking covered and could be used for the parking policies set out in A1 and A2 without difficulty. The stamps could also be used for A3 and A4, save that the two weeks all-areas tourist stamp would need to be date stamped at the point of sale thus limiting the likely retail outlets. The use of short period stamps (for A4) is likely to quickly necessitate the renewal of the parking clocks. Loss of a clock would also amount to loss of the paid parking fee and in some cases the detail that would need to be included on the stamp could render it confusing and/or difficult to read. For these reasons the Department does not support this approach.

- b) An alternative approach to evidencing the payment of the paid parking fee could be the use of a windscreen display disc much like the old motor tax discs. The parking clock (including a day wheel if used in 23 hour parking areas) would be used as at present. The Windscreen display disc would display the valid period, applicable parking areas and have an area in which the vehicle registration number would be written. Basic security features to avoid copying and/or self-printing would be included. The two week all-areas tourist disc would also have a space where the date of first use could be written. The windscreen display discs could, therefore, be used for the parking policies set out in A1 to A4 without difficulty, could readily be clear and legible, would not be affected by loss of a clock and would be cheap to produce and distribute. The Department considers that this approach is currently operationally the best method of evidencing payment under a paid parking clock system.
- c) As a further alternative a vignette could be used in a similar manner to the motor tax and motorway toll vignettes widely used in Europe. A vignette is a windscreen sticker designed to break up if removed and hence its construction ensures it can only be used with a single vehicle. The vignette is perhaps best thought of as a hybrid between the stamp and the windscreen display disc. With a Vignette loss of the clock would not result in loss of the paid parking fee but it is likely to be less easy to write a start date on a vignette and hence its use for tourist or short period validity paid parking is more restricted than the Windscreen disc. Some vignettes used in Europe have the day and month indicated around the edge of the stamp and the valid date is clipped (similar to clipping railway tickets) at the point of sale. This approach may limit the number of retail outlets willing to stock the vignette. A scratch card system could be adopted to overcome this issue but generally the vignette offers no substantial benefits over the windscreen display disc. For these reasons the Department does not support this option as the mechanism by which paid parking payment would be evidenced.

Offences

- 5.17 Parking in a paid parking area without displaying the valid and appropriate evidence of payment in the prescribed manner or displaying evidence of paid parking but including a registration number that has been altered would be an offence and treated in the same way as not displaying a parking disc clock or overstaying the allotted time and carry the same penalties to those that currently apply.

Distribution

- 5.18 The validity period of the evidence of payment of annual paid parking would run from January 1st to December 31st. Discs or stamps for the coming year would be put on sale no sooner than November 1st of the preceding year. If it proves desirable to introduce the paid parking for the first time during the latter months of 2015, there would be transitional provisions in relation to this first year so that the display of evidence of paid parking for the forthcoming year would also cover the few months remaining in 2015 being the year in which paid parking was introduced. So, for example, if paid parking was introduced on 1 September 2015, the discs or stamps would be sold with a life of one year (2016) but would also be valid, at no additional cost, for the months remaining in 2015 following the introduction of paid parking.
- 5.19 The Department would provide the stamps or discs (whichever might be adopted) to retail outlets wishing to sell them as is the current practice with parking clocks. The retail outlets would pay to the Environment Department the paid parking sum (the sum set by the States) and be permitted to sell the stamps/discs having applied, as is the case at present, whatever mark-up they consider appropriate. However, both the stamp or disc and advertising material required to be prominently displayed at the point of sale (as a condition of permission to retail the stamps or discs) would clearly indicate the cost of the paid parking element. The Department would also sell the stamps or discs from its traffic offices and potentially other States offices at face value. The per item production, storage and distribution cost of the stamps and discs, even with some security features incorporated, should not be significant but with the high volume of annual transactions a cost in the order of £50,000 per annum should be assumed
- 5.20 It has been suggested that the annual paid parking could be administered by enabling drivers to pay the annual charge as part of their vehicle insurance premium and that the insurance companies would collect and remit the fees to the States.
- 5.21 Individuals would advise the insurance company whether they wish to buy annual paid parking and the type of paid parking they wish to buy. The insurance companies would then issue the stamps or windscreen discs. There are, however, numerous problems with this proposal:

- I. People renew their insurance throughout the year and hence the insurance renewal would not align with the annual paid parking renewal.
- II. The insurance companies would not be able to sell the tourist paid parking stamp or disc.
- III. A person moving to the island with existing insurance would not be able to buy their paid parking without further transactions through their insurance company.
- IV. Requiring an insurance company to print a Windscreen Insurance Disc as evidence of insurance is a relative minor administrative burden. Requiring them to also print a stamp or disc of standard design but displaying the various parking options and requiring them to collect and remit money to the States is a much more significant burden.
- V. Several insurance companies registered to transact business on island are online companies with no actual local presence and even if the locally based companies (or more likely the brokers) are willing to undertake this additional administrative function it is most unlikely the online companies will be.
- VI. Insurance companies are likely to want to charge the States a handling fee on top of the actual administration costs thus reducing the income to the States from the scheme.
- VII. Some insurers operate via monthly direct debit and it is possible to cancel the insurance during the premium year and cancel the direct debit. The paid parking element would therefore have to be paid in full in the first instance requiring the companies to enter into two forms of transaction with some of their customers.
- VIII. Adding the paid parking charge to insurance premiums may encourage some drivers to avoid insuring their vehicles.

5.22 The Department considers that what limited benefits might exist by collecting paid parking through the vehicle insurance system are heavily outweighed by the complexities and disadvantages and the Department does not support the collection of parking charges in this way.

Element B: Pay per hour long-stay paid parking

5.23 Although recently rejected, the States has, during this term of Government, approved the principle of an hourly rate for long-stay paid parking as have previous States. Hourly paid parking is, therefore, included as a potential funding element. A much simplified system at a lower rate is presented such that only the Odeon, Salerie and North Beach compounds (excluding the East Arm) long-term (5 and 10 hour) disc parking areas would attract hourly paid parking between the hours of 08:00 and 18:00 Monday to Friday. Short term parking would remain free thus ensuring those shoppers who require their cars can continue to frequent Town free of parking charge. Commuters would also have the option of avoiding hourly paid parking charges by using those 5 and 10 hour spaces located other than at the three parking areas listed above. Long stay parking would be free on weekends and public and bank holidays. For the

purposes of this element a flat fee of 40p per hour is presented with no small car or low emission car discounts hence making administration and enforcement less complex. The 40p level is based on the fact that 60p has already been deemed by some to be too high and a sum lower than 40p would not present a worthwhile exercise. Parking in a paid parking area without displaying a valid paid parking receipt in the prescribed manner would be an offence and treated in the same way as not displaying a parking disc clock or overstaying the allotted time and carry the same penalties to those that currently apply.

- 5.24 The fees may currently be set by Ordinance under the 2009 Enabling Law. It is proposed that if an hourly paid parking fee is approved by the States as a funding element, the fee set by Ordinance could be amended by Regulation of the Department such regulation to be subsequently ratified by the States thus enabling the fee to easily follow inflation and administrative costs without burdening the States with unnecessary debates whilst still enabling the States the ability to annul a regulation of the Department.
- 5.25 A mixed system of electronic transactions including online payment and pay and display machines could be used thus supporting Guernsey's move to a digital future. It would be necessary to tender the long-stay paid parking system in accordance with States procurement rules. Paid parking systems relying on any form of pay and display or on site payment portal will also require planning permission in respect of the infrastructure followed by mobilisation and installation. An Ordinance would need to be made under the 2009 Enabling Law together with consequential amendments, for example, to existing road traffic and parking legislation, to give effect to this proposal and it would be necessary to clearly define all of the operational, policy and enforcement details in advance of legislative drafting. It is estimated that, including legislative drafting, tendering and installation, paid parking of this form would take in the order of one year to implement.
- 5.26 It is estimated that 10 to 15% of the income would be used in administering the scheme and that circa 20% of the chargeable hours would not be realised either due to vacant spaces or due to "leakage" in the system generated, for example, through overstaying the paid period and through unpaid change over periods or through the payment systems not operating. On the basis of 792 spaces, a potential 2500 hours per space per annum, an 85% occupancy factor and a 10% leakage factor of the resultant occupied spaces, an income of circa £600k could be assumed. The cost of collecting this income is difficult to calculate as more than one payment method would be provided but online transactions are estimated to cost circa £25k per annum whilst Pay and Display costs including annualised capital, serving and collection costs are estimated to be around £90k per annum. Net income is therefore estimated at £0.5m.

Advantages and disadvantages

- 5.27 Whilst the Department considers this the most acceptable of any of the forms of paid parking presented in this report in that it approximates more closely to the aims and original funding mechanisms set out in the Transport Strategy, achieves income from valuable areas of States land and drives modal shift, the policy as presented is weaker than that presented in the approved Transport Strategy. Adoption of this policy option would carry some of the negativity perceived to attach to hourly paid parking and require all the administrative and legislative support but would not deliver all the funding and modal shift envisaged in the original strategy report. The Department remains fully supportive of hourly paid parking but has not included it as an element in its recommended funding package due to recent decisions of the States.

Element C: Fuel excise duty

- 5.28 This funding element is a simple additional duty to that already charged on each litre of dutiable fuel sold. Fuel on which duty is currently charged is “gas oil” which includes diesel (but does not include heating oil or marine diesel) and petrol (but excluding petrol used for air navigation or marine navigation). The full year income is based on 10.8m litres of dutiable gas oil (including diesel) sold per annum and 21.5m litres of dutiable petrol sold per annum. Should a funding package be approved by the States that contains this element then the intention would be to introduce the additional duty at the earliest possible opportunity and certainly no later than at the next budget.
- 5.29 There is emerging evidence to demonstrate that diesel has additional environmental pollution issues when compared with petrol in terms of particulates emissions which, although they can be addressed to a degree by modern particulate filters, can present a significant health hazard. Therefore, to acknowledge this, a price differential between the duty charged on petrol and the duty charged on diesel could be applied. The Department has presented various duty rates and differentials in the funding option packages set out in section 8.

Advantages and disadvantages

- 5.30 With this funding element income can be achieved quickly as there are legislative mechanisms already in place in order to increase the fuel duty and it is assumed that there are no additional collection charges. The income achieved is, therefore, solely based on the additional duty charged. Those using the roads the most or those using the least fuel efficient vehicles would contribute the most and hence this is in accordance with the polluter pays principle of the transport strategy. The price elasticity of fuel would suggest that a moderate increase in duty per litre would have a minimal impact on volume of sales and this is particularly the case at present following the recent drops in fuel prices. Conversely, this means that a moderate increase in fuel duty will act as little more than a means of raising revenue to fund the other strategy measures and

will not of itself deliver any significant change in behavior. Businesses are likely to wish to transfer the additional costs to products and services and hence there is an inflationary argument especially if the additional duty is anything more than modest. The Department supports this funding element.

Element D: Bus fares

- 5.31 The standard bus fare is currently £1, with island resident OAPs, children under 3 years of age and students, not being private scholars of the colleges or living close to their school, travelling free of charge. Multi-journey as well as family and day and week carnets are also available. In 2014 the average fare per paying passenger equated to approximately £1 but this is a result of higher value day and weekly cards, the promotion of the round island route, the Guernsey Vaeux, higher value night fares and the unpopular and subsequently withdrawn £2 tourist rate, compensating for the multi journey carnets. Total fare paying passenger figures (excluding concessions and integrated school student carryings) in 2014 were 1.2m.
- 5.32 With the removal of the first registration duty and paid parking funding streams a completely free bus service (as approved in May 2014) is not considered affordable at this time. It is proposed that a standard cash fare of £1 remains in place but that this is supported by strongly promoted and heavily discounted frequent user products principally aimed at local resident users but including day cards and week cards aimed at meeting tourist needs but available to all. A monthly or longer period commuter card with online top-ups and other updated features would also be promoted. Such low fare period products would be designed to incentivise travel by bus. It is further proposed that island resident OAPs, children under 3 and all island students (including private scholars of the colleges or students living close to their school) should travel free of charge. The contract with CT plus provides for the potential of fare collection, banking and accounting and the administrative cost of introducing or retaining a fare is approximately £25,000 per annum. The intention would be that period products such as a monthly card offering unlimited travel would offer very significant discounts to the headline cash fare figure. The new fares would be introduced with effect from the 2015 winter timetable. It is estimated that fare income under these proposals would be approximately £0.75m per annum.

Advantages and disadvantages

- 5.33 No additional legislation would be required to retain or alter the fare card for bus journeys but it would be necessary to publicise and consult on the proposed fares prior to their introduction. Any decision on the level of fare must therefore be a decision in principle pending the outcome of the statutory consultation. The fare income could be achieved immediately however this only reduces the additional funding required rather than generating new funding for the strategy. Provided the multi-journey products made travel available for significantly less than the current cash fare then this would be consistent with the strategy aims to

encourage bus use. However, the benefit would clearly not be as significant as free bus fares. In recognition of the reluctance in some quarters to fully fund a free bus service and the loss of the necessary income to deliver free bus services the Department is prepared to support the retaining of a bus fare delivering income of approximately £0.75m per annum.

Element E: Benefit in kind

- 5.34 Benefit in kind was presented in detail to the States in the Treasury and Resources report dated 17 December 2014 (Billet d'Etat III, 2015) and the States resolved to not introduce a system for taxing, as a benefit in kind, the provision of employee provided parking. Nevertheless some deputies have suggested to the Department that a simple system of Benefit in Kind should be introduced and therefore this item is also included as a potential element.
- 5.35 A simple benefit in kind tax raised at the rate of 20% of the prescribed value of the benefit of a parking place set at £1000 by regulations made under the Income Tax (Guernsey) Law 1975 as amended would be £200. The benefit is valued at £1000 as this is an approximation to the annual long term commuter paid parking cost that would be incurred under hourly paid parking as set out in Element B above. The tax would only be applied to motor vehicle parking places provided for the benefit of employees and where those parking spaces are located within the areas zoned as residents parking areas in St Peter Port.
- 5.36 This funding element would have no significant additional administrative cost. The number of parking spaces captured under such a tax is unknown but is estimated to be approximately 2000 and therefore income would be approximately £0.4m.

Advantages and disadvantages

- 5.37 The Department recognises all the issues raised by the Treasury and Resources Department in its report dated 17 December 2014, (Billet d'Etat III 2015) concerning the various mechanisms and policies that could be applied in raising a parking benefit in kind. However, that report noted that many of the issues surrounding the valuation of a benefit in kind based on the actual value of a parking space could be avoided by setting the value by regulation. The tax would be relatively simple to raise and as the legislation would be achieved through regulation it could be quickly implemented. However, in the absence of paid parking as set out in Element B, the financial benefit to employees of employer provided parking would not exist. Similarly if paid parking was achieved through any of the clock options A1 to A4 the benefit would reduce to, at most, circa £240 per annum generating a tax income of only £48 per space which, at an assumed 2000 spaces would only generate income in the order of £0.1m. Therefore, due to the need for benefit in kind to go hand-in-hand with hourly long-stay paid parking, which is not being recommended in this report, the Department does not support Benefit in Kind as a funding element.

Element F: States employee paid parking

- 5.38 It is important to distinguish, for paid parking purposes, the difference between public parking areas and other States land. States land, for example at Sir Charles Frossard House or the Hospital, can be designated as public parking areas via the implementation of disc controlled parking under the Vehicular Traffic Ordinance. In doing so, however, the States would need to consider whether it wishes to utilise such land as part and parcel of an administrative function delivered from the associated offices or whether it should be a public controlled parking area available to all rather than just to callers to the business/service carried out at the associated premises and staff. If public parking is the desired use then paid parking could be introduced by designating the areas as short or long stay disc parking places or as approved parking places. In these resulting controlled areas the parking policies set out in sections A1 to A4 could apply. Conversely if the land is primarily used in support of service delivery from the offices then general public parking should be avoided and parking should be reserved for callers and staff. A parking charge could still be introduced in respect of staff parking if that is the will of the States but this would need to be achieved by means other than through paid parking and disc zones. The method of raising the charge is likely to be best prescribed by the property administrators who can take into account factors such as shared spaces, allocated spaces, essential use etc. It would seem reasonable to align the basic parking rate to either the benefit in kind rate (i.e. £200 as set out in element E) or the rate prevailing for long stay public places (i.e. aligned to element B) or aligned to the paid parking clock rate (elements A1 to A4) whichever may be adopted by the States.
- 5.39 The number of employee spaces across the States is estimated to be 3000, including parking spaces in schools, the Hospital, States Works, care homes and offices. In many of these cases the States require the employee to provide a vehicle for work and hence the number of parking spaces that could be charged will be fewer. Income could be in the region of £0.4m if the benefit in kind rate was applied based on approximately 2000 charged spaces at £200, or £0.3m if the hourly paid parking rate was charged.

Advantages and disadvantages

- 5.40 Legislation may be required if the charge was a parking charge imposed by the employer for using the employers land and the parking cost could potentially be deducted as part of payroll involving minimal administration costs. However, removing an existing employee's right or introducing a charge for that right may be deemed to be an employment issue and the States would need to consider the implications for such action in relation to each class of employee and each category of parking space. Further consideration would be required before this funding element could be pursued and consultation would have to be entered into with the staff affected and the union representatives. As such there may be a considerable lead in time to this element. Conversely if States employee paid parking is achieved through converting the land to public parking with disc parking places or approved parking places applied then legislation will be necessary.

- 5.41 The Department does not believe that such a scheme is beneficial overall but has included it here purely in response to calls for States employees to pay for workplace parking. The department considers that charging employees to park should only be delivered as part of a wider Benefit in Kind scheme (see E above) and, therefore, does not support this element.

Element G: Simplified and reduced first registration duty – emissions based

- 5.42 A simplified one-off first registration duty for new or new to the Island vehicles based only on a vehicle's carbon dioxide emissions (or engine size in the absence of emissions data), restricted to as few as four bands and with a differential for diesel and petrol engine vehicles could be introduced as per the table below:

CO ₂ emissions (g/km) Petrol	Engine Size (cc)* Petrol	CO ₂ emissions (g/km) Diesel	Engine Size (cc)* Diesel	First Registration Duty (£)
Up to 110	Up to 1000	Up to 100	Up to 1000	0
111g to 140	1001 to 1500	101 to 120	1001 to 1300	150
141 to 165	1501 to 1800	121 to 140	1301 to 1600	300
166 and over	1801 and over	141 and over	1601 and over	450

*Engine size only to be used in absence of CO₂ data.

- 5.43 Motorcycles above 500cc (diesel and petrol) would also attract a First Registration Duty set at £100. Vehicles specially adapted for disabled people would remain exempt from the duty but no other discounts or exemptions would be applied as the rates proposed are already very low and any amendments or discounts move away from the “simplified scheme” basis. Such a system with, even at the highest rate, a duty far below the cost of the vehicle should present no concerns in respect of insurance and loan facilities and there would be no need to discount commercial vehicles, Police and Emergency vehicles, agricultural vehicles, second hand vehicles, classic vehicles or mobile homes or any other vehicle being brought to the island for registration. The engine size alternative would be used only for those vehicles where there was no published CO₂ emissions figure.
- 5.44 The duty will apply when a vehicle is first registered in the Guernsey part of the register maintained under the Motor Taxation and Licensing (Guernsey) Law, 1987 ("**1987 Law**"), and not in the Alderney part of the register. The Department would look to ensure that, under section 3 of the Motor Vehicles (International) Circulation Ordinance, 1974, that vehicles are not illegally circulated on foreign plates to avoid the First Registration Duty. Legislation would be required to introduce the duty but much work in this respect has already been completed as a result of the States initial resolutions in support of a First Registration Duty.

- 5.45 Under section 2(10) of the 1987 Law, the method and rates of tax are set by Ordinance. The Department recommends that the 1987 Law is amended so that the Department has the power to amend the rates and bands of [motor tax, including] the First Registration Duty by regulation. Any such regulation would need to be laid before a meeting of the States of Deliberation as soon as possible after being made, where the States would have the opportunity to annul the regulations.
- 5.46 Based on historical sample data of the number of imported vehicles in each category income from such a scheme is estimated to be approximately £0.75m per annum.

Advantages and disadvantages

- 5.47 A system based on emissions for newly registered vehicles would be straightforward to introduce and manage. Administration costs would be minimal due to the relatively low number of vehicles to which the duty would apply each year and the availability of the existing registration administration system. Legislation has already been prepared but would require some amendment. However, the duty, when set at such a low level and applied as a one off duty on first registration, is unlikely to have a strong influence on buyer behaviour and therefore will not play a significant role in incentivising a more efficient fleet as the originally approved propositions would have done. Nevertheless, the duty does signal intent and supports the strategy especially if partnered with increases in fuel duty or, in due course, annual vehicle taxes. Therefore the Department supports this element for inclusion in funding packages.

Element H: Simplified and reduced first registration duty – width based

- 5.48 A simplified one off first registration duty for new or new to the Island vehicles based only on a vehicle's width (including commercial vehicles) and restricted to as few as five bands could be introduced as per the table below:

Width (mm)	Duty (£)
Up to 1750	0
1751 to 1800	150
1801 to 1850	300
1851 to 1900	450
1901 and over	900

- 5.49 Vehicles specially adapted for disabled people would remain exempt from the duty but no other discounts or exemptions would be applied as the rates proposed are already very low and any amendments or discounts move away from the “simplified scheme” basis. Such a system with, even at the highest rate, a duty far below the cost of the vehicle should present no concerns in respect of insurance and loan facilities and there would be no need to discount commercial

vehicles, police and emergency vehicles, agricultural vehicles, second-hand vehicles, classic vehicles or mobile homes or any other vehicle being brought to the island for registration.

- 5.50 The duty will apply when a vehicle is first registered in the Guernsey part of the register maintained under the 1987 Law and not in the Alderney part of the register. The Department would look to ensure that, under section 3 of the Motor Vehicles (International) Circulation Ordinance, 1974, that vehicles are not illegally circulated on foreign plates to avoid the First Registration Duty. Legislation would be required to introduce the duty but much work in this respect has already been completed as a result of the States initial resolutions in support of a First Registration Duty.
- 5.51 Under section 2(10) of the 1987 Law, the method and rates of tax are set by Ordinance. The Department recommends that the 1987 Law is amended so that the Department has the power to amend the rates and bands of [motor tax, including] the First Registration Duty by regulation. Any such regulation would need to be laid before a meeting of the States of Deliberation as soon as possible after being made, where the States would have the opportunity to annul the regulations.
- 5.52 Based on historical sample data of the number of imported vehicles in each category income from such a scheme is estimated to be approximately £0.6m per annum.

Advantages and disadvantages

- 5.53 A system based on width for newly registered vehicles would be relatively straightforward to introduce and manage and administration costs would be minimal due to the relatively low number of vehicles to which the duty would apply each year and the availability of the existing registration administration system. However, for those vehicles where width is not given on the official documentation the simple expedient of adopting a proxy (such as the engine size as is the case for emissions) is not available. Therefore, a duty on width will be more complex and resource intensive. Legislation has already been prepared but would require some amendment. The duty, when set at such a low level and applied as a one off duty on first registration is unlikely to have a strong influence on buyer behaviour and hence will not play a significant role in incentivising a narrower fleet as the originally approved propositions would have done. The duty does signal an intent and supports the strategy especially if partnered with the emissions duty, increases in fuel duty or, in due course, annual vehicle taxes. Nevertheless, due to the additional complexities associated with operating a width scheme, and considering the level of revenue, the Department has not carried this element forward into its preferred funding package.

I: Annual motor tax – emissions based

- 5.54 An annual recurring motor tax based on carbon dioxide emissions or engine size could be introduced alongside the existing fuel duty. As an *indicative* scheme potential bands are set out in the table below. Again engine size would only be used where CO₂ data was not available.

ANNUAL MOTOR TAX				
CO ₂ Emissions g/km Petrol	Alternative engine cc Petrol*	CO ₂ Emissions g/km Diesel	Alternative Engine cc Diesel*	Duty £
Up to 100	up to 800	Up to 90	up to 800	0
101 to 110	801 - 1000	91 to 100		0
111 to 120	1001 - 1200	101 to 110	801 - 1000	50
121 to 130	1201 - 1500	111 to 120	1001 - 1200	80
131 to 150	1501 - 1800	121 to 130	1201 - 1500	110
151 to 165	1801 - 2100	131 to 150	1501 - 1800	140
166 to 185	2101 - 2400	151 to 165	1801 - 2100	170
186 to 200	2401 - 2700	166 to 185	2101 - 2400	200
201 to 225	2701 - 3000	186 to 200	2401 - 2700	230
226 to 255	3001 - 3500	201 to 225	2701 - 3000	260
256 and over	3501 and over	226 and over	3001 and over	290

*Engine size only applicable in the absence of CO₂ data

A flat rate for Motorcycles above 500CC could be applied at £50.

- 5.55 It is assumed 55,000 vehicles would pay the annual tax including motorcycles over 500cc and commercial vehicles. It is anticipated that various exemptions and discounts would be introduced along the lines of those that previously existed but this would require some significant additional work in order to establish the current validity of such historic exemptions and discounts. The income is estimated to be in the range of £4m to £6m per annum. Whilst significant additional work would be required to firm up the income projection it should be recognised that annual road tax could raise income far in excess of that required to fund the Transport Strategy.

Advantages and disadvantages

- 5.56 Re-introduction of an annual tax and the administration that would be required, if tried and tested historical systems were used, would require additional staff resources including office space and facilities. However, evidence of payment of the tax could potentially be via the registration and accounting system rather than by windscreen disc display thus saving on the re-employment of those staff resources released with the removal of the previous scheme. The Department would, nevertheless, be required to generate and issue invoices in respect of the tax. Online payment systems could be set up but provision would be needed for payment in person at States offices for those not wishing to use online payment. Enforcement of such a digital payment scheme would be via the Police and

Traffic Wardens using hand held readers able to read or input the registration number and interrogate the DVL database to establish whether the tax in respect of that vehicle had been paid. Whilst it is the Department's understanding that readers capable of operating in such a way are being introduced by the Home Department, much work would be needed by both departments to ensure compatibility between the various systems. Such digital schemes remove the simple obvious visual indication of compliance and prevent public reporting of non-compliance.

- 5.57 In the first instance it would be necessary to populate the DVL database with CO₂ figures or engine size for every vehicle (some 70,000 vehicles) that is already on the database. This would be an extremely time consuming and resource-hungry exercise probably best achieved by outsourcing the function or by the employment of temporary data inputters. Significant IT technical issues are envisaged and set up costs are likely to be significant. The system could then be set up to auto-generate annual tax invoices based on the vehicle emissions data and any exemptions or discounts could be programmed into the system. It should be noted that whilst set up costs would be significant and current annual DVL administration costs would also increase, the collection costs as a percentage of income have historically only been in the order of 5% and as such this represents a reasonably efficient way to collect tax.
- 5.58 The re-establishment of an annual motor tax would require repealed legislation to be re-enacted and updated. If the method of collection and demonstration of tax paid is different to the tried and tested system operated historically, then it will be necessary to clearly define all of the operational, policy and enforcement details in advance of legislative drafting. Allowing for further investigation, further States reports, legislative drafting, IT development and data base population, a lead-in time of 12 to 18 months should be assumed.
- 5.59 An annual road tax based on emissions would, if set at appropriate bandings, support the transport strategy and incentivise modal shift to generally smaller and definitely cleaner vehicles. However, as indicated above, the income is likely to far exceed the funding required for the Transport Strategy and therefore this element might, more appropriately, be taken forward as part of the diversification of the tax base and as one of the environmental taxes that will be investigated by the Treasury and Resources Department following the amendment placed by Deputy Burford and Ogier (Billet d'Etat IV, 2015 article I amendment 14). As such, whilst the Department does support the reintroduction of an annual motor tax, it has not taken this element forward into its preferred funding package as it now lies more appropriately within the remit of Treasury and Resources. Nevertheless, should there be a desire to support this option now, the Department must make clear that it would require interim funding for the Transport Strategy to bridge the gap until the tax is up and running.

- 5.60 It should be noted that, whilst this section refers to an annual motor tax based on emissions, an annual motor tax based on width may also be considered to be desirable by some. The Department would strongly counsel against an annual tax based on width because, whilst engine size or emissions can be extracted from manufacturer's data including for older vehicles, width measurements especially for older vehicles are simply not readily available. An annual tax based on width would, therefore, necessitate the physical measuring of thousands, of vehicles in order to populate the data base and in the Department's view this would represent a totally inappropriate use of resources.
- 5.61 It has been suggested, as for the paid parking clock options, that an annual recurring motor tax could be administered by requiring vehicles to pay the annual tax as part of their vehicle insurance premium and that the insurance companies would collect and remit the fees to the States. All the comments made in respect of insurers collecting paid parking (in section A above) also apply to insurers collecting annual road tax. However, in addition, if the road tax was based on emissions and potentially including exemptions and discounts, as has historically been the case, the model becomes far more complex and would be exceptionally burdensome for insurers. The Department considers it most unlikely that the companies would be willing to operate in this way and the Department does not support such a collection model.

Element J: Transfer of vehicle ownership tax.

- 5.62 An administration fee of £25 is presently charged for the transfer of ownership of a vehicle on the Guernsey DVL register and to issue the updated vehicle registration certificates. This fee could be increased beyond the existing basic administration costs but to do so would be outwith the approved model for charging as recommended by the Policy Council. Therefore, the additional income would need to be raised as a tax. This could be achieved by an amendment to the Motor Taxation and Licensing Law 1987 so that there is express provision to provide for this tax under the Law. Approximately 12,500 transfers are chargeable annually and hence a doubling of the fee would raise £0.3m.

Advantages and disadvantages

- 5.63 There would be no additional administration or collection costs and the total £50 charge (£25 administration charge and £25 tax) in relation to the other vehicle sale costs is insignificant unless the vehicle being transferred is of minimum value. As such the charge may discourage the purchase of vehicles that should be removed from the road and thus supports the strategy aims. The transfer of vehicles for spares or for motorsports may be impacted. New legislation would be required to introduce this tax and this would place this current charge into a different category to other charges raised by the Driver and Vehicle Licensing unit. Whilst the volume of transactions identifies this Element as a potential area for revenue raising the Department does not support turning a single DVL service charge into a tax and hence does not support this new tax as a funding element.

6. **Roadworthiness testing.**

6.1 A Guernsey inspection of transport test akin to the MOT inspections but perhaps stripped down to a basic assessment of roadworthiness has been suggested as a funding option by the motor trade. Whilst such a system would generate additional work and income for Guernsey garages, it would not play any part in funding the strategy. This is because the costs the Department could raise would be restricted to passing on the costs incurred in:

- Setting and documenting the vehicle inspection system;
- Validating/check testing authorised garages and their record keeping;
- Validating/ check testing vehicle inspectors;
- Validating/check testing calibration of test equipment
- Inspecting/auditing the application of the vehicle inspection system including complaint and appeal handling.

6.2 These costs would be passed on to the garages that in turn would pass them onto the vehicle owners as part of the inspection cost. The garages would, of course, wish to include their own inspection staff and premises costs. Whilst, through liaison with the motor trade, the total costs could be calculated as a vehicle inspection cost which would then be prescribed in legislation this cost could not generate a profit to the States for application to the Transport Strategy. Any such additional funds would have to be raised through a new vehicle tax and vehicle taxes are already addressed under Elements G to J above.

6.3 The introduction of a Guernsey roadworthiness or safety test is not, therefore, a legitimate funding source and cannot be considered to be a funding element.

6.4 The Department would take this opportunity to comment on the development of the MOT or equivalent national tests across Europe. As is common for many subject areas, Europe is seeking to harmonise standards across Member States. As such, EU Directives have been approved which seek to harmonise vehicle inspection standards and which seek to make sharing of vehicle inspection records easier across member States. These new Directives do not seek to require that vehicles registered in non-Member States visiting (temporarily circulating) in Member States territory have an equivalent to an MOT. Clearly all national enforcement agencies have vehicle standards and can stop and inspect vehicles to ensure that they are fit to be circulated on the roads and the existence of an equivalent to an MOT may smooth that process but there is nothing in the current European Legislation and no current indication that future European legislation will prevent the entry of visiting vehicles that do not have an MOT or equivalent. The Department intends to place on the States of Guernsey website a clear statement that Guernsey does not operate an MOT style inspection system and therefore does not issue certificates but that it does operate an ad-hoc vehicle inspection and rectification system so as to help ensure that vehicles used on the public highway comply with requirements under existing legislation. The Department give consideration to creating a leaflet which may be carried by motorists visiting Europe explaining Guernsey's relationship with Europe and its approach to vehicle inspections.

7. Summary of Possible Funding Elements

7.1 The funding elements listed above are summarised in the table below along with the estimated potential annual income.

Element	Description	Potential Income £
A1	Annual paid parking restricted to short and long term disc parking	Up to 1,150,000
A2	A paid parking clock - all controlled areas	1,150,000
A3	A paid parking clock - differentiated by parking duration	1,200,000
A4	A paid parking clock - differentiated by parking duration and period validity	1,900,000
B	Pay per hour long-stay paid parking	500,000
C gas oil	Fuel excise duty - gas oil (diesel)per 1p increase (10.8m litres)	108,000
C petrol	Fuel excise duty – petrol per 1p increase(21.5m litres)	215,000
D	Bus fares with effect from 2015 winter timetable	750,000
E	Benefit in kind	400,000
F	States employee paid parking	400,000
G	Simplified and reduced first registration duty – emissions based	750,000
H	Simplified and reduced first registration duty – width based	600,000
I	Annual motor tax – emissions based	Up to 6,000,000
J	Transfer of vehicle ownership tax	300,000

8. Possible Funding Packages

8.1 The following funding packages adopt a mixture of some of the above funding elements and apply unit rates where appropriate, to generate a number of options for States' consideration. Members may wish to generate alternative options and it is hoped that the Department has provided sufficient information in the elements described above to assist in this respect. The options presented below, save for packages 1 and 2, are packages delivering the income required to fund the Transport Strategy.

8.2 Package 1 only contains funding element A2 (the intention of the Lowe/Brouard amendment paid parking clock) and is presented as a single element package in order to give effect to the resolution of the States (Billet III, 16 January 2015). The Department is not supporting this element, however, if it was to be approved the package would generate insufficient funds and additional funding elements would need to be identified by amendment to make up the required sum. Package 2 is an annual motor tax single element package (Element I) which would bring in a sum in excess of that required to fund the transport strategy.

8.3 Package 4 is the Department's preferred package to fund the transport strategy.

Package 1:

Element	Description	Detail	Projected income £
A2	A paid parking clock - all controlled areas	Lowe/ Brouard parking clock at £33	1,150,000

- 8.4 *Comment:* The department considers that if a paid parking clock is to be introduced there are other, more preferable, methods and the Department does not support this option for the reasons set out in Element A2. If however there is a desire to introduce this element, then in order to fund the transport strategy it will need to be supplemented by other elements to raise an additional £2.3m.

Package 2:

Element	Description	Detail	Projected income £
I	Annual motor tax – emissions based	Emission based vehicle tax ranging from £0 to £290	up to 6,000,000

- 8.5 *Comment:* The Department considers that there is significant merit in a reintroduction of an annual motor tax but is not recommending it in this report because (a) it would bring in excess revenue, (b) it would take too long to implement and (c) it is considered that it is more appropriately addressed by the Treasury and Resources as part of the wider tax review. However, should the States adopt this option it must be noted that a delay of 12 to 18 months will be experienced before strategy funding income is realised during which time elements of the strategy including the bus service will need to be funded.

Package 3:

Element	Description	Detail	Projected income £
C	Fuel excise duty (petrol and gas oil (diesel))	An increase of 8.5p x 32.3m litres	2,745,000
D	Bus fares (with effect from 2015 winter timetable)	£1 cash fare, heavily discounted frequent user and period rates	750,000
Total			3,495,000

- 8.6 *Comment:* This package has minimal administrative burdens and can be implemented quickly. It follows a user pays policy and meets the desire of those who would, apart from retaining a bus fare, fund the full strategy through a duty on fuel. However, such a jump in fuel prices could be inflationary if oil prices rise back to previous levels. The impact of larger fuel rises will pass through to goods and services and impact on people who do not own or drive motor vehicles. Because of the significant additional duty on fuel no differential is made between diesel and petrol as such a differential would

exacerbate the impact on commercial vehicles. The negatives outweigh the positives and for these reasons this package is not recommended by the Department as its preferred package.

Package 4:

Element	Description	Detail	Projected income £
C	Fuel excise duty – gas oil (diesel)	An increase of 7.5p x 10.8m litres	810,000
C	Fuel excise duty - petrol	An increase of 5.5p x 21.5m litres	1,180,000
D	Bus fares (with effect from 2015 winter timetable)	£1 cash fare, heavily discounted frequent user and period rates	750,000
G	Simplified and reduced first registration duty – emissions based	Emission based first registration vehicle tax ranging from £0 to £450 per vehicle	750,000
Total			3,490,000

- 8.7 *Comment:* This package supports the principles of the Transport Strategy, delivers some elements of the funding relatively quickly, spreads the costs over a wide range of users and does not involve overly complex or burdensome administrative requirements. **The Department supports this package of measures as its preferred package.**

Package 5:

Element	Description	Detail	Projected income £
A4	A paid parking clock - differentiated by parking duration and period validity	8000 monthly sale at £20; 30,000 all areas at £50; 4000 tourist at £12	1,900,000
C	Fuel excise duty – gas oil (diesel)	An increase of 3p x 10.8m litres	330,000
C	Fuel excise duty - petrol	An increase of 1p x 21.5m litres	215,000
D	Bus fares with effect from 2015 winter timetable	£1 cash fare, heavily promoted discounted frequent user and period rates	750,000
J	Transfer of vehicle ownership tax	12500 vehicles at £25	300,000
Total			3,489,000

- 8.8 *Comment:* This package largely supports the principles of the Transport Strategy, delivers some elements of the funding relatively quickly, spreads the costs over a wide range of users and does not involve overly complex or burdensome administrative requirements. However, it fails to deliver any

element of disincentive to car ownership and whilst the parking clock model A4 is the most sophisticated of the parking clock options it still essentially acts as a sunk cost and hence has limited impact on parking choice. If this package were adopted it would be necessary to decide on the method of evidencing paid parking and, as indicated in Element A (Visual demonstration of payment of paid parking), the Department prefers the use of a windscreen disc. The Department does not support this package.

9. Legislation, Costs and Resources

- 9.1 The legislative and resource constraints have been set out in each funding option A to J. The legislative drafting time required will depend on the funding package selected, but it is estimated that a minimum of three months drafting time will be required in most cases.

10. Consequential Amendments to Previous States Resolutions

- 10.1 In changing the manner in which the Transport Strategy will be funded and in light of recent States debates and resolutions it is necessary to make a number of consequential amendments to previous States Resolutions.
- 10.2 Firstly, as a result of the previous States debates and the resulting withdrawal of the proposed legislation for the introduction of a First Registration Duty based on width and CO₂ emissions it is necessary to rescind resolution VI.4 of Billet d'État No IX of 2014 concerning the introduction of a banded First Registration Duty based on CO₂ and Width as set out in that report.
- 10.3 It is also necessary to rescind resolution VI.24(a) of Billet d'État No IX of 2014 concerning the means of funding the strategy by First Registration Duty based on carbon dioxide emissions and vehicle width as set out in that report. Possible alternative first registration taxes are set out under elements G and H of this report.
- 10.4 Secondly the States is also recommended to rescind resolution VI.11 of Billet d'État No IX of 2014 concerning the direction to Treasury and Resources to classify the bus depot as a pipeline project for Capital Reserve funding. The funding for the bus garage was part of the strategy funding requirements which are addressed below. The Department will bring back to the States, as part of the next round of capital investment, the case for the construction of a bus depot and the funding required.
- 10.5 If the Department's preferred funding package is approved which includes the retention of a bus fare the States is recommended to rescind resolution VI.12 of Billet d'État No IX of 2014 concerning the implementation of free bus travel.
- 10.6 As the funding required to deliver the strategy, including the funding for the bus garage, has changed as a result of States decisions and will further change if the

proposals in this report are adopted it is necessary to rescind resolution VI.25 of Billet d'État No IX of 2014 directing the Treasury and Resources Department to take account of the strategy funding requirements as set out in Appendix 6 of that Minority Report when recommending cash limits and routine capital allocations for the Environment Department for 2015 and subsequent years. An alternative recommendation is included in this report to direct the Treasury and Resources Department to take account of the strategy funding requirements as set out in Section 3 of this report when recommending cash limits and routine capital allocations for the Environment Department for 2016 and subsequent years.

- 10.7 As a result of the delays in funding and hence implementing the strategy the States is recommended to rescind resolution VI.27 of Billet d'État No IX of 2014 concerning the date (December 2017) on which the Department would report back on the Strategy and to instead direct the Department to report back by December 2018.

11. Impacts for 2015

- 11.1 The Department's base Revenue cash limit and routine capital allocation for 2015 was increased by £2.22 million (£3.07million less £0.85million from paid parking income) to cover the cost of delivering the Transport Strategy as per the resolutions arising from the April 2014 States debate. However, following the States not resolving to support the funding arrangements the Treasury and Resources Department recommended to the Environment Department that it should not incur any further expenditure beyond that already committed.
- 11.2 Two key commitments were, therefore, essentially unfunded, namely the salaries of the staff appointed to take forward the Active Transport initiatives and more significantly the costs of the new bus contract.
- 11.3 As set out in section 3 above the new contract costs an additional £1.1m of which circa £700k is in respect of covering inflation and underfunding aspects of the previous contract and £400k resulting from improvements to the quality of the service and route improvements. Following discussions with the Treasury and Resources Department it was agreed that the Environment Department should meet the costs of the service improvements and enhancements from its 2015 base budget (i.e without recourse to Transport Strategy funding) whilst the inflationary and under funding costs would be allocated to the Department from the Budget Reserve.
- 11.4 As a consequence the Department has been required to fund circa £475k (£325k bus contract and £150k salary costs) from its baseline budget. Had the Department proceeded with its intention to make all bus travel free at the point of use this "deficit" would increase to circa £1.6m. The Department has carried out a 2015 budget rebasing exercise in an attempt to cover the £475k shortfall and at the time of writing, there remains a shortfall of circa £150k-200k.

- 11.5 Should the Department's proposed funding package be approved by the States and be implemented swiftly then circa £500k income would be realised in 2015 which would partially offset the additional costs incurred.

12. Advice of the Law Officers

- 12.1 The Law Officers of the Crown have been consulted on the proposals set out in this report and their comments have been taken into account during its preparation.

13. Compliance with States Strategic Policy

- 13.1 The Department believes that this Report conforms to the overarching strategies (fiscal and economic, social, environmental and infrastructure) set out in the States Strategic Plan. Clearly the report seeks to deliver environmental enhancement through a strategy that reduces the negative impacts of motor vehicles. However, adopting the recommendations of this report could result in a departure from aspects of the fiscal and economic strategy, specifically with regard to no real terms growth in revenue expenditure.

14. Consultation

- 14.1 The Department and its predecessors have previously consulted widely, frequently and extensively on the shape direction and delivery elements of a Transport Strategy including how it should be funded. As part of the preparation of the current (2014) approved strategy wide-ranging and extensive consultation was carried out including interviews, surveys, questionnaires and stakeholder meetings. Since the States debate on the strategy and especially during the time leading up to the debate on the legislation proposed to give effect to the First Registration Duty the Department met with various members of the motor industry and representatives of a campaign group. In the preparation of this report the Department has liaised with the Home Department concerning the proposed differential in duty on fuel and has met with Deputies Lowe and Brouard concerning the parking clock proposals and the intention of the amendment. Meetings have previously been held with the Bus Users Group concerning the retention of a bus fare. Any person or organisation wishing to make their views known has had the opportunity to raise concerns or make suggestions. Members of the public, companies and organisations also have the opportunity during the six weeks between the publication of this report and the States meeting to make their views known.

15. Conclusion

- 15.1 The States has spent the last decade debating Transport Strategies but with little in the way of actual meaningful delivery. The States has now approved an Integrated Transport Strategy with an Action Plan and the proposals contained in this report, specifically package 4, presents, in the opinion of the Board, an acceptable means by which those recommendations can be funded and taken forward.

16. Recommendation

The States is recommended to:

Funding Package for the Integrated Transport Strategy and Action Plan

1.
 - a. Agree and approve that the Integrated Transport Strategy and Action Plan will be funded by a combination of:
 - i. an increase of 5.5p per litre in the duty on petrol other than fuel used for air or marine navigation and an increase of 7.5p per litre gas oil (diesel) as set out in Element C of this Report,
 - ii. bus fares as set out in Element D of this Report,
 - iii. a banded First Registration Duty based on CO₂ emissions as set out in Element G of this Report,

as further described in Package 4 in this Report.

- b. Rescind
 - i. resolution VI.12 of Billet d'État No IX of 2014 concerning the implementation of free bus travel,
 - ii. resolution VI.4 of Billet d'État No IX of 2014 concerning the introduction of a banded First Registration Duty based on carbon dioxide emissions and vehicle width, and
 - iii. resolution VI.24(a) of Billet d'État No IX of 2014 concerning the means of funding the strategy by First Registration Duty based on carbon dioxide emissions and vehicle width.

Amendment of Motor Tax Rates by Regulation

2. Agree that the Department shall have the power to amend, by regulation, the rates and bands of motor tax, including the First Registration Duty based on CO₂ emissions as set out in Element G of this Report, well understood that such regulations would be laid before a meeting of the States of Deliberation as soon as possible after having being made, where the States would have the opportunity to annul the regulations.

Bus Depot

3.
 - a. Rescind resolution VI.11 of Billet d'État No IX of 2014 concerning the direction to Treasury and Resources to classify the bus depot as a pipeline project for Capital Reserve funding, and
 - b. note that the Department will present proposals for the construction of a bus depot as part of the next phase of capital bids under the States Capital Investment Programme.

Strategy Funding Requirements

4.
 - a. Rescind resolution VI.25 of Billet d'État No IX of 2014 directing the Treasury and Resources Department to take account of the strategy funding requirements as set out in Appendix 6 of the Minority Report referred to in resolution VI.1 of Billet d'État No IX of 2014 when recommending cash limits and routine capital allocations for the Environment Department for 2015 and subsequent years, and
 - b. direct the Treasury and Resources Department to take account of the strategy funding requirements as set out in section 3 of this report when recommending cash limits and routine capital allocations for the Environment Department for 2016 and subsequent years.

Reporting back to the States

5.
 - a. Rescind resolution VI.27 of Billet d'État No IX of 2014 concerning the date (December 2017) on which the Department would report back on the Strategy, and
 - b. direct the Environment Department to conduct a review of the Transport Strategy and report back to the States by December 2018 with an analysis of the effectiveness of the measures implemented, and recommendations in relation to changes that may be required in order to continue to deliver the Vision.

Preparation of Legislation

6. Direct the preparation of the legislation necessary to give effect to the above recommendations.

Yours faithfully

Y Burford
Minister

B L Brehaut
Deputy Minister

J A B Gollop
P A Harwood
E G Bebb

(N.B. The Treasury and Resources Department welcomes this policy letter and the Environment Department's commendable objective of ensuring that the Integrated Transport Strategy previously agreed by the States is funded. The Department is concerned that the 2015 budget for the Environment Department, which was approved by the States in October 2014, contains £1.47 million in respect of net revenue costs associated with the implementation of the Strategy (£2.42 million gross revenue costs when paid parking income is removed) for which no funding is currently in place. Following the States' decisions in February 2015, the Environment Department is not currently incurring expenditure on any initiatives apart from the continuation of service improvements to the scheduled bus service and staff costs. It is noted that the Environment Department is attempting to reprioritise its existing budget to meet these costs.

However, the Treasury and Resources Department has previously agreed a transfer from the Budget Reserve to the Environment Department's 2015 revenue budget of £520,000 in respect of the scheduled bus service contract, which had to be renewed with effect from 1 April 2015, to fund a like-for-like contract providing similar levels of service and the service improvements provided during the first quarter of 2015. It is noted that the ongoing cost of the renewed scheduled bus service contract is approximately £500,000 per annum more than anticipated in May 2014, when the States approved the Integrated Transport Strategy.

In respect of 2016, the funding mechanism recommended by the Environment Department is neutral in respect on the overall States' financial position when compared to that previously approved (in May 2014) but would mean that net revenue expenditure (i.e. the Environment Department's Cash Limit) needs to increase by a further £680,000. This would put increasing pressure on the States' fiscal objective of "*a real terms freeze on aggregate States' revenue expenditure.*" Funding this would result in a reduction of 0.4% for all Departments and Committees, excluding formula-led expenditure and the Health and Social Services Department. The Treasury and Resources Department is concerned that the States are being required to consider such additional funding requests which, in isolation, undoubtedly have merit, but may not be of the highest priority when considered alongside other competing and increasing demands for additional budget, particularly from the Health and Social Services Department.

In respect of the funding proposals, the Treasury and Resources Department is concerned that the proposed increase in fuel duty (which is estimated will increase inflation by approximately 0.1%) limits its flexibility to propose increases within the Budget Report as part of normal budgetary management. The Department has proposed within recent Budget Reports increases in fuel duty which at least maintain the duty's real value after inflation. Therefore, in respect of 2016, this could mean that some £500,000

(being the approximate value of a 3% inflation increase in fuel duty) might need to be found by increasing other taxes. In addition, fuel duty cannot be considered the most sustainable source of tax revenue given that improvements in vehicle efficiency will inevitably continue to lead to reductions in the volumes of motor fuel consumed, as is noted by the Environment Department in its policy letter. Furthermore, if the Integrated Transport Strategy achieves 'modal shift' there will be a reduction in the number of vehicle journeys undertaken and consequentially a further drop in fuel duty income.

The Treasury and Resources Department agrees with the Environment Department that the reintroduction of annual motor tax based on emissions would better support the Integrated Transport Strategy and incentivise modal shift to generally smaller and cleaner vehicles than an increase in fuel duty. This tax also has the benefit of broadening the tax base – potentially enabling a reduction in the quantum of and reliance on other taxes - and would provide a more sustainable source of funding than, for example, increases in fuel duty. It is noted that the Environment Department supports the reintroduction of an annual motor tax but did not propose this as the funding source within this policy letter because of the length of time estimated for its delivery, along with the fact that it could raise considerably more than is required for the Integrated Transport Strategy. However, the Treasury and Resources Department is of the view that, if this is an effective tax in delivering the objectives of the Integrated Transport Strategy then these should not be barriers to its introduction. For example, a temporary increase in fuel duty could fund the delivery of the Strategy in the short term which could then be removed as motor tax is introduced.

It is noted that the Environment Department is now recommending that the bus depot be considered as a proposal in the next round of capital prioritisation for funding directly from the Capital Reserve (i.e. from appropriations from General Revenue instead of by a proportion of the income derived from the Integrated Transport Strategy being appropriated to the Capital Reserve).

In conclusion, the Treasury and Resources Department considers it vital that a *sustainable* source of funding is now identified and approved for the Integrated Transport Strategy. If the States are not able to agree a funding mechanism, the Department is of the view that the resolutions to introduce the measures designed to deliver on the Strategy's objectives should then be rescinded. In short, it is not possible to have the Integrated Transport Strategy without any funding mechanisms.)

(N.B. Following the approval of an Integrated Transport Strategy, but the rejection of the main funding mechanisms required for its delivery, the Environment Department has had to review the funding options. The Policy Council acknowledges that the Environment Department has weighed up all possible funding options and has discounted those that either do not meet the objectives of the Strategy, or do not raise an adequate amount of funding. The Environment Department's preferred approach (Package 4) is unlikely to affect behaviour in terms of vehicle use or acquisition but does not conflict with the principles of the Strategy and, as structured, would raise the appropriate levels of funding without being significantly inflationary.

The package of measures preferred by the Environment Department tempers some of the concerns previously expressed by motor traders and others and is likely therefore to be more palatable to the industry and to the wider public. Therefore, by a majority, the Policy Council encourages the States of Deliberation to support funding mechanisms for the previously approved Strategy, particularly as it fulfils the States' strategic objectives.)

The States are asked to decide:-

XIII.- Whether, after consideration of the Policy Letter dated 6th May, 2015, of the Environment Department, they are of the opinion:-

1. To agree that the Integrated Transport Strategy and Action Plan will be funded by a combination of:
 - a) an increase of 5.5p per litre in the duty on petrol other than fuel used for air or marine navigation and an increase of 7.5p per litre gas oil (diesel) as set out in Element C of this Report;
 - b) bus fares as set out in Element D of that Policy Letter;
 - c) a banded First Registration Duty based on CO₂ emissions as set out in Element G of that Policy Letter.
2. To rescind:
 - a) Resolution VI.12 of Billet d'État No IX of 2014 concerning the implementation of free bus travel;
 - b) Resolution VI.4 of Billet d'État No IX of 2014 concerning the introduction of a banded First Registration Duty based on carbon dioxide emissions and vehicle width;
 - c) Resolution VI.24 (a) of Billet d'État No IX of 2014 concerning the means of funding the strategy by First Registration Duty based on carbon dioxide emissions and vehicle width.

3. To agree that the Environment Department shall have the power to amend, by regulation, the rates and bands of motor tax, including the First Registration Duty based on CO₂ emissions as set out in Element G of that Policy Letter, well understood that such regulations would be laid before a meeting of the States of Deliberation as soon as possible after having been made, where the States would have the opportunity to annul the regulations.
4. To rescind Resolution VI.11 of Billet d'État No IX of 2014 concerning the direction to the Treasury and Resources Department to classify the bus depot as a pipeline project for Capital Reserve funding.
5. To note that the Environment Department will present proposals for the construction of a bus depot as part of the next phase of capital bids under the States Capital Investment Programme.
6. To rescind Resolution VI.25 of Billet d'État No IX of 2014 directing the Treasury and Resources Department to take account of the strategy funding requirements as set out in Appendix 6 of the Minority Report referred to in resolution VI.1 of Billet d'État No IX of 2014 when recommending cash limits and routine capital allocations for the Environment Department for 2015 and subsequent years.
7. To direct the Treasury and Resources Department to take account of the strategy funding requirements as set out in section 3 of that Policy Letter when recommending cash limits and routine capital allocations for the Environment Department for 2016 and subsequent years.
8. To rescind resolution VI.27 of Billet d'État No IX of 2014 concerning the date (December 2017) on which the Environment Department would report back on the Strategy.
9. To direct the Environment Department to conduct a review of the Transport Strategy and report back to the States by December 2018 with an analysis of the effectiveness of the measures implemented, and recommendations in relation to changes that may be required in order to continue to deliver the Vision.
10. To direct the preparation of such legislation as may be necessary to give effect to the above decisions.

COMMERCE AND EMPLOYMENT DEPARTMENT

**AMENDMENTS TO STATUTORY MINIMUM WAGE ARRANGEMENTS
TO COME INTO FORCE ON 1 OCTOBER 2015**

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

23rd April 2015

Dear Sir

1. Executive Summary

1.1 In accordance with the provisions of the Minimum Wage (Guernsey) Law, 2009, the Department is seeking States' agreement to its proposals to increase the Statutory Minimum Wage Rate.

1.2 The Department recommends the setting of the following Minimum Wage Rates:-

Adult Minimum Wage Rate at **£6.85** per hour (currently it is £6.65 for workers aged 18 and over)

The Young Persons' Rate at **£6.10** per hour (currently it is £5.55 for workers aged 16 and 17)

1.3 Further, the Department proposes, in accordance with section 33 of the Law, the States approves 1st October 2015 as the date for the introduction of these revised Minimum Wage Rates.

The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations, 2015 has been drawn up to give effect to the change in rates.

1.4 For information, it is the Board's intention to leave unchanged the Associated Rates (Accommodation and Food Offsets). These changes do not require the approval of the States.

Accommodation & Food Offset: **£92** per week (currently £92)

Accommodation only Offset: **£64** per week (currently £64)

2. Introduction

- 2.1 Section 5 of the Law requires the Department to carry out a public consultation prior to making regulations setting Minimum Wage Rates. A consultation was undertaken in February 2015 and the results are presented as Appendix I to this report.
- 2.2 Section 31 (3) of The Minimum Wage (Guernsey) Law, 2009 requires the States, on recommendation from the Commerce and Employment Department (the Department), to approve the Regulations that set the hourly Minimum Wage Rates, prior to them coming into effect.
- 2.3 The 2007 States' decision to implement a statutory minimum wage established the fundamental principle that it is unacceptable in the current social and economic climate in Guernsey for employees and workers to be paid low wages to the point of exploitation.
- 2.4 In 2010 the States approved an amendment which was worded as follows:-

To direct the Commerce & Employment Department, whilst having regard to the requirements of the Minimum Wage (Guernsey) Law, 2009, to take fully into account when reviewing minimum wage rates that it is a policy objective of the States of Deliberation that the young persons' minimum wage rate and the adult minimum wage rate should be equalised as soon as possible.

This view of the States has therefore become a relevant factor to be taken into account by the Department in arriving at its recommendation. (See section 3.2 (ii) below).

- 2.5 Following the introduction of the Statutory Minimum Wage in October 2010, there have been numerous enquiries from employers and employees regarding the Minimum Wage provisions. To date, three complaints have been determined by the Employment & Discrimination Tribunal and none by Civil (Magistrates) Court.

3. Considerations regarding the Minimum Wage & Associated Rates

3.1 Matters to be taken into account by the Department

The Minimum Wage Law requires the Department to consider and take into account the following before making Regulations setting the minimum wage rates:-

- a) *The current rate of minimum wage in the United Kingdom, the Isle of Man and Jersey*

Table 1 – Current Minimum Wage Rates – UK, the Isle of Man and Jersey

Minimum Wage (Hourly) Rates			
	Young Persons' Rate	Adult Rate	Date effective from
Guernsey	£5.55 (aged 16-17)	£6.65 (aged 18 & over)	1 st October 2014
UK	£3.79 (aged 16-17) £5.13 (aged 18-20)	£6.50 (aged 21 & over) £6.70 per hour (aged 21 & over) (an increase of 3%) - the biggest real terms rise in seven years.	1 st October 2014 1st October 2015 Recommended by the Low Pay Commission & accepted by UK government.
IOM	£4.67 (aged 16 but not 17) £5.24 (aged 17 but not 18)	£6.65 (aged 21 and over) £6.00 (aged 18 & over)	1st October 2014
Jersey	Trainee Rate for a maximum period of two years for those on training programmes accredited by Social Security Dept.: Year 1 £5.09 Year 2 £5.93	£6.78 (above compulsory school age, 16)	1st April 2015

b) The current economic and trading conditions prevailing in Guernsey

The Guernsey Gross Domestic Product 2013 Bulletin (issued 20.8.14), produced by the Policy Council measures total GDP for 2013 in Guernsey at an estimated £2,186 million which was 0.5% higher than 2012 in real terms. Finance sector output declined by an estimated 1.3%. Non-finance output is estimated to have increased by 0.5%. Total wages decreased by an estimated 0.8%.

c) The rate of inflation in Guernsey

	2014	RPI	RPIX
	March	2.8%	2.2%
	June	2.6%	2.1%
	September	2.5%	1.8%
	December	1.2%	0.6%

d) The rate of unemployment in Guernsey

Unemployment levels have remained fairly static with slight monthly variations. The level of unemployment in Guernsey remains low compared to the UK. Figures released by the Social Security Department for the week ending 28 February 2015 recorded that there were 386 people registered as unemployed in the island (1.2% of the economically active population). Of those, 45 (11.65%) were in the 16-19 age group. Compared to figures released on 1st March 2014, out of 443 unemployed, 58 (13.09%) were in the 16-19 age group. Hence, a slight reduction for the 16-19 year old age group.

In the Annual Independent Fiscal Review (October 2014) Professor Geoffrey Wood stated that *“although still remarkably low by international standards, unemployment in Guernsey remains well above the pre-crisis levels; but it seems to be heading in the right direction.”*

In addition, he commented *“By comparison with the UK, while Guernsey experienced a more gentle recession in the early years, the island now appears to be lagging behind in the recovery.”*¹

e) Current rates of pay in Guernsey

Currently the States of Guernsey does not collate job-related pay data and thus there is little precision in any information on the market rates for specific jobs. However, information is available on median earnings per sector in the Guernsey Annual Earnings Bulletin for 2014 (see f below). The Hostelry sector had the lowest median earnings in 2012 (£17,810) which was 41.2% lower than the overall median.

f) The increase or decrease in rates of pay in Guernsey over the previous twelve months

The most recent Guernsey Annual Earnings Bulletin (31.12.14) gives a measure of the average change in primary earnings from employment and reflects the underlying change. The Bulletin reports the following ‘Headlines’:

- *The median of all employees’ earnings was £30,290 in 2014, which, compared to 2013 is 2.2% higher in nominal terms and 0.4% higher in real terms than in 2013.*²
- *The median of male employees’ earnings was £33,280 in 2014, 1.6% higher in nominal terms and 0.4% higher in real terms than in 2013.*

¹ <http://www.gov.gg/annualindependentfiscalreview>

² Nominal earnings are expressed at monetary values of the stated time period, i.e. without making allowance for changes in inflation over time. Real earnings are presented to show trends after the effects of inflation have been removed.

- *The median of female employees' earnings was £27,040 in 2014 4% higher in nominal terms and 2.8% in real terms than in 2013.*
- *Employees aged 40 to 44 had the highest median earnings in 2014 at £37,180 whilst 15 to 19 year old employees had the lowest median earnings at £15,990.³*
- *The median earnings of finance sector employees were 41.2% higher than the overall median in 2014.*

The full version is available at www.gov.gg in the Government and Administration Section (Facts & Figures).

g) Such other factors that appear to the Department to be relevant

The following were identified as relevant when considering the statutory minimum wage rates:-

- i. Public and political expectations.
- ii. Creating a level playing field for employers recruiting staff from off-island in competition with the UK, Jersey and the Isle of Man.
- iii. The risk to financially vulnerable businesses.

3.2 The Department's comments on the other relevant factors

i. Public and political expectations

The introduction of a statutory minimum wage aimed to ensure that the '*... worst cases of financial exploitation in employment were eliminated*'. Given that only three complaints have been determined by the Employment and Discrimination Tribunal, the Department considers that this suggests that the rate is respected by most employers.

ii. Equalising the Minimum Wage Rates for all ages

The UK Low Pay Commission Report 2015 recommended, and the government has accepted, that the Adult Rate (21 years and over) should rise by 3% to **£6.70** from October 1 2015.

The Low Pay Commission recommended an increase of 2.2% to £3.87 in the 16-17 year old rate, an increase of 3.3% to £5.30 in the Youth Development Rate for those aged 18-20 and an increase of 2.6% to £2.80 in the Apprentice Rate

³ The number of hours worked are not recorded and the difference between male and female earnings and also between age groups 'may result from differences in number of hours worked as well as differences in rates of pay'

which applies to all apprentices in Year 1 of an apprenticeship and to 16-18 year old apprentices in any year of an apprenticeship.

Having reviewed the consultation responses, the Department continues to believe that there may be a risk of increasing youth unemployment were equalisation to be made and thus there is merit in differentiation in the minimum rates for those entering the labour market for the first time as the Young Persons' Rate incentivises employers to hire young people and to give them the opportunity to learn and develop essential labour market skills.

Nevertheless, the Department has taken into account the aspiration expressed in the States' Resolution (see paragraph 2.4 above) regarding the youth rate, and again recommends a higher increase in this rate than that recommended for the adult rate. The proposed rate changes will bring about a further decrease in the difference between the two rates from 1st October 2015.

iii. Creating a level playing field for employers recruiting staff from off-island in competition with the UK, Jersey and the Isle of Man

As many industries in Guernsey rely on seasonal workers, the Department believes that the minimum wage rates must strike a balance between setting rates that are affordable to all or most employers operating in Guernsey, and yet not fuel the perception given to potential employees that Guernsey "pays low wages". To date, the approach has been to set a rate that bears comparison with the UK, but which recognises the slightly higher cost of living in Guernsey.

The Department's decision on the adult minimum wage rate means that the rate in Guernsey remains higher than the UK rate. (See Table 1).

(It should also be noted that the qualifying age for the UK adult minimum wage is 21 years and in Jersey above the school leaving age of 16, as opposed to 18 years and over in Guernsey).

iv. The risk to financially vulnerable businesses

The Department gave consideration to the financial vulnerability of businesses that would be required to increase pay rates to at least match the statutory minimum wage. The Department believes that the contribution those businesses make to the economy, the employment of local labour, and their overall economic contribution to the Island has to be balanced by the reality that the States can also be subsidising these businesses as employees on low pay may still need to rely on financial assistance from the Social Security Department.

4. Consultation

- 4.1 Between 3rd February and 3rd March 2015, the Department carried out a public consultation on minimum wage rates. Some 250 consultation papers were sent

out to targeted groups including, hospitality, care and residential homes, agriculture and horticulture, trade unions and staff associations and groups representative of employers in Guernsey. Individual States members were also circulated with consultation papers and invited to comment.

- 4.2 Members of the public were also invited to contribute as individuals through the Commerce and Employment (Employment Relations) website. Media releases giving full details of the consultation were made available to all the local media.
- 4.3 A summary of the responses to the public consultation is in Appendix I to this report.
- 4.4 In addition the Social Security Department sent a letter of response to the consultation. That letter recommended “increasing the minimum wage not only to ensure that employers pay their employees fairly but also to reduce the burden on General Revenue and the taxpayer of supporting the lower paid in the community”. See Appendix II.
- 4.5 The Law Officers of the Crown have been consulted on the drafting of the necessary regulations to give effect to the recommendations in this report. The regulations recommended by the Law Officers were subsequently made by the Commerce and Employment Department.

5. Conclusions

- 5.1 Having considered the criteria and relevant factors as set out in the Law, the Department has concluded that there is a case to increase the Statutory Minimum Wage Rates with effect from 1st October 2015.
- 5.2 Even though the economy may be showing signs of growth, the rate of improvement may not yet be strong and in the light of this, it is the view of the Department that the minimum Wage Rate should be increased to £6.85 per hour. This is a higher percentage increase than the current RPI and therefore should help support the lower paid in the community as suggested by the Social Security Department.
- 5.3 As stated in section 3.2 (ii) the Department believes that full equalisation of the Young Persons’ Rate with the Adult Rate is not appropriate this year, but has again made recommendations which amount to the progressive reduction in the difference between these rates.
- 5.4 The Department has decided not to alter Offset Rates and so the current rates will continue to apply.

Accommodation and Food	£92 per week
Accommodation only	£64 per week.

5.5 The Department believes that it has complied fully with the six principles of corporate governance in the preparation of this States' Report.

6. Recommendations

6.1 The Department recommends that the States:

- (a) Approves The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) Regulations, 2014 (as set out in Appendix III to this Report) which increases the Minimum Wages Rates, as set out below:-

Adult Minimum Wage Rate to be set at **£6.85** per hour (For workers aged 18 and over).

Young Person's Minimum Wage Rate to be set at **£6.10** per hour (For workers aged 16 and 17).

- (b) Approve that the new rates (recommended at 6.1 (a) above) be effective from 1st October 2015.

Yours faithfully

K A Stewart
Minister

A H Brouard
Deputy Minister

D de G De Lisle
G M Collins
L S Trott
States Members

Advocate T Carey
Non States Member

APPENDIX I

Response Count - 108

Employee – 69

Trade Union – 1 (representative of many individual workers)

Employer – 21

Employers' Association – 3 (representative of many individual employers)

Other - 14

Question 2: Should the Minimum Wage and Associated Rates be changed with effect from 1 October 2015 or remain the same?			
Answer Options	No Change	Yes Change	Response Count
Minimum Wage Rate Over 18 years (currently £6.65 per hour)	21.9% (16)	78.1% (57)	73
Minimum Wage Rate 16-17 years (currently £5.55 per hour)	27.8% (20)	72.2% (52)	72
Max Accommodation Only Offset (currently £64 per week)	57.4% (39)	42.6% (29)	68
Max Accommodation and Food Offset (currently £92 per week)	55.1% (38)	44.9% (31)	69

Adult Rate (18 and over)

Of the 57 who responded, 50 suggested changes in the Adult Rate which were quantifiable, varying from £6.45 (-3%, one respondent) to £15 per hour. 3 suggested an increase to that of a living wage of an unspecified amount. Of the 49 suggesting an increase, the following broad trends emerged:

- 26 respondents suggested increases between £6.70 and £7.65
- 17 respondents suggested increases between £8 and £9.44
- 6 respondents suggested increases of £10 and above, including one at £15

Young Persons' Rate

Of those who responded, 44 suggested changes in the Young Persons' Rate which were quantifiable, ranging from -3% (one respondent) to £15 per hour. 1 Respondent suggested the rate remains the same at £5.55 per hour. 2 respondents suggested an increase to a living wage of an unspecified amount and 1 respondent suggested the rate

should be more in line with the Adult Rate. A further respondent suggested the introduction of a Youth Rate for apprentices at a lower rate than the Young Persons' Rate. Of the 43 who suggested an increase, the following broad trends emerged:

- 17 suggested increases to between £5.60 and £6.00
- 17 suggested increases in the band of £6.50 to £7.50
- 8 respondents suggested increases in the range of £8 and £9
- 1 respondent suggested an increase to £15

Maximum Accommodation Only Offset

Of those who responded 26 were quantifiable. 2 responded suggesting rates below the current rate of £62, 4 suggested the rate remain the same and 20 suggested increases between £65 and £105. Of those suggesting increases the following broad trends emerged:

- 14 suggested increases in the band of £65 to £75
- 4 suggested increases in the band £80 to £90
- 2 suggested increases to £100 and £105

Maximum Accommodation & Food Offset

Of those who responded 26 were quantifiable. 3 responded to suggest a decrease in the rate to between £70 and £90, 4 suggested the rate remain the same at £92 and 19 suggested increases which fell into three broad bands:

- 7 suggested rates between £93 and £94.76
- 9 suggested increases between £99 and £110 (of these, 6 suggested
- 3 suggested rates ranging from £120 to £150

APPENDIX II



SOCIAL SECURITY

A STATES OF GUERNSEY GOVERNMENT DEPARTMENT

Edward T. Wheadon House
 Le Truchot, St. Peter Port, Guernsey
 GY1 3WH
 Telephone +44 (0) 1481 732500
 Email enquiry@ssd.gov.gg
 www.gov.gg

Deputy K Stewart
 Minister
 Commerce and Employment Department
 Raymond Falla House
 PO Box 459
 Longue Rue
 St Martins
 GY1 6AF

Our Ref:

Your Ref:

Date: 27 February 2015

	CC	ACTION
MINISTER	<input checked="" type="checkbox"/>	
CO	<input checked="" type="checkbox"/>	
EDU		
CS	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>
FSD		
M&T		
R&CS		
COMMENTS		

Dear Deputy Stewart

The Minimum Wage and Associated Rates Consultation – 2015

Thank you for the opportunity to contribute to the Minimum Wage Rate setting consultation process. I have not completed the consultation questionnaire as the Department's views are set out in this letter.

The Social Security Department appreciates that in deciding at what levels to recommend setting the minimum wage rates, the Commerce and Employment Department must have regard to, amongst other things, the impact that an increase would have on employers. However, the Social Security Department requests that the Commerce and Employment Department also has regard to the impact that the level of the Minimum Wage has on social welfare expenditure, which is funded from General Revenue.

The current level of the Minimum Wage means that individuals, couples and families who are fully occupied in low paid work may be entitled to a substantial income 'top-up' from supplementary benefit to cover their basic costs of living and, in the case of families, a rent rebate from the Housing Department to provide affordable housing. Both of these benefits are means-tested benefits funded from General Revenue. A theoretical (but realistic) case study is set out in appendix 1 to illustrate this point.

Despite working as much as could reasonably be expected given their circumstances, this family is entitled to a supplementary benefit top-up of £71.78 per week, or £3,732.80 per annum to meet their needs as determined by the States through the annual supplementary benefit requirement rates setting process. In addition, the family is benefiting from a rent rebate of £109.71 per week, which amounts to an annual housing subsidy of £5,704.92.

In total, this low income working family would be entitled to receive means-tested social welfare benefits (excluding fringe benefits such as medical cover, Legal Aid, free school uniforms, rates, etc) of **over £9,400 in 2015**.

It should be noted that this is very conservative example based on a family with one young child, who have no childcare expenses as they make use of informal childcare when the wife is at work and who are living in social housing. The family's benefit entitlement would be higher if their child was older, if they had more children, if they had to pay for childcare or if they rented in the private sector.

During the week ending 31 January 2015, supplementary benefit top-ups totalling £33,784 (including the winter fuel allowance) were paid to support claimants (and their families) who were in work. Of course, some people in receipt of a supplementary benefit top-up are paid more than the minimum wage, but I make reference to this figure to demonstrate that many working families need financial support from the States.

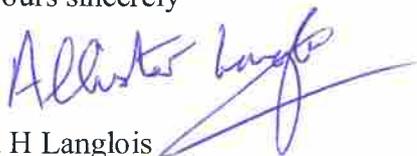
In December 2014, the Supplementary Benefit (Guernsey) Law, 1971 was amended to include a requirement that all people who claim supplementary benefit who are under pensionable age and all dependants who are of working age (i.e. over school leaving age but under pensionable age) and who have left full-time education, be in full-time remunerative work, or acting in compliance with work requirements relating to them, in order to be eligible for supplementary benefit, although some modifications and exceptions to this rule are set out in Regulations.

This new eligibility criterion, which is being implemented through the Department's 'Progress to Work' initiative, is expected to lead to an increase in the proportion of people in receipt of supplementary benefit who are in work and receiving a benefit top-up.

The Social Security Department recommends increasing the Minimum Wage rate not only to ensure that employers pay their employees fairly, but also to reduce the burden on General Revenue and the taxpayer of supporting the lower paid in the community. The higher the minimum wage, the less the amount of subsidy required from General Revenue to support low income working families.

I hope the above comments are of use.

Yours sincerely



A H Langlois
Minister

APPENDIX 1

Case study - 2015 supplementary benefit entitlement of a low paid working family**Family composition:**

Married couple with a three year old child.

Working hours:

Husband works 40 hours per week earning the adult Minimum Wage.

Wife works 20 hours per week earning the adult Minimum Wage.

Requirements

	Weekly	Annual	Notes
a Couple requirement rate	£246.06	£12,795.12	Based on long-term rates which are payable after 6 months of continuous entitlement
b Child under 5 requirement rate	£37.00	£1,924.00	Family has one child under the age of 5
c Rent allowance	£92.80	£4,825.60	Based on the rebated rent for a two bedroom semi-detached social housing property with a standard weekly rent of £202.51
d Total requirements	£375.86	£19,544.72	a+b+c

Income

e Gross earnings	£399.00	£20,748.00	Husband working 40 hours. Wife working 20 hours. Both at minimum wage.
f Family Allowance	£15.90	£826.80	
g Total gross income	£414.90	£21,574.80	e+f
h Income tax	£26.88	£1,398.00	20% of gross earnings less married couple's tax allowance
i Social Insurance	£23.94	£1,244.88	6% employees contribution on gross earnings
j Total deductions from income	£50.82	£2,642.88	h+i
k Net income	£364.08	£19,884.96	g-j

SPB calculation

Total requirements (d)

£375.86 £19,544.72

Less net income less earnings disregard (k - £60.00)

£304.08 £15,811.92

k-£60.00 earnings disregard (i.e. £30 applied for both husband and wife as they are both working)

Total supplementary benefit payable

£71.78 £3,732.80

APPENDIX III

GUERNSEY STATUTORY INSTRUMENT2015 No.

**The Minimum Wage (Prescribed Rates and Qualifications)
(Guernsey) (Amendment) Regulations, 2015**

<i>Made</i>	<i>23rd April, 2015</i>
<i>Coming into operation</i>	<i>1st October, 2015</i>
<i>Approved by the States</i>	<i>, 2015</i>

THE COMMERCE AND EMPLOYMENT DEPARTMENT, in exercise of the powers conferred on it by sections 1(3), 3(1) and 31 of the Minimum Wage (Guernsey) Law, 2009^a and all other powers enabling it in that behalf, hereby makes the following Regulations:-

Substitution of schedule to principal Regulations.

1. The principal Regulations are amended by substituting, for the Schedule to those regulations, the schedule contained in the Schedule to these Regulations.

Interpretation.

2. (1) In these Regulations, "**the principal Regulations**" means the Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) Regulations, 2012^b.

(2) The Interpretation (Guernsey) Law, 1948^c applies to the interpretation of these Regulations –

^a Order in Council No. I of 2010; as amended by Order in Council No. XIII of 2010.

^b G.S.I. No. 40 of 2012; as amended by G.S.I. No. 15 and No. 49 of 2014.

^c Ordres en Conseil Vol. XIII, p. 355.

(a) in the Islands of Guernsey, Herm and Jethou, and

(b) as it applies to the interpretation of an enactment.

(3) Any reference in these Regulations to an enactment is a reference thereto as from time to time amended, re-enacted (with or without modification), extended or applied.

(4) For the avoidance of doubt, unless the context requires otherwise, an expression used in these Regulations has the same meaning as in the Minimum Wage (Guernsey) Law, 2009.

Transitional and savings provisions.

3. (1) These regulations do not have effect in relation to any worker and his work until the first day of the first pay reference period of the worker in respect of that work.

(2) For the avoidance of doubt, before the first day of the first pay reference period of the worker in respect of that work, the principal Regulations have effect in relation to that worker and that work as if these Regulations had not been made.

(3) In this regulation, "**the first pay reference period**", in relation to a worker and his work, means the first pay reference period of the worker, in respect of that work, beginning on or after the date specified in regulation 4 for these Regulations to come into force.

Citation and commencement.

4. These Regulations may be cited as the Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) (Amendment) Regulations, 2015 and come into force on the 1st October, 2015.

Dated this 23rd day of April, 2015

K. A. STEWART

Minister of the Commerce and Employment Department

For and on behalf of the Department

Regulation 1.

SCHEDULE

SCHEDULE TO BE SUBSTITUTED FOR THE SCHEDULE TO THE PRINCIPAL
REGULATIONS

"SCHEDULE
MINIMUM WAGE RATES

Regulations 1(1) and 2(1)

Adult Minimum Wage Rate	£6.85 per hour.
Young Person's Minimum Wage Rate	£6.10 per hour."

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations replace the minimum wage rates for adults and young persons with the new rates of £6.85 per hour and £6.10 per hour, respectively, for the purposes of the Minimum Wage (Guernsey) Law, 2009 ("the Law").

Under section 31(3) of the Law, these Regulations do not have effect until approved by a resolution of the States. If so approved, these Regulations will come into force on the 1st October, 2015. The new rates will then take effect on and from the first day of the first pay reference period of each worker in respect of any particular work.

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

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

The States are asked to decide:-

XIV.- Whether, after consideration of the Policy Letter dated 23rd April, 2015, of the Commerce and Employment Department, they are of the opinion:-

1. To approve The Minimum Wage (Prescribed Rates and Qualifications) (Guernsey) Regulations, 2014 (as set out in Appendix III to that Policy Letter) which increases the Minimum Wages Rates, as set out below:-

Adult Minimum Wage Rate to be set at **£6.85** per hour (For workers aged 18 and over).

Young Person's Minimum Wage Rate to be set at **£6.10** per hour (For workers aged 16 and 17).

2. To approve that the new rates be effective from 1st October 2015.

**COMMERCE AND EMPLOYMENT DEPARTMENT
PUBLIC SERVICES DEPARTMENT**

STRATEGIC ROLL ON/ROLL OFF FERRY SERVICES

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

11th May 2015

Dear Sir

1. Executive Summary

- 1.1 Guernsey depends heavily upon reliable Roll On/Roll Off (RoRo) ferry services for its economic wellbeing. Each year, approaching 80% of the Island's foodstuffs and other 'non-bulk' commodities are imported by conventional RoRo ferry. In addition, fast ferry RoRo services accounted for respectively 348,000 and 76,000 passenger and car movements during 2014, undertaken by a combination of visitors to Guernsey and local residents. In other words, RoRo ferry services to and from the Island are strategically vital, "lifeline" services. Such services are currently provided by Condor Ltd. ("Condor") and they form a substantial network of car, passenger and freight services sailing to and from Jersey, Poole, Portsmouth and St Malo.
- 1.2 The strategic importance of these services is recognised in the revised and extended Joint Policy Statement on Sea Links (JPS) for the period ending 31 December 2018 that Guernsey and Jersey agreed at the end of 2012. The JPS included the policy objective of maintaining and developing, *"..year round, long-term, reliable, robust and reasonably priced roll on/roll off passenger, car and freight ferry services of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists..."*. It included a commitment that the Islands would work with the incumbent operator to review service requirements and make recommendations to their respective Assemblies regarding long-term arrangements for RoRo ferry services no later than 31st December 2016.
- 1.3 Guernsey does not currently have legal provisions in place to support the Island's strategic sea link services. The Island has been able to underpin the revised JPS with an extended and non-legally binding Memorandum of Understanding for services with the current operator through to 2024. However, in order to provide Guernsey with a greater level of protection and resilience in

- 1.4 respect of its lifeline RoRo sea link services, both in the immediate future and long term, this States Report recommends the development of appropriate legislation.

2. Roll On/Roll Off Ferry Services – Strategic Need and Economic Benefits

- 2.1 The provision of reliable and affordable sea link services is essential to the well-being of Guernsey on a number of levels. The Island produces a minimal amount of what it consumes – such consumption ranging from foodstuffs to building materials to clothing – and the Island has increasingly relied upon RoRo freight services for the importation of such goods for the past twenty years or so. As Guernsey’s food retailers have become more dependent upon “just in time” deliveries to fill their shelves, quality seaborne freight services have taken on even greater levels of importance.

- 2.2 In 2014, almost 80% of the commodities off-loaded at St Peter Port Harbour were shipped to the Island on RoRo freight vessels. The service provided by these vessels can justifiably be termed a ‘lifeline service’ for which Guernsey has a strategic need.

- 2.3 Guernsey has also benefited from high speed RoRo car and passenger ferry services on the northern route (UK Mainland) since 1993 and on the southern route (St Malo) since 1998. During 2014, the incumbent operator carried 348,000 passengers and 76,000 cars to and from Guernsey, this number comprising both local residents and visiting tourists. The availability of quality high speed sea travel, that includes an option for visitors to bring their vehicles to the Island, is an essential enabler to Guernsey’s visitor economy which it is estimated in 2014 contributed 4.9% (£108.8 million) of Guernsey’s Gross Domestic Product.

3. Security of Service

- 3.1 Paragraphs 2.1 to 2.3 above illustrate the Island’s reliance upon RoRo ferry services, particularly for freight importation purposes; a reliance that Guernsey shares with Jersey. The Islands have enjoyed a degree of security of service since the late 1990s when, following a tender process undertaken in 1998, Guernsey and Jersey entered into separate Service Level Agreements ("SLAs") with Condor.

- 3.2 Following on from the first SLAs, Guernsey and Jersey have entered into various successor operator agreements, both jointly and separately, with the aim of creating improved levels of certainty and resilience for the Islands. A timeline summary of the arrangements put in place since 1998 is attached as Appendix B.

- 3.3 Throughout this period, Jersey has been able to achieve a greater level of security of service than Guernsey through the granting to the operator of a Ramp Licence (providing access to its RoRo ramps) issued under the Harbour (Administration) (Jersey) Law, 1961 (as amended). Guernsey does not currently have legislation available to provide such security to a RoRo operator.

4. Progressing towards long term arrangements

- 4.1 In exercise of the commitment made in the JPS running to December 2018 (paragraph 1.2 refers), during the second quarter of 2013 Guernsey's Commerce and Employment Department and Public Services Department, acting through their joint Sub-Committee, the External Transport Group (ETG) (see Appendix A), and Jersey's Economic Development Department commenced the process of examining the Islands' anticipated long term needs against the incumbent operator's ability to meet such needs.
- 4.2 As stated at paragraph 3.3, whereas Jersey had available to it the ability to provide a greater level of certainty to any operator via legislation, Guernsey did not. Guernsey's ability to support its policy on RoRo sea links is currently restricted to a non-legally binding Memorandum of Understanding which makes provision, inter alia, for minimum service levels and standards. Nevertheless, discussions and negotiations with Guernsey and Jersey were undertaken on an "equal partner" basis.
- 4.3 Competition for services is generally beneficial to the consumer. That truism, in the context of Guernsey's and Jersey's strategic sea links, is however tempered by the Islands' experience of competition for RoRo services. Over the past two decades or so, there has been intermittent competition in respect of southern route car and passenger services. Whilst this has produced some temporary benefits for the consumer, ultimately the market has proved unable to sustain two operators. In examining the Islands' long term RoRo service needs, the potential damage to an operator providing comprehensive, year round lifeline services arising from the effects of "cherry-picking" of profitable routes was highlighted. The Islands' experience and information provided by the incumbent operator strongly indicated that:-
- 4.3.1 Although some segments of the incumbent operator's business are profitable - in particular, the northern freight route - others do not cover their incremental costs. This results in a cross subsidy to support those incremental and fixed costs.
- 4.3.2 In the event that unregulated competition was introduced without, for example, the imposition of minimum service standards, the northern route passenger service, particularly during the off season period, would be vulnerable. In other segments it was likely that a new entrant would be unable to cover the costs associated with running services or the entry of a competitor would bring about a reduction in the operator's profitability and its ability to cover the overall costs of the part of the Islands' service network that it retained which would impact upon the price or quality of its remaining segments.

- 4.4 With the full support of Guernsey's ETG, Jersey's Minister for Economic Development sought independent advice in early January 2014 from the Channel Islands Competition and Regulatory Authorities (CICRA) regarding whether it would be appropriate and in the economic interests of the States of Jersey and the States of Guernsey to enter into a long term arrangement with the incumbent operator for the provision of car, passenger and freight RoRo services between the Channel Islands and the United Kingdom and France. CICRA subsequently sought advice from Oxera Ltd, a consultancy specialising in the provision of specialist advice on transport infrastructure to operators, regulators and governments on business strategy, regulatory and competition issues.
- 4.5 Oxera's advice broadly endorsed the case for cross subsidy between different parts of the operation and recognised the threat to year round service provision that would result from permitting competitors to "cherry pick" for example, seasonal profitable routes. However, Oxera also advised that, in the event that negotiations for an agreement for services should be developed, the terms agreed should replicate the outcomes that could be expected by a competitive tender process that would include provision for some form of price limitation, service standards and efficiency requirements and a means of ensuring continuity of (service) supply.
- 4.6 Following the advice provided by CICRA/Oxera, Guernsey's ETG (under direction of the Boards of the Commerce and Employment and Public Services Departments) and Jersey's Economic Development Department proceeded with developing an essentially commercial Operating Agreement. The Agreement (which, because of Guernsey not having relevant legislation in place, is between the Jersey Harbour Master and Condor) was developed on an equal partnership basis with Guernsey, and with legal advice from the Law Officers' Chambers. The Operating Agreement, which can be viewed on line at: <http://bit.ly/1QdtIeY> covers RoRo car, passenger and freight services and, inter alia, includes conditions providing for:-
- Price and profit regulation
 - Base schedule (i.e. minimum) service requirements
 - Capacity servicing requirements
 - Operational and customer performance measures
 - Penalties (including termination for unresolved default within a set timescale)
 - Contingency planning
 - Fleet investments requirements to ensure ability to meet service requirements
 - A seven year review point during the term of the agreement.
- 4.7 While the Operating Agreement provides a high level of certainty to the operator, it is important to note that it allows the entry into the RoRo car, passenger and freight services market by an alternative operator - provided such operator is able, as a minimum standard and subject to further conditions, to

provide at least the minimum service level specified in the Agreement. Consequently, the agreement does not exclude competitors from this market, but it does prevent the "cherry picking" which could undermine and potentially put under threat the Islands' lifeline services.

- 4.8 On 24th June 2014 the Boards of the Commerce and Employment and Public Services Departments approved a revised JPS, extended to 2024 (Appendix C refers); this was followed on 28th July by the Policy Council's endorsement of the document and the policies contained therein. During July, Jersey followed its own political processes to gain formal approval of the JPS; subsequently an Operating Agreement between the Jersey's Harbour Master and Condor Ltd for services for RoRo car, passenger and freight services to 2024 was signed on 15th August.
- 4.9 Following approval of the JPS to 2024 and the finalisation of Jersey's Operating Agreement with Condor, as an interim measure and pending development of a Guernsey Operating Agreement, it was agreed with Condor to extend the non-legally binding Memorandum of Understanding for RoRo car, passenger and freight services through to 2024, thereby creating alignment with the JPS and the Jersey Operating Agreement. This was achieved by an exchange of letters with the Chief Executive Officer of Condor Ltd.
- 4.10 As a partner to Jersey in the JPS and having extended its non-legally binding MoU with Condor to 2024, Guernsey provided a signal of intent to extend arrangements with the company. However, taking a due diligence approach towards providing greater security for the Island's long term strategic RoRo service needs, a prudent decision was taken to seek independent advice on the economic justification for entering into a legally binding agreement with the incumbent operator, subject to the Island having first introduced supporting legislation. Consequently Frontier Economics Ltd was appointed to conduct an independent economic analysis of the proposed arrangements for RoRo sea link services.

5. Independent review of proposed arrangements

- 5.1 In respect of Guernsey's proposed arrangements (that would substantially mirror Jersey's) for long term RoRo car, passenger and freight services, Frontier Economics Ltd ("Frontier") stated;

"We find that, given the characteristics of the market for RoRo services to Guernsey, and the decision taken by the States of Jersey regarding future arrangements, that the proposed arrangements are justifiable, and are more likely to be more effective at meeting policy objectives than the proposed alternatives."

- 5.2 Frontier's report is at Appendix D. The main factors cited in the report as influencing its findings can be summarised as:

- Even together, Guernsey and Jersey represent a small market size for RoRo services which limits the extent of entry into and competition within the market.
- The existing service network arrangements provide cross subsidies. What is effectively a self funding concession model is considered superior to a state funded cross subsidy arrangement which is generally recognised as inefficient.
- The Jersey Operating Agreement contains substantial provisions that would also form part of Guernsey's Agreement that, inter alia, regulate the prices charged for services, specify the minimum frequency of services on all routes and ensure quality of services.
- Jersey and Guernsey negotiating together have improved bargaining power and the joint monitoring of arrangements generates economies of scale.

5.3 The opinion provided by Frontier gave clear endorsement to the development of arrangements with Condor similar to those in place in Jersey. The ETG consequently entered a four week consultation on 5th September 2014 giving the public and the business community the chance to comment upon Frontier's findings. The consultation was announced via a release to all media following which the Public Services Department Minister, (the then ETG Chairman) provided interviews, as requested. The consultation process generated just one response that made no direct comment on the issue of economic justification for the proposed arrangements. In the light of the response received, Frontier Economics reviewed and confirmed its earlier findings on 22nd October, 2014.

6. Guernsey's current legislative provision

6.1 Access to and use of the harbours of St Peter Port and St Sampson are controlled by the Harbourmaster using powers conferred on him by the Harbours Ordinance 1988, as amended (the "Ordinance").

6.2 In essence the provisions of the Ordinance are concerned with operational matters and the need to operate the harbours in a safe manner. They are not suitable for the new objective that the States wishes to meet, namely that of safeguarding strategic RoRo sea transport links. There is no reference in the Ordinance to any issues beyond the day-to-day operational needs of the harbours and marinas, which is entirely in keeping with its purpose and also the context in which it was brought into force. It is now time to consider new legislation that will encompass a wider remit and take into account the strategic needs of the Island. Such legislation would not impinge upon the Harbourmaster's powers under the Ordinance.

7. Proposed legislation

7.1 In order to create a firm legal basis for entering into a legally binding Operating Agreement in similar terms to the Jersey agreement, to provide greater security

and resilience to the Island's lifeline RoRo sea link services, and to achieve parity with Jersey in ongoing and future negotiation with the incumbent or future operators, Guernsey will need to put in place appropriate and proportionate regulatory legislation.

- 7.2 It is proposed that the legislation create a simple licensing regime, that will take into account the Commerce and Employment and Public Services Departments' joint policies on RoRo services in force from time to time, pursuant to which the Ro-Ro ramps at St Peter Port Harbour could not be used by an operator offering RoRo car, passenger and freight ferry services to and from the United Kingdom, Jersey or St Malo, except pursuant to a licence granted by the Commerce and Employment Department. That Department would be under a statutory duty to consult both the Public Services Department and the Harbourmaster before granting a licence. It is appropriate that the Commerce and Employment Department is the licensing authority in view of the vital economic and strategic importance to the Island of Ro-Ro services; equally, it is right that both the Public Services Department and the Harbourmaster should be consulted before a licence is granted, in view of that Department's mandated responsibilities and the Harbourmaster's statutory powers and duties.
- 7.3 The legislation will need to contain relevant supplementary provisions, providing for licences to be suspended and revoked in appropriate circumstances, appeals against such decisions, the publication of applications, and all other necessary supplementary and consequential provisions, including any required amendments to other legislation.

8. Consultation

- 8.1 As detailed in paragraph 5.3 above, the Public Services and Commerce and Employment Departments together ran a well-publicised period of consultation open to the public and the business community from 5 September to 3 October 2014.
- 8.2 The Harbourmaster has been consulted regarding the proposals contained within this States Report.
- 8.3 The Law Officers' Chambers have been consulted in relation to the preparation of this Report and the legal issues arising from the matters referred to therein.

9. Resources

- 9.1 It is not expected that the proposed new regime will add significantly to the demands placed upon the Departments. Consequently no additional financial or staff resources will arise for the States from the proposals and recommendations set out in this States Report.

10. Corporate Governance

- 10.1 The Commerce and Employment and Public Services Departments believe they have fully complied with the six principles of good governance in the public services in the preparation of this Report (set out in Billet D'Etat IV, 2011 and approved by the States).

11. Recommendation

- 11.1 The Commerce and Employment and Public Services Departments, recommend the States to:
1. approve the preparation of legislation to create a simple licensing regime that will take into account the Commerce and Employment and Public Services Departments' joint policies on RoRo services in force from time to time, pursuant to which the Ro-Ro ramps at St Peter Port Harbour could not be used by an operator offering RoRo car, passenger and freight ferry services to and from the United Kingdom, Jersey or St Malo, except pursuant to a licence granted by the Commerce and Employment Department; which Department would be under a statutory duty to consult both the Public Services Department and the Harbourmaster before granting such a licence, and
 2. approve the preparation of all necessary supplementary provisions within that legislation required to give effect to the above recommendation, including (but not limited to) provision for licences to be suspended and revoked in appropriate circumstances, appeals against decisions, the publication of applications, and any required amendments to other legislation.

Yours faithfully

K A Stewart
Minister

S J Ogier
Minister

A H Brouard
Deputy Minister

D J Duquemin
Deputy Minister

D de G De Lisle
G M Collins
L S Trott
States Members

P A Harwood
R A Jones
M H Dorey
States Members

Advocate T Carey, Non-States Member

Appendix A – External Transport Group Overview

The External Transport Group (ETG) was constituted as a joint Sub-Committee of the Commerce and Employment (C&E) and Public Services (PSD) Departments in September 2004.

Constitution

- The Minister of C&E and the Minister of PSD
- In addition a minimum of one member of C&E and one member of PSD, both of whom must be a sitting members of the States.

Chairmanship alternates periodically between the Ministers by agreement.

Mandate

To provide co-ordination of the activities of the Public Services Department as operator of the air and sea ports and the Commerce and Employment Department with its responsibilities for the promotion and provision of air and sea links and for the Island's economic wellbeing.

To advise the respective Departments and act under the delegated authority, in respect of :

- Maintaining and developing existing key air and sea transport routes.
- Promoting and developing as appropriate new and additional sea and air transport links both to and from the UK and into Europe.
- Assessing the impacts of new route/service developments on existing facilities and services at Guernsey Airport and at the Harbours.
- The development and implementation of operational policies,
- Advising on the introduction of legislation.

Appendix B

Timeline - Roll On/Roll Off Ferry Services following pan-Island 1998 tendering process

1998 – Guernsey’s then Transport Board and Jersey’s then Transport Authority undertake a joint tender process for UK – Channel Islands (the northern route) car and passenger services.

The incumbent operator, Condor Ltd, is successful following which Guernsey and Jersey entered into separate Service Level Agreements (SLA) with the company for northern route services. In Jersey’s case this was underpinned by a Ramp Licence, issued under the Harbours (Administration) (Jersey) Law, 1961.

2001 - The original SLAs are due to expire at the end of the year and are extended by Jersey and Guernsey respectively to the end of 2007 and 2008. The SLAs did not unequivocally grant exclusivity to Condor Ltd for northern route RoRo car and passenger services although they provided a high degree of comfort to the operator.

2007/8 - Car and passenger services on the southern (St Malo) route have been subject to intermittent competition. In the period up to 2007/8 Guernsey did not have an SLA in place on this route, although Jersey did in some cases, underpinned by the Ramp Licence system.

2008 - In 2008 Guernsey and Jersey first agreed a Joint Policy Statement ("JPS") on Sea Links in respect of existing (northern and southern) routes for a period through to 31 December 2013. That JPS, which concerned RoRo car and passenger services only, stated that the Islands shared a common aspiration:

“..to maintain and develop year round, long-term, reliable, robust and reasonably priced passenger car ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists. ..”

The JPS, which was approved by the Commerce and Employment Department and Public Services Department and endorsed by the Policy Council, broadly provided that unless market or operator failure occurred, the Islands would not pro-actively seek alternative operators before December 2013. In addition, a decision whether or not to seek tenders for services from January 2014 would be made jointly by the Islands with no less than 18 months notice before that date being provided to the then incumbent operator, Condor Ltd.

2009 (January) - Guernsey enters into a non-legally binding Memorandum of Understanding (MoU) with Condor Ltd for RoRo car and passenger services on the northern route, expiring 31 December 2013.

2009 (June) - Guernsey enters into a non-legally binding Memorandum of Understanding (MoU) with Condor Ltd for RoRo car and passenger services on the southern route, expiring 31 December 2013.

2011 (fourth quarter) - Discussions begin between the ETG, Jersey's Economic Development Department and Condor Ltd regarding a potential long term agreement for services beyond December 2013.

2012 (July) – A potential threat to the viability of strategic RoRo car, passenger and freight services is identified, partly precipitated by the removal by the UK Government, with effect from the beginning of April that year, of the Low Value Consignment Relief ("LVCR") concession the Islands had enjoyed until then.

Although some aspects of Condor's operations are profitable (particularly the northern freight route), others do not cover their costs and the loss of revenue arising from reduced freight carryings following the LVCR decision affects its profitability. In addition, the company was operating in a leisure market at that time that was still being adversely affected by the recessionary conditions that began to be felt in 2008/9. Taken together, it was considered that these factors represented a threat to the incumbent operator and, thus, to the Islands' strategic sea links.

The concerns identified in July 2012 arose at a time when the Islands were in early discussions with Condor about the potential to extend arrangements for services beyond 2013; as an element of those discussions, Guernsey and Jersey sought reassurance from the operator regarding its fleet replacement plans in order to maintain the standard of services required. A four month period of intense pan-Island negotiation with Condor Ltd resulted in an interim revision and extension to 31 December 2018 of the JPS, agreed at the end of 2012. Guernsey extended the non-legally binding MoU with Condor to December 2018 and included for the first time, RoRo freight services.

The interim and revised JPS stated that the extension presented '*.. an opportunity for the two Island governments to re-state their joint resolve to provide a coordinated and effective approach to sea transport whilst accepting that no long-term solution is currently available but needs to be considered. During the five year period between 2013 and 2018 the Jersey and Guernsey governments will continue to develop a coordinated and effective approach to sea transport that will lead to a fully integrated long term policy and strategy position. Thus, as a basic policy position, it is believed that, in the interests of the people of the Islands, the States of Guernsey and the States of Jersey should share a common aspiration..*', and that,

'.. the Islands and the incumbent operator will formally review and make recommendations on the extension, or otherwise, of arrangements beyond 31 December 2018 no later than 31 December 2016.'

2013 (second quarter) – Pan-Island negotiations in respect of a long term agreement for RoRo car, passenger and freight services begin with Condor Ltd. Early in discussions,

Condor Ltd identifies the then 'Austal 102' (renamed 'Condor Liberation' 21 March 2015) as a key vessel asset replacement.

2014 (24 June) –Guernsey's Public Services and Commerce and Employment Departments approve a recommendation for a revised and extended ten year JPS to 2024 (that includes a review at seven years); Policy Council endorsement is provided 28 July 2014. The JPS provides for continuation of the relationship with Condor Ltd for RoRo car, passenger and freight services. The Departments also approved, and the Policy Council subsequently endorsed, the drafting of a States Report recommending the development of appropriate legislation to safeguard the Islands strategic sea links which, once enacted, would facilitate the development of an Operating Agreement between Guernsey and Condor Ltd with a similar content and purpose to that drafted between Jersey's Harbour Master and the company.

2014 (14 July) – Jersey's then Economic Development Department Minister presents a Ministerial Decision to the States of Jersey Assembly setting out the justification for a revised policy on sea links, as prescribed by the JPS. Subsequently, after following due process under the Harbour (Administration) (Jersey) Law, 1961 (as amended), Jersey's Harbour Master and Condor Ltd entered into an Operating Agreement for RoRo car, passenger and freight services on 15 August 2014 for a ten year period, with a seven year review point. Within days, Condor Ltd gives final commitment to the £50m purchase of the then Austal 102.

Appendix C



Guernsey & Jersey Joint Policy Statement on Sea Links

Revised Policy

The Governments of Jersey and Guernsey have a common policy objective that governs the provision of Roll on/Roll Off (Ro/Ro) car, passenger and freight services:

“..to maintain and develop year round, long-term, reliable, robust and reasonably priced roll on/roll off passenger, car and freight ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.”

In order to ensure continued provision of effective Ro/Ro car, passenger and freight services (“Ferry Services”) in the medium to long term, the Jersey and Guernsey Governments have agreed a revised Joint Policy position for the period to 2024. This revised policy will facilitate significant capital investment in the immediate replacement of the ageing fast ferries that service the Jersey-Guernsey-UK route and, in due course, future investment to replace the fast ferry currently servicing the southern (St Malo) route.

The policy allows for the development of an agreement for the provision of ferry services in two phases:

1. An initial period of 7 years from the commencement of an agreement. This will represent an extension of approximately 2 ½ years from the current policy position announced in December 2012. This extension reflects the significant immediate capital investment that is to be made by the incumbent operator
2. Should no agreement have been reached with the incumbent operator on the long term provision of ferry services by the date of expiry of the initial 7 year agreement, an additional 3 year period, within which the Governments of Jersey and Guernsey will determine the manner in which the long term provision of car passenger and freight services to the Islands will be met.

The Joint Policy Statement is not intended to create any third party legal rights or representations.

Background

In December 2012 the Governments of Jersey and Guernsey agreed a revised Joint Policy Statement on ferry services for the period to 31 December 2018. Throughout 2013 and 2014, the two Islands have continued in-depth discussions concerning a long-term agreement for Ro/Ro ferry services with the incumbent operator. These discussions identified an opportunity for a capital investment by the incumbent operator of some £50 million to procure a new ferry. The new vessel will replace the fast ferries currently operating on the UK routes with a new and larger high speed fast ferry.

The immediate purchase of a new vessel delivers a more reliable and sustainable service and presents the opportunity for the governments of Jersey and Guernsey to re-state their joint resolve to provide a coordinated and effective approach to sea transport. During the initial seven year period the governments of Jersey and Guernsey will maintain a coordinated and effective approach to sea transport policy and operations. During that period the governments of Jersey and Guernsey will continue to work closely to evaluate ferry service requirements to support the residents and the economic development of both islands.

At the end of the first phase of the agreement, the governments of Jersey and Guernsey will have determined the manner in which the long-term provision of ferry services will be met. It is clear that, in the interests of both residents and broader economic prosperity of the Islands, a common policy position should be maintained.

Policy aims can, however, conflict with each other - a low priced fare may be bought with a consequently lower quality or less reliable service. The guarantee of a robust service (such as an all-weather conventional ship available at the same time as a fast ferry) comes at a price. Low fares and higher capacity may result from competition but make it impossible to sustain the breadth of service in the long-term given local economies of scale. Both Islands recognise this inevitable, and to some extent insoluble, dilemma and on the other hand, the importance of such links to the Islands.

Government can guide and oversee matters but there is always a limit to how much is achievable by overt intervention. A good level of service and reasonable fares are undoubtedly achieved by a strong relationship between shipping operators and their customers and not by government standing proxy for one party alone. Because of this, the current stance of the two Islands is that they will most effectively achieve their sea transport aims by establishing some overarching parameters and keeping regulatory interventions to a minimum. On the UK northern routes, a year round reliable car and passenger service is currently being achieved by the incumbent operator offering a conventional Ro/Pax and fast ferry Ro/Ro service. The incumbent operator also provides year round reliable fast ferry car and passenger services on the southern route to France.

The two Islands believe it is appropriate to include within the Statement the provision of Ro/Ro freight ferry services for the Island that are of sufficient quality, capacity and frequency to meet the needs of residents and to support economic sustainability and development. It is evident that the success of the Ro/Ro freight services is integral to the sustainability of the car and passenger ferry services. In part, car, passenger and freight services share common infrastructure (the conventional ferries) but it is clear that the profitability of freight services helps to sustain competitive car and passenger services which are valued by residents and vital to both islands' tourism sectors.

For the avoidance of any doubt, should any new application be received for the provision of a Ro/Ro service network to and from the UK and France, the effect that such additional competition and capacity would have on the both the northern and/or southern routes will be jointly assessed by the governments of Guernsey and Jersey. In addition, the governments of Jersey and Guernsey will assess the operational and commercial capability and capacity of any a potential new operator to provide an acceptable level of services, (i.e. a standard of service that meets the Islands' agreed common policy position).

In summary, the Chairman of the External Transport Group in Guernsey and the Minister for Economic Development in Jersey have agreed that:

- The administrations in Guernsey and Jersey will work with the incumbent operator to ensure that the Islands' sea transport needs will continue to be adequately served. Remedies will be sought for identified deficiencies.
- Unless there is demonstrable and material market change that the operator is unable to meet or operator deficiency generally, (against the requirements of this Joint Policy Statement, or the Islands' supporting agreements), neither administration will pro-actively seek new operators on any existing Ro/Ro route in the initial 7-year period. However, the option to respond to either situation will be retained and exercised in the event of such deficiency. Notwithstanding the underlying policy, the Islands will formally review and make recommendations on the extension, or otherwise, of arrangements beyond the additional 3 year period, no later than the date of expiry of the initial 7 year agreement.
- Notwithstanding the above, an application from any new operator would be fully evaluated with particular regard to how the proposal might meet the policy aims of both Islands.
- Any decision whether or not to seek alternative service operators at the date of expiry of the initial 7 year agreement (or earlier in response to operator deficiency), will be a collective decision taken by the two Islands.

- If, to achieve the policy aims, seeking an alternative operator was believed necessary on any particular route, the incumbent operator would be given thirty six months' notice of such intention, except where there was a significant threat to adequate service which demanded a shorter timescale.

The EU Regulation 1177/2010 on Sea Passenger Rights came into force on 18 December 2012 and affords protection of passengers in respect of certain aspects of the services they receive. In addition to the obligations placed upon the operator by these provisions the Islands require that, in respect of RoRo car, passenger and freight services, any operator should:

- Maintain published information in the form of a Customer Charter, Terms and Conditions of Carriage or some other means, which as a minimum will include the effective management of passengers and their cars in the event of delayed, disrupted or cancelled sailings and meet other requirements laid down by the two administrations;
- Address all customer complaints openly, effectively and swiftly;
- Undertake passenger surveys on a regular basis to test the services delivered and publicise the results;
- Maintain and publish a record of vessel performance against schedules and publicise results;
- Seek comment and/or approval, as necessary, from the relevant administration for annual sailing schedules;
- Seek approval from the relevant administration for increases in maximum prices and to provide commercial reasoning for such increases.

The primary mechanisms that influence restrictions upon fare increases are the market and actual, or the threat of, competition. Alternatively, the threat of entry, substitution to other modes of transport and consumer behaviour (choosing not to travel) may act as a sufficient constraint on prices where direct competition does not exist. The Islands' current stance is to maintain the option to develop local competition law further or increase the use of competition regulatory authorities rather than direct government intervention should this prove necessary.

Customer complaints not successfully dealt with by the operators themselves will as far as possible be addressed by the appropriate bodies such as local Trading Standards services and the UK's Voluntary Complaint Handling Body (the Cruise Lines International Association, CLIA UK & Ireland).

The mechanisms that each Island uses to manage the routes, control market access and administer the harbours will differ and will be set out in individual Island agreements.

However, the broad policy structure made explicit in these statements will be adhered to by both administrations.

States of Guernsey

States of Jersey

Chairman External Transport Group

Minister for Economic Development

Dated -

Dated -

APPENDIX D



Economic review of the proposed arrangements for roll-on and roll-off ferry services to and from Guernsey

A REPORT PREPARED FOR THE STATES OF GUERNSEY
COMMERCE AND EMPLOYMENT DEPARTMENT AND PUBLIC
SERVICES DEPARTMENT, ACTING AS THE EXTERNAL
TRANSPORT GROUP

September 2014

Economic review of the proposed arrangements for roll-on and roll-off ferry services to and from Guernsey

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Economic review of the proposed arrangements for roll-on and roll-off ferry services to and from Guernsey

Executive Summary

The States of Guernsey Commerce and Employment Department, and Public Services Department, acting as the External Transport Group, have sought a review of the economic justification of proposed arrangements for the supply of Roll-on, Roll-off passenger, car and freight services (“RoRo” services) to and from Guernsey.

The arrangements are described in a Joint Policy Statement (JPS) developed by the respective governments of the States of Jersey and the States of Guernsey. The arrangements would be in effect until 2024. They provide for a period of 7 years in which the respective governments of the States of Jersey and Guernsey will not proactively seek an alternative provider to the current incumbent, Condor Ferries Ltd (“Condor”), for the provision of RoRo services. If, during this 7 year period, an agreement has not been reached with the incumbent regarding the long term provision of RoRo services, the JPS provides for an additional 3-year period during which the incumbent would continue to provide services, while the authorities will consider the appropriate arrangements for the long term provision of RoRo services.

The States of Jersey has given effect to these arrangements through an Operating Agreement between the Harbour Master of Jersey and Condor, which is underpinned by a statutory regulatory regime. There is no equivalent legislation currently in place in Guernsey. The Operating Agreement notes that a separate agreement, similar in substance to the Operating Agreement, will be entered into between the States of Guernsey and Condor.

Prior to formalising arrangements with Condor and to making recommendations in respect of any new supporting legislation, and consistent with legal advice, the authorities of the States of Guernsey wish to ensure that the proposed arrangements are economically justifiable. In considering whether the arrangements are economically justifiable, we consider whether they are likely to be more effective in meeting the objectives set by the States of Guernsey for the provision of RoRo services, than potential alternative arrangements. This approach is consistent with the concept of “proportionality”, which is central to principles of good regulation

The objectives set for the supply of RoRo services to and from Guernsey require that these services be affordable, reliable, sustainable, and offered on a continuous, year-round basis. RoRo services have been identified as a key facilitator of Guernsey’s economic development.

The two alternative arrangements that are considered are: (i) a liberalised approach in which profitable segments are open to competition. In that case, unprofitable segments would need to be supported through a specific subsidy mechanism funded by the States; and (ii) a concession approach in which a contract for the supply of all services is put to tender, and the winning bidder is given the right to supply services for a determined period (say, 10 years). This approach could be supplemented by a system of state subsidies for unprofitable routes.

We find that, given the characteristics of the market for RoRo services to Guernsey, and the decision taken by the States of Jersey regarding future arrangements, that the proposed arrangements are justifiable, and are likely to be more effective at meeting policy objectives than the proposed alternatives.

The main factors influencing this finding are as follows:

- The small size of the market for RoRo services to Guernsey and Jersey, which has historically limited the extent of entry and competition within the market. Implementing arrangements that differ from those pursued by the States of Jersey could further fragment the market, and could also preclude economies of scale and scope that are associated with servicing both jurisdictions.
- Under the proposed arrangements, the operation of unprofitable routes is supported through cross-subsidies from profitable activities. By contrast, under the competitive model, and probably under the concession model, specific state subsidies would need to be agreed. While there are recognised inefficiencies with cross-subsidies, these are likely to be a superior alternative to an approach based on state subsidies in this particular case. This is mainly because of the administrative costs associated with implementing a system of state subsidies. A concession model applied to the current incumbent could operate on the basis of cross-subsidies; at best this would amount to mimicking the proposed arrangements.
- Jersey's Operating Agreement with Condor contains substantial provisions regulating prices charged for services, the minimum frequency of services on all routes, as well as the quality of services. These provisions would be replicated in any agreement entered into by the States of Guernsey, and can be expected to mitigate the negative consequences of market power. Under the competitive model, the extent to which market power is mitigated relies on the intensity of competition, which historically has been low. A concession model would need to replicate the regulatory provisions contained in the Operating Agreement.
- A joint approach between the States of Guernsey and the States of Jersey would allow both parties to improve their bargaining position vis à vis Condor, or any other provider of RoRo services. This is important given the essential nature of the service and the limited number of potential providers. Moreover, whereas fragmentation would also increase the costs of supervising the implementation of arrangements, joint monitoring allows administrative resources to be pooled.
- One of the challenges in any long-term arrangement is the impossibility of foreseeing all contingencies, which leads to contracts being incompletely specified. Incompleteness in contracts can open the scope for haggling and opportunistic behaviour. Such issues can be mitigated through formal channels, including joint bargaining as explained above, and informal and tacit means. In the case of Condor, the long-standing relationship between the

service provider and the Channel Islands, and the fact that key members of senior management are long-standing island residents, create a set of informal, but nonetheless significant, mechanisms that can mitigate the scope for opportunistic behaviour. These informal mechanisms may be missing in the case of other operators.

1 Introduction

1.1 Context and rationale for the review

The States of Guernsey Commerce and Employment and Public Services Departments, acting as the External Transport Group, have requested a review of the economic justification of the proposed arrangements for the provision of roll-on and roll-off passenger, car and freight ferry services (hereafter “RoRo services”) to and from Guernsey.

These arrangements are described in the Joint Policy Statement (JPS) developed by the respective authorities of the States of Jersey and the States of Guernsey. The arrangements provided for in the JPS run to 2024. They have received political approval in both jurisdictions in June-July 2014.

In summary, the arrangements provide for a period of 7 years in which the governments of the States of Jersey and the States of Guernsey will not proactively seek an alternative provider to the current incumbent, Condor Ferries (“Condor”), for the provision of RoRo services. The JPS states that if, during this 7 year period, an agreement has not been reached with the incumbent regarding the long term provision of RoRo services, there shall be an additional 3 year period during which the incumbent would continue to provide services, while the authorities will consider the appropriate arrangements for the long term provisions of RoRo services.

On 15 August 2014, an Operating Agreement between the Harbour Master of Jersey and Condor was signed, to give effect to these arrangements on behalf of the States of Jersey. The Operating Agreement notes that a separate agreement, similar in substance to the Operating Agreement, will be concluded by the States of Guernsey and Condor. In addition, the Jersey Harbour Master issued, on 15 August 2014 a *Permit for Combined RoRo Freight, Passenger and Private Vehicle Car Ferry Services* for the period to 14 August 2024, thereby providing access to Jersey Harbour’s RoRo facilities. This permit was issued pursuant to a legislative regulatory regime; there are currently no equivalent statutory provisions in place in Guernsey.

Prior to entering into its own operating agreement with Condor, and making recommendations in respect of any new supporting legislation, the authorities of the States of Guernsey wish to satisfy themselves of the economic justification of the proposed arrangements.

In considering the economic justification of the proposed arrangements, it is necessary to take into account the fact that these arrangements are conditioned by wider policy objectives sought by the authorities, and that they also determine the nature and extent of competition in the relevant markets. Because of this, the appropriate way of considering the question of justification is to examine whether the proposed arrangements are likely to be more effective than alternative arrangements at meeting the objectives set by the authorities of the States of Guernsey. This approach is consistent with the concept of “proportionality” in regulation, which is a central part of good regulatory practice.

1.2 Approach to the review and structure of this report

Given the proposed approach this report is structured as follows:

- Section 2 provides a description of the context for RoRo services to Guernsey, a description of the proposed arrangements and the rationale for these.
- Section 3 provides a description of potential alternatives and assesses these against the objectives sought by the States of Guernsey. It concludes by comparing the effectiveness of the proposed arrangements versus the alternatives considered.

2 Roll-on, roll-off ferry services: key economic aspects and policy objectives

2.1 Overview and context

- Affordable, reliable and accessible transport links, including sea links, have been identified as a key facilitator of Guernsey’s economic and social development.¹
- The JPS reflects these concerns in a common policy objective stating that “...to maintain and develop year-round, long-term, reliable, robust and reasonably priced roll on/roll off passenger, car and freight ferry services. These services should be of sufficient quality and frequency to meet the travel needs of Island residents, the business community and tourists.”
- RoRo ferry services connect Guernsey to the UK via Weymouth, Poole and Portsmouth (the “Northern Route”), and to France via St. Malo (the “Southern Route”). They also connect Guernsey to Jersey.
- Data from the 2013 Visitor Exit Survey show that visitor departures by sea were 34.5% of all departures.
- Information provided by Condor suggests that 80 per cent of passenger and car traffic to and from the Channel Islands is transported between the months of May and October. Freight volumes are relatively stable throughout the year.
- Competition in RoRo services to and from the Channel Islands has historically been limited. The principal operator, Condor, was established in Guernsey, and is currently owned by the Macquarie Infrastructure Company LLC (“Macquarie”). Other RoRo providers have entered the market on occasion, but for limited duration and with a limited offering of services.
- Condor operates a mix of vessels, including conventional craft and high speed craft. In August 2014, following the conclusion of the Operating Agreement by the States of Jersey and the granting of a RoRo Ferry Services Permit, Condor finalised the purchase of a £50 million vessel. This investment is expected to deliver operational efficiencies in terms of reduced fuel and maintenance costs, and because its speed and capacity would allow Condor to retire two older high speed vessels. The newer vessel is also capable of operation in a broader range of conditions compared to the older vessels, allowing for greater reliability in supply.

¹ States of Guernsey (2014), A Strategic Framework for Guernsey’s Economic Development, p 4.

- RoRo passenger services to the UK, and to a lesser extent to France, compete with air transport services (including fly-drive options). Lift-on, lift-off (LoLo) freight services compete to a limited extent with RoRo freight services.
- A recent analysis of Condor's operation conducted for the States of Jersey suggests that the Northern freight routes in summer and winter are the principal sources of profit. That is to say, they cover their incremental costs, and also make a positive contribution to meeting the fixed costs associated with other routes. Northern passenger routes are profitable in both summer and winter, in the sense that revenues cover incremental costs. Southern freight routes are loss-making all year round, as are southern passenger routes in winter. Loss-making routes are ones in which revenues for these routes do not cover incremental costs: they therefore require a cross-subsidy from the profitable routes, principally the northern freight route.
- Were Condor operating solely on a profit maximising basis, it would discontinue service provision in the specific loss-making segments. That it continues to provide these services reflects the service level obligations it has entered into through, in the case of the States of Guernsey, a Memorandum of Understanding (MoU) between the States and Condor. The provisions of the MoU specify a minimum schedule of services on these routes. These requirements reflect the policy objectives of the States, which in turn reflect community expectations, to ensure continuity of service provision across all routes. The requirement to provide a minimum schedule of services across all routes is also reflected in the Operating Agreement between the States of Jersey and Condor.

2.2 Rationale for the proposed approach

- The approach developed through the JPS, and captured by the Operating Agreement implemented by the States of Jersey, reflects the particular constraints of supplying network services, such as RoRo services, to a small market. RoRo activities are characterised by high fixed costs, such as those associated with investment in vessels. Fixed costs in turn imply the existence of economies of scale, and more specifically a minimum efficient scale of operation. The small geographical size of the market constrains the ability of suppliers to take advantage of the operational efficiencies associated with scale economies. This in turn explains why, historically, periods in which multiple operators have supplied RoRo services to both Jersey and Guernsey have been rare, and short in duration.
- The experience is similar to that of some other small island jurisdictions, such as the Isles of Scilly and the Isle of Man. The Isle of Wight is served by two service providers.
- As already observed, the States of Jersey has entered into an Operating Agreement with Condor, along the lines described in section 1.1, and which calls for a similar agreement between the States of Guernsey and Condor. In addition to this legal requirement, the arrangements pursued by the States of Jersey have a bearing on the ability of the States of Guernsey to seek an alternative set of arrangements, given that Guernsey on its own is an

even smaller market. In particular, attempts to attract an alternative service supplier to Guernsey would prove challenging (see section 3.2.1 for a further discussion).

- The States of Guernsey's approach needs also to reflect new investment in fleet capacity. While Condor's investment is expected to some extent to pay for itself through various operational efficiencies over time, the ability of the service provider to recover its costs in a market of limited size is also conditional to some degree on achieving a predictable flow of business. The agreement concluded with the States of Jersey reflects this concern. Any alternative arrangement contemplated by the States of Guernsey would need to recognise the risk of stranding the investment by substantially altering market conditions relative to expectation.
- As observed in section 2.1, revenues from a number of routes are insufficient to cover their incremental costs. Left to its own devices, a profit maximising firm would not supply these activities. Because the authorities require the supply of these activities, some sort of subsidy is needed. In this case, the subsidy takes the form of a cross-subsidy from profitable routes, an option that is possible because Condor is the single provider.
- While alternatives to cross-subsidisation exist (notably in the form of direct payments by the state), the attractiveness of the cross-subsidy approach is that it reduces the administrative burden, associated with managing and implementing the system of subsidies, that would be placed on the States of Guernsey. Moreover, alternatives that do not involve access to the cross-subsidy are likely to impose particular financial costs on Guernsey, because its small size is likely to imply a greater likelihood that supply will be commercially unprofitable when compared to supplying Jersey and Guernsey as a whole.
- The requirement to supply unprofitable routes reflects broader concerns about the potential role RoRo services could play in the development of Jersey and Guernsey, and community expectations regarding reliability and continuity of services. Feedback from the authorities of the States of Guernsey suggests that in addition to formal policy arrangements, the ability of Condor to respond to community expectations is attributable to a number of tacit factors. These include the long history of the firm's involvement with Channel Islands, and that its close association with Guernsey (including the fact that senior staff are long-standing members of what is a small community) create various informal pressures that encourage service delivery.
- Where the potential for competition in a market is constrained by the size of the market and the presence of fixed costs, society faces costs associated with the exercise of market power. That is, compared to a competitive situation, prices will be higher and supply will be lower. This means that some consumers whose willingness to pay exceeds the costs of supplying them are not able to access the service, which is wasteful. Quality may also be lower than under competition.
- Attempts to mitigate market power can be done through several mechanisms. The first is to explicitly regulate prices and the quality of service provision. This approach is reflected in the Operating Agreement concluded by the States of Jersey and Condor. The Operating Agreement contains detailed provisions for price regulation that are consistent with

approaches taken more generally in regulating the pricing practices of monopoly providers of network services in other sectors. The approach is also consistent with the need for the regulated entity – Condor – to implement a system of cross-subsidies to sustain unprofitable operations. The Operating Agreement also contains detailed provisions, including reporting requirements, for performance monitoring in order to ensure the quality of service. It also sets out the minimum schedule of services that must be provided.

- The second option to mitigating the problem of market power, which can be complementary to the first, is to allow the threat of new entry to discipline both pricing behaviour and service provision. The proposed arrangements leave open the possibility for the authorities to consider a putative entrant should one demonstrate its capacity to meet all service requirements, including the satisfactory supply of unprofitable routes. Procedures for addressing new entrants are specified in the Operating Agreement. Moreover, the proposed arrangements also allow for the States of Guernsey and Jersey to consider the approach to long term provision – including the option of an alternative provider – following the first seven years of implementation of the proposed arrangement. The extent to which the threat of entry is credible is of course contingent not only on the policy stance towards new entry, but on the realistic possibility that competitors could feasibly seek to enter the market, given Condor’s advantages as an incumbent.
- The plausibility of entry by an alternative supplier is more generally relevant to the issue of the bargaining power the States of Guernsey has relative to an incumbent. When a party is reliant on a single provider of an essential service, it may be exposed to a hold-out problem. A hold-out problem may occur between two parties when one party supplies a service that is critical to the other, giving the first party significant leverage over the other. In particular, the service provider may seek to renegotiate an arrangement to its advantage by withholding or degrading service provision. Such problems occur because it is usually not possible to write contracts that foresee all possible contingencies.
- How severe the hold out problem is depends on how residual rights of control are specified in the contract i.e. which party holds decision rights in cases when the contract is silent. The allocation of residual rights needs to mitigate the risk of hold-out for the state, specifically, the risk that the supplier could withhold or scale-down service provision in order to extract a better deal. It also needs to ensure that the investor is not exposed to unilateral actions by the state that might strand its investments, such as for example, materially changing conditions of competition or of access to port facilities. There are also informal mechanisms that might address the hold-out problem – such as the loss of reputation and standing of the service provider.
- One way bargaining power can be increased is for a party to form a joint negotiating position with another party that shares a common interest.. Indeed, this is likely to explain the historical preference for the States of Jersey and the States of Guernsey to act jointly, a preference that has carried over into the proposed arrangements. And as already observed, the fact that both Channel Islands would retain the right to consider an alternative service provider that meets the service requirements provides an outside option that could help, to some extent at least, improve their bargaining power.

3 Assessing alternative arrangements

3.1 Overview

- Counterfactual cases in which the States of Guernsey adopt their own arrangements assume that other things remain as they are, notably that the States of Jersey will continue to implement the arrangements described in section 1.1, given that it is legally bound through the Operating Agreement.
- A consideration of the counterfactual cases must also reflect the broad policy commitments of the States, including the desire to maintain affordable, reliable, and continuous service provision across existing route segments. It needs also to reflect the States of Guernsey's intention to avoid public ownership of RoRo assets.
- On this basis, two alternatives could be considered. The first is to liberalise service provision and allow for free commercial entry wherever this is profitable (“the competitive model”). Under a liberalised model, it would be reasonable to assume that competitive entry might occur, if at all, on profitable routes from Guernsey. This is likely to undermine the potential to cross-subsidise unprofitable routes. Service provision on these routes, if it is to continue, would require subsidisation by the States.
- The second alternative would be to formally tender for the provision of RoRo services to Guernsey for a specified period of time (10 years for example). The tender would provide sole rights to supply the services over the period of the contract. The contract could include pricing and quality standard specifications, including service schedules. While the exclusivity of service provision may create scope for cross-subsidisation, it is also possible to include specific state subsidy payments within the scope of the contract to support unprofitable routes.

3.2 Assessing the alternatives

3.2.1 Competitive model

- As observed in sections 1.1 and 2.2, lessons of experience suggest that the potential for competitive entry is limited, even on profitable routes, and in the absence of formal policy restrictions on competition. This points to the influence of incumbency advantages – notably, familiarity with the local market and brand recognition – combined with the effects of fixed costs and small market size.
- Because the competitive model would focus on routes from Guernsey only, the scope for competitive entry would be even more restricted. This is because the limited scope for profitability on routes from Guernsey would further reduce the attractiveness of entry. Moreover, the position of the incumbent on the routes from Jersey (which is a larger

market) would offer the incumbent the scope to compete aggressively with any new entrant on Guernsey routes, in particular by taking advantage of economies of scope and scale involved in supplying multiple routes. This acts as a deterrent to entry.

- In the event of competitive entry, the States would need to subsidise the provision of non-competitive routes, for reasons explained in section 3.1. This could be done through tendering a specific contract for these services. This could encourage the cost-effective provision of these services, but only on the assumption that there is competition between service providers.
- However, it is probable that the new entrant would focus exclusively on other routes and shy away from competing with the incumbent. In that case, the authorities would be left to negotiate with the incumbent. The administrative costs of doing this - relative to a situation in which the incumbent financed the services through a cross-subsidy - are likely to be high, given that the incumbent will have a better knowledge of the true costs of service delivery relative to the authorities. The authorities will also need to consider the public costs of funds associated with the subsidisation of unprofitable routes

3.2.2 Formal tender model

- A formal concession would provide a contractually binding arrangement between the authorities and service provider for the exclusive supply of routes to Guernsey. At the end of the contract, other service providers would have the possibility of bidding for the contract. A variety of end-of contract arrangements could be envisioned, including providing the incumbent first right of refusal subject to having met specific performance criteria, to automatic competitive re-tendering.
- The contract would contain specific pricing provisions similar to that in the Operating Agreement, and would need to specify required service levels. In practice, because the scope of the contract would cover Guernsey services only, the contract would need to include provisions for subsidising unprofitable routes, unless the operator is the incumbent (given that the incumbent would also provide services to Jersey).
- The cost of supplying unprofitable routes from Guernsey only will most likely be higher for an operator not able to access the Jersey routes, because of loss of economies of scope and scale. The public costs of funds associated with the subsidies would also need to be taken into account.
- In the event the concession was won by the incumbent, the arrangements could in practical effect mimic, in aspects, the arrangement that is actually proposed by the States of Guernsey and currently implemented by the States of Jersey. Both are time-limited and allow for the potential for entry. The Operating Agreement implemented by States of Jersey allows for the possibility of entry during the life of the contract even if the states would not proactively seek a new contractor. A concession contract would normally provide scope for the States to seek new entry within the life of the contract in the event of serious underperformance.

- There are likely to be various costs to the States of Guernsey associated with the process of contracting through a concession. For a start, the States' bargaining power is likely to be lower than if it were able to negotiate jointly with the States of Jersey. This in turn could leave it more exposed to hold-outs and opportunistic renegotiation, particularly in negotiations with a supplier that does not have the same connections to Guernsey as the incumbent, and hence does not face the same informal incentives against opportunistic behaviour. Secondly, the process of negotiation itself is likely to be resource-intensive, whereas a joint approach may spread this administrative burden between the jurisdictions.

3.3 Are the proposed arrangements justified when compared to the counterfactuals?

The main risks associated with the proposed arrangement are, first, the possibility of market power. As observed in section 2.2, this can carry significant economic costs for users of RoRo services. There are also transfers from users of profitable routes to users of unprofitable routes in line with the cross-subsidies.

The problem of market power could be addressed through explicit price and quality of service regulation as set out in the Operating Agreement between the States of Jersey and Condor. It would be expected that, in developing its version of the Operating Agreement, that the States of Guernsey would transpose the provisions of the existing agreement. The implementation and enforcement of the regulatory provisions would be conducted on a joint basis by the respective States. Pooling administrative resources would reduce the costs of overseeing the contract. Provisions regarding new entry, when incorporated in arrangements concluded by the States of Guernsey, could further mitigate the exercise of market power.

Secondly, there is the possibility that the States would be left exposed to hold out problems to the extent that the arrangement entrenches the position of the incumbent. However, both this issue and the negative consequences of dominance may be addressed in part by informal mechanisms that mitigate the scope for opportunistic behaviour.

It is unclear as to what extent either of the alternatives presented could address the market power issue any better than the proposed arrangements. Incumbency advantages, combined with fixed costs and market size (especially given that Guernsey would have different arrangements to Jersey) are likely to dampen prospects for effective competition under the competitive model, and therefore the scope to mitigate market power through that route. The concession model could be combined with price and quality of service regulation, but at best this would simply amount to replicating the provisions of the Operating Agreement.

Under the competitive model, the hold out issue may arise in the context of any negotiations on subsidies for the operation of unprofitable routes. Under the concession model, there may be hold out problems of a similar nature to any that arise under the proposed arrangement. Under either model, the fact that the States of Guernsey would negotiate would reduce its bargaining power relative to a joint approach.

Indeed, an important issue with both alternatives is that they will be specific to the States of Guernsey. In addition to the possibility of segmenting an already small market, with the possible

loss of efficiencies relating to economies of scale and scope, and the issues relating to diminished bargaining power, is the extra administrative burden placed on the States.

3.4 Conclusions

The findings of this report suggest that the proposed arrangements are appropriate to meeting the policy objectives set out for the States of Guernsey, and are likely to do so more effectively and at lower cost than the alternatives.

The conclusion reflects, first, that the proposed arrangements essentially build on the historical pattern of commercial RoRo operations to both Jersey and Guernsey, and the specificities involved in supplying such services to small island jurisdictions. The proposed arrangement also builds on the tacit incentives at play that stimulate, to some extent, the provision of RoRo services in accordance with the objectives set by the authorities.

The conclusion also reflects the reality that the Operating Agreement entered into by the States of Jersey limits the extent to which Guernsey could feasibly adopt an alternative arrangement.

Clearly, the effectiveness of the proposed arrangements depends to a large extent on whether the States of Guernsey implement regulatory provisions of the type contained in the current Operating Agreement implemented by the State of Jersey, and on any supporting legislation developed by the States of Guernsey. The Operating Agreement contains provisions that require, amongst other things, that the parties work “in good faith to develop any further key performance indicators that are relevant to the operation of the Services and these will operate as non-binding reference tools for monitoring, consultation and review purposes.” Developing such tools for monitoring, consultation and review would strengthen the ability of the States of Guernsey to ascertain how effectively overall policy objectives will be met through the proposed arrangement, and assist in considering suitable arrangements over the longer term when the current ones come to an end.

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FRONTIER ECONOMICS EUROPE

BRUSSELS | COLOGNE | LONDON | MADRID

Frontier Economics Ltd 71 High Holborn London WC1V 6DA

Tel. +44 (0)20 7031 7000 Fax. +44 (0)20 7031 7001 www.frontier-economics.com

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

(N.B. The Policy Council supports the proposals contained within this Policy Letter. It is of the view that the introduction of legislation to create a simple licensing regime for the use of the St Peter Port roll on/roll off ramps, which is similar to legislation that has successfully been in operation in Jersey for some time, will provide Guernsey with a greater level of protection and resilience in respect of its roll on/roll off sea links.)

The States are asked to decide:-

XV.- Whether, after consideration of the Policy Letter dated 11th May, 2015, of the Commerce and Employment Department and the Public Services Department, they are of the opinion:-

1. To approve the preparation of legislation to create a simple licensing regime that will take into account the Commerce and Employment and Public Services Departments' joint policies on Roll On/Roll Off services in force from time to time, pursuant to which the Roll On/Roll Off ramps at St Peter Port Harbour could not be used by an operator offering Roll On/Roll Off car, passenger and freight ferry services to and from the United Kingdom, Jersey or St Malo, except pursuant to a licence granted by the Commerce and Employment Department; which Department would be under a statutory duty to consult both the Public Services Department and the Harbourmaster before granting such a licence.
2. To approve the preparation of all necessary supplementary provisions within that legislation required to give effect to the above proposition, including (but not limited to) provision for licences to be suspended and revoked in appropriate circumstances, appeals against decisions, the publication of applications, and any required amendments to other legislation.